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Enhancing the Right to Tourism for Local People in Era Covid-19: Study Concerning Tourism Sectors Regulation

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Abstract

This study aims to examine and analyze the rules and regulation regarding the right to tourism based on international law and the Indonesian legal perspective. It also discusses about the lesson learned during the Pandemic Covid-19 in enhancing and facilitating the right to tourism for local people. This is a normative legal research using statutory approach and conceptual approach. The study shows that the right to tourism has been acknowledge in both international law and Indonesian law and its derivative. Therefore, the lesson learned during the Pandemic Covid-19 is enhancing and facilitating of the right to tourism shall be fulfilled in any condition, hence the stakeholders shall provide the fulfillment of right to tourism, especially for local people

Keywords

Right to tourism, Covid-19, Tourism, Regulation.

Introduction

During the Covid-19 pandemic, the tourism sector was one of the worst-hit sectors. The pandemic demanded the governments of several countries to implement lockdown policies. This caused tourism activities to stop for a while.

The government then prohibits tourism activities in order to prevent the spread of the Covid-19. The prohibition certainly has an impact on decreasing the income of a country including certain regional income, which has so far relied on the tourism sector. This condition requires governments in several countries, including Indonesia to issue policies to overcome the Covid-19 pandemic as well as trying to reduce the impact that arises from the pandemic, especially in the tourism sector.

Apart from government policies, the entrepreneurs also take out their concerns about the impact of the Covid-19 pandemic. They try to attract domestic tourists to carry out tourism activities by offering various benefits for them while still paying attention to the health protocols of Covid-19. This effort is also being made to rebuild sustainable tourism in the new-normal era. According to the United Nations World Tourism Organization (*hereinafter* the UNWTO), sustainable tourism defined as "tourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the environment and host communities."(Dwijayanthi et al., 2017)

The concept of sustainable tourism which is regulated by the United Nation World Tourism Organization emphasizes the need for visitors, companies and the surrounding environment for tourism activities. This is of course closely related to the regulation and fulfillment of right to tourism.

The concept of sustainable tourism, which is regulated by the UNWTO emphasizes the need for visitors, companies, and its surrounding in terms of the fulfillment of tourism activities. Hence, it is closely related to the regulation and fulfillment of the right to tourism.

According to the Article 2 of the Universal Declaration of Human Rights (*hereinafter* UDHR), it is stipulated that: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".(*Universal Declaration of Human Rights | United Nations*, n.d.) Referring to this provision, it can be understood that everyone has the same rights without any distinction based on ethnicity, race, religion, nationality or other status.

Based on the UDHR, it can be understood that equality of human rights has been regulated juridically, but in practice there are still gaps between one person and another. It also applies in the context of the Bali tourism industry. Bali which has been named as "World's Best Destination 2017 by Trip Advisor"(*BALI Crowned World's Best Destination 2017 by Trip Advisor - Indonesia Travel*, n.d.) Turns out that there are still some unresolved issues regarding the gap between local and foreign tourists. There are still several people are treated differently with the

definition of "national or social origin", where local people are considered not having enough money to travel and/or access the facilities/infrastructure of the tourism industry compared to tourist or foreigners.

The existence of foreign tourists in Bali is not a new thing to be discussed. In the 2016 to 2019 period, the increase in foreign tourist visits in general increased by an average of 2 million people per three years. However, conditions drastically decreased in the 2020-2021 (Badan Pusat Statistik, 2013) period because the world was hit by the Covid-19 pandemic, which made many things change significantly, including the tourism industry. Before the pandemic, Bali was known as one of the most popular tourist destinations around the world. As one of the provinces that makes a large contribution to the APBN, of course Bali is very much taken into account. As disclosed by the Governor of Bali, Wayan Koster, that Bali has made a large contribution from the tourism sector to the national foreign exchange of IDR 75 trillion or around 28.9% in 2019. (Wijaya & Maya, 2020)

Based on the explanation abovementioned, it is interesting to study in-depth and analyze the regulation regarding the right to tourism as part of human rights and lessons learned from the Covid-19 Pandemic in facilitating the right to tourism for local people. This paper will respectively discuss the regulation of the right to tourism as part of human rights based on Indonesia law and international law as well as discussing the lessons learned from the Covid-19 pandemic in enhancing and facilitating the right to tourism for local people (Choudhury, Pandey, & Bhattacharya, 2021).

A similar study was conducted by Dian Herdiana in 2020, which analyze the Recommendations for Tourism Recovery Policy after the Corona Virus Disease 2019 (Covid-19) Outbreak in Bandung City ("Rekomendasi Kebijakan Pemulihan Pariwisata Pasca Wabah *Corona Virus Disease* 2019 (Covid-19) di Kota Bandung"). The study examines the recovery efforts can be carried out by the government of Bandung City in the tourism sector as well as the role of entrepreneurs to support the government in restoring tourism conditions in Bandung. In 2020, Sabrina Tremblay-Huet also examines a study concerning "Covid-19 Leads to a New Context for the "Right to Tourism": a Reset of Tourist' Perspective on Space Appropriation is Needed", which mainly discusses the need for reforming regulation regarding the implementation and the fulfillment of the right to tourism after the Covid-19 Pandemic. (Tremblay-Huet, 2020)

Based on the explanation abovementioned, it is known that there are similarities in terms of the focus of the study, which mainly discuss about the right to tourism. However, this paper will specifically discuss the arrangement of the Right to Tourism as a part of human rights and lesson learned from the Covid-19 Pandemic in enhancing and facilitating the right to tourism for local people (Soltannia et al., 2020).

The study aims to analyze and examine the regulation concerning the right to tourism as a part of human right according to Indonesia legal perspective and international law as well as lesson learned from the Covid-19 Pandemic in

enhancing and facilitating the right to tourism for local people. This writing will discuss systematically the regulation concerning the right to tourism based on both Indonesia legal perspective and international law as well as discussing the lesson learned from the Covid-19 pandemic in enhancing and facilitating the right to tourism for local people, which highly hoped to be able to deliver an ideal concept of regulation in terms of the fulfillment of the right to tourism in the future (*ius constituendum*) (Yosef et al., 2021).

Research Method

This is normative legal research using statutory approach and conceptual approach. According to Sutadnyo Wigyosubroto, normative legal research is defined as doctrinal research using law as its object, which later is conceived and developed based on doctrines as believed in order to form a concept or development. The writing will be described in a descriptive-analytic technique in order to portraying the object and its problem as well as any lesson learned systematically.

Result And Discussion

Regulation regarding the Right to Tourism as a part of Human Rights

Indonesia as a state based on the rule of law put human rights as concrete evidence of the commitment of its capacity to prevent the abuse of power by the State against its citizen, it is following the idea from Mohammad Hatta.(Gatra, 2019) The regulation concerning human rights is specifically regulated under Law Number 39 of 1999 concerning Human Rights. In accordance, Indonesia also ratified the UDHR and comply its regulation with regard to the acknowledgment and fulfillment of human rights as regulated under the UDHR.

According to the Article 24 of the UDHR, it is stipulated that "*Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay*". This provision guarantee that everyone has the right to rest and leisure, or also known as the right to tourism.

In general, the right to tourism is rarely discussed, since it is considered as fundamental as non-derogable rights.(Dharmawan, 2012) However, when it comes to Bali, it cannot be denied that tourism has given a huge contribution to the economic growth of Bali.(Antara & Sumarniasih, 2017) Many locals work in tourism sectors, such as hotels, villas and other tourism areas.

The development of the tourism sector in Bali has become the focus of the government. Both the central government and local governments are trying to formulate various strategic policies, which aimed to support the development of the tourism sector itself.(Santosa & Saraswati, n.d.) The formulation of the policy was carried out with the idea that the right to tourism is a part of human rights, which shall be fulfilled in order to guarantee the right to rest and leisure, as well as

the right to work in the tourism sector and actively participate in the tourism activities.(Laheri, 2015)

The recognition of the right to tourism as a part of the human rights refers to several human rights principles, inter alia the principle of universality, the principle of dignification of humans, the principle of non-discrimination, the principle of quality, the principle of inseparability, the principle of immutable rights/confiscated/exchanged with certain things, the principle of interdependence, and the principle of responsibility.(Laheri, 2015) The implementation of those principles then followed by the obligation to respect, an obligation to protect as well as obligation to fulfill the right to tourism.(Arsika et al., 2018)

Regulation concerning the right to tourism as a part of human rights is closely related to civil and political rights as well as the economic, social, and cultural dimensions.(Arsika et al., 2018) It is in accordance with the *Article 13 of Universal Declaration of Human Rights*, which stipulated that:(McCabe & Diekmann, 2015)

- (1) *"Everyone has the right to freedom of movement and residence within the borders of each States;*
- (2) *Everyone has the right to leave any country, including his own, and to return to his country."*

This provision also respectively emphasized in the Article 12 paragraph (1) and (2) of *International Covenant on Civil and Political Rights (hereinafter ICCPR)*, which stipulates that "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence" and "Everyone shall be free to leave any country, including his own".

Regulation concerning the right to tourism is also emphasized in the Framework Convention on Tourism Ethics 2020, which stipulates that "*aiming to promote responsible, sustainable, and universally accessible tourism in the framework of the rights of all persons to use their free time for leisure pursuits or travel with respect for the choices of society of all peoples*". The provision concerning the right to tourism is also stipulated in Article 5 paragraph (2), as follows:

"Tourism activities should respect the equality of men and women; they should promote human rights and, more particularly, the individual rights of the most vulnerable groups, notably children, the elderly, persons with disabilities, ethnic minorities and indigenous peoples."

Regulation concerning the right to tourism as a part of human rights is regulated under the Article 7 of the United Nations World Tourism Organization-Global Code of Ethics for Tourism (*hereinafter GCET*). This provision mainly regulates the recognition of the right to tourism and facilitating access for everyone to leisure, travel, and holidays.

From Indonesian legal perspective, the implementation of tourism is carried out based on the Indonesia Law Number 10 of 2009 concerning Tourism (*hereinafter Tourism Law*). According to the Tourism Law, the right to tourism is juridically recognize as a part of human right and shall be implemented

concretely.(Dharmawan et al., 2011) According to the provisions of the Tourism Law, the right to tourism shall be carried out to increase the people's prosperity and welfare as contained in "Pancasila" and the Preamble of Constitution of the Republic of Indonesia of 1945.

According to the explanation abovementioned, it can be understood that the right to tourism has been recognized legally. Thus, it is important to implement the harmonization within the stakeholders in order to facilitate the fulfillment of the right to tourism. Hence, the fulfillment of the right for both local people and foreigners shall be carried out without any discrimination.

Lesson Learned from the Pandemic Covid-19 in Enhancing and Facilitating the Right to Tourism for Local People

The impact of the Covid-19 Pandemic on the tourism sector has been increasingly felt since the President of Indonesia, Mr. Joko Widodo issued Presidential Decree No. 11 of 2020 concerning Covid-19 Public Health Emergencies and also the Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters of the Spread of Covid-19 as a National Disaster and accompanied by various related policies. Since then, an extraordinary impact has hit the Indonesian people.

The regulations issued by the Government have been known as one of the external factors that could bring a significant change in every sector, including tourism sector. One of the regulations during the Covid-19 Pandemic is related to the effort of Government in terms of recovery in both economy and tourism sector. The idea of recovery programs in tourism sectors received a positive response from the people who need entertainment to release fatigue during the quarantine period.(Brouder et al., 2020) It cannot be denied that the quarantine during the pandemic causes the right to tourism have been curtailed.(Baum & Hai, 2020) Therefore, the idea of *new-normal* including the concept of recovery by implementing the health protocol of Covid-19 brings positive vibes for both entrepreneurs and tourists (Saravistha, 2021).

The idea of *new-normal* is expected to be able to help the recovery process of tourism sector in various countries, including Indonesia. The recovery of tourism sector also expected to be able to help the economic growth.(Suryanto & Kurniati, 2020) Hence, this situation and condition become a challenging task for all of the stakeholders in terms of the management and also the marketing of each tourism area.(Buhalis & Amaranggana, 2015) The Covid-19 Pandemic has forced the stakeholders in the tourism sector to rethink and reset tourism sector toward a better version for the future.(Higgins-Desbiolles, 2020)

The implementation of Presidential Instruction No. 6 of 2020 on Maintaining Self-Discipline and Law Enforcement of Health Protocols in the Prevention and Control of Covid-19 was then followed by "Surat Edaran No. 3355" issued by the Governor of Bali concerning the New-Era Life Order Protocol, especially in tourism sector. Those regulations are expected to be able to help the recovery process in tourism sector.

Considering that has been economic loss during the Covid-19 Pandemic, a lot of stakeholders, especially the entrepreneurs try to find solutions for maintaining their business. One of the solutions taken is offering packages with a reasonable price that can be afford by the local people. By implementing this strategy, the entrepreneurs still able to carry out their business running even in the slow pace. Hence, this condition is still considered to be better option in supporting the tourism sector.

The idea of offering a reasonable price for customer attracts several local people to come and visit Bali. It shows that the pandemic situation enhances and facilitates the right to tourism for local people, since the pandemic provides a chance for the local people to leisure and rest in a proper way with a reasonable price. Hence, the right to tourism as a part of human rights as stipulated in Article 24 of the UDHR is now being implemented properly. During the Pandemic, the local people have had the opportunity to enjoy facilities that previously were only be enjoyed by foreign tourists due to obstacles in the form of inability to reach the rates set by the business actors. For instance, the five-star hotel, which is usually only be enjoyed by foreigners is now being enjoyed by the local people as well.

With regard to the idea of fulfillment of the right to tourism and the recovery process of tourism sector after the Covid-19 Pandemic, the local government shall consider several regulations concerning about the obligation to provide tourism information, legal protection as well as the safety and security for tourists under the GCET.(Arsika et al., 2018) Referring to the GCET, the Government is obliged to provide any information as well as a prior notice, which can be assumed as a travel warning in the event of things that endanger the safety of the tourists. Through the openness to information or early warning, it is expected that it will be able to build a sense of trust, security and certainty for those who wants to travel regarding the current situations and condition of the area.

The pandemic condition provides a new perspective that in the effort to enhance and facilitate the fulfillment of the right to tourism and sustainable tourism, especially in Bali. All the stakeholders shall comply with the local wisdom that believes by the Balinese people. One of the local wisdoms that might be able to support the growth and development of the sustainable tourism after the Covid-19 pandemic is the "*Tri Kaya Parisudha*" philosophy. This philosophy is defined as "*three pure behavior which leads to better social integrity*".(Rosalina, 2017) This philosophy is expected to be a guidance for the stakeholders in the tourism sector to provide a better tourism activity, especially in the fulfillment of the right to tourism to match the idea of *Manacika* (proper knowledge), *Wacika* (proper language), and *Kayika* (proper attitude).(Rosalina, 2017)

Referring to this philosophy, the implementation of tourism in Bali shall be done in a proper knowledge, language and attitude. By providing a proper knowledge, it is expected that the stakeholders will provide a proper service for tourists, which in accordance to the health protocol of the Covid-19. Through the proper language, it is expected that the stakeholders will deliver any information needed to prevent transmission and spread of the Covid-19 (Saravistha D. B.,

2022). Last, through a proper attitude, it is expected that the stakeholders will provide a good service in providing safety and security for both local people and foreigners without any discrimination. Thus, the stakeholders shall be able to comply the idea of new-normal with the philosophy of "Tri Kaya Parisudha" as Balinese local wisdom.

According to the explanation abovementioned, it can be understood that there still a gap between local people and foreigner in terms of the fulfillment of the right to tourism. However, the Covid-19 pandemic changed everything. During the Covid-19 Pandemic, the local people can enjoy the leisure and rest with a reasonable price. Hence, there shall be a regulation, which aims to enhance and facilitate the right to tourism for local people even after the Covid-19 Pandemic. This regulation shall comply with the new-normal era as well as the local wisdom of the Balinese people.

Conclusion

According to the explanation abovementioned, it can be concluded that the right for tourism has been acknowledge as a part of human right in Indonesia legal perspective and international law. According to Indonesia Law, the right to tourism is recognized in the Tourism Law and its derivative. Hence, there shall be a harmonization between the stakeholders in the fulfillment of the right to tourism for everyone without any discrimination. In terms of the Covid-19 pandemic, there shall be a regulation, which aims to enhance and facilitate the right to tourism for local people even after the Covid-19 pandemic. This regulation shall comply with the new-normal era as well as the local wisdom of the Balinese people.

Suggestion

Though this research, it is hoped that the government and entrepreneurs will be able to make rules and regulation related to fulfilling the right to tourism to be fulfilled even after the Covid-19 Pandemic. Thus, the guarantee of the right to tourism can still be fulfilled as a part of the human rights, which is legally recognized without any discrimination between local people or foreigners.

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