

INVESTMENT LEGAL RECONSTRUCTION IN DEVELOPING LOCAL WISDOM-BASED TOURISM INDUSTRY FROM INDONESIA

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Abstract: *The philosophical issue in this study was the liberation in international trading and in the investment in the tourism sector which eradicates the barriers of foreign countries to invest in Indonesia. The juridical issue in this paper is that there are many overlapping or inconsistent norms among one law to other laws as well as the principle of state sovereignty. The investment development in the tourism sector also raises sociological issues such as the emergence of various challenges and negative impacts as the consequence of tourism investment, i.e., economic, effect, ecological, and socio-cultural effects. This is a normative study that utilizes the laws approach, conceptual approach, and legal comparison approach. The legal materials used in this study were the primary legal material, secondary legal material, and tertiary legal material. The legal materials were collected by using a documentation study with the snowball technique. The technical analysis of the legal material used descriptive, comparative, evaluative, and argumentative techniques. The finding of this study showed that to formulate the investment regulation in the tourism sector which is based on local wisdom in the future it should use the 3R method (Reduce, Reuse, Recycle) in the management of tourism investment, further the establishment of regulation in regional level must use ROCCIPI method (Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology), in which the policy formulation is conducted by involving people participation.*

Keywords: *Reconstruction, Investment, Tourism Industry, Local Wisdom.*

Introduction

Recently, the development of investment could not be separated from the development of globalization and liberation that have created the world in global unity and it produced a free market as the manifestation of individual independence. Eventually, the role of the country is reduced and it compels the countries to survive in facing the change

caused by the contemporary reality existence. Robertson (1992) stated that globalization is a concept that refers both to the compression of the world and the intensification of consciousness of the world as a whole, which meant that globalization has developed consciousness that the world is a whole unity and there are no more separated blocks. Economic globalization is also triggered by two important issues namely technology and international trade liberation as well as foreign investment. The existence of liberation in international trade has a crucial role in the development of world industry so eventually, it could create opportunities for the economic growth of a country (Santoso et al., 2011).

Globalization and liberation in this modern era could not be separated from the history of the three pillars of the world economy through Bretton Woods. Those pillars are International Monetary Fund (IMF), International Bank for Reconstruction and Development (IBRD), and General Agreement on Tariff and Trade (GATT) which further transformed into World Trade Organization (WTO). The international law regulation concerning investment is marked by General Agreement on Tariff and Trade (GATT) in Uruguay Round in 1994. There are four agreements in GATT, namely Trade-Related Investment Measure or TRIMs, General Agreement on Trade and Services or GATS, Trade-Related Aspect of Intellectual Property Rights or TRIPS, and establishment of Multilateral Trade Organisation. WTO is a countries forum to agree on the exchange of “liberation” commitment by eradicating the barriers of trade and agreeing on terms and conditions that should be followed by the country members, such as opening reciprocal market access. Article XVI paragraph (4) of the WTO establishment agreement becomes an essential indicator for WTO to oblige the country members to adjust their regulations or trade laws with the regulations mentioned in the WTO trade Annex.

The issuance of Law No 7 of 1994 dated on 2 November 1994 concerning the ratification of Agreement Establishing the World Trade Organization has officially recruited Indonesia to be a WTO member and all agreements within the WTO has become national legislation (Janed, 2016). Further, the implementation of principles in GATT in the investment sector is accommodated by Law No 25 of 2007 concerning Investment (hereinafter referred to LoI). One of the reasons for the issuance of Law No 25 of 2007 concerning Investment is related to increasingly fierce competition among the nations, so the policy of investment should create the national economic competitiveness to support the integration of the Indonesian economy into the global economy.

Investment involves many sectors including tourism. The tourism that is studied in this research is tourism from the perspective of investment legal. Tourism could not be separated from global society so it is a basic human need and a part of respected and protected human rights as stated in Article 28 of the 1945 Constitution of the Republic of Indonesia. In present globalization, tourism as a basic need that is respected as a human right is believed capable of improving national economic growth. The understanding related to reciprocal principle and does not differentiate country of origin: Article 3 paragraph (1) of LoI mentioned that investment is based on the principle of equal treatment and does not discriminate from the country of origin. It means there is the same treatment for foreign and domestic investment. It opens an opportunity for investors to invest in all sectors, so it violates the constitution because it leads to liberation. Surely, it is not in line with the Regulation of President of the Republic of Indonesia No77 of 2007 concerning List of Closed and Open Business with Requirements in the Investment Field. Likewise, the Law of Tourism in Article 14 does not provide a clear and decisive description

concerning the permitted businesses in the tourism sector. It could affect the local people's life in which the investment is invested. Based on these regulations, it could be seen that there is an inconsistency from one regulation to other regulations, in which one regulation permits while the other prohibited.

The philosophical issue in investment legal in the tourism sector is there is an impact of economic globalization which causes liberation in the world trade system so every country is urged to provide the same opportunity and treatment to other countries to invest in especially in the developing countries. The implementation of WTO agreement liberation principles in the Laws in the sector of economic development in Indonesia, as stated in LoI is basically in line with the principle of Pancasila and the 1945 Constitution of the Republic of Indonesia. On one side, the development of the Indonesian economy is aimed at realizing social justice for all Indonesian as the ultimate goal of implementing the principle of Pancasila and the 1945 Constitution of the Republic of Indonesia (Hadi et al., 2012). Investment activity is principally intended for improving the economy of a country to realize prosperity and fortune for all levels of society and fulfill demands for tourism goods and services to obtain maximum profit. However, in reality, investment in the tourism industry brings the chaos of values and norms marked by the profanation of holy places for tourism purposes (Landra, 2018). It has a bad impact on the environment and people's life in many regions of Indonesia. Spatial planning based on the values of local wisdom in the area is neglected, so that physical development is often carried out in areas that endanger the preservation of the natural environment or which are seen by the community as sacred areas that are sacred.

The juridical issue in this paper is that there are many overlapping or inconsistent norms among one law to other laws as well as the principle of state sovereignty that ultimately reduce the role and participation of the people in conducting protection of the values living and developing in the region, especially related to investment in the tourism sector. Therefore, there should be a synergized, harmonious, and specific regulation upon the local wisdom living in the society in implementing tourism investment for the sake of people's prosperity at all levels through the regulation protection. The juridical issue related to the overlapping investment regulation in the tourism sector and the existence of local wisdom has brought sociological problems in terms of the urgency of the territory of customary law society in conducting their customary and cultural activities because of the expansion and exploitation of the tourism investment activities. This issue also occurs in all Indonesian territories such as the project of food estate and integrated energy in Merauke, Papua (Mar, 2011), in the tourism investment business which is based on research in Nusa Ceningan related to the customary society and natural resources as the tourism potency, the territory of Paperu Cape, which is well-known as Souino Cape, causes the degradation of the main jobs of the local people (Aliansi Masyarakat Adat Nusantara, 2013), the waiver of the living area of Balinese customary society in Ungasan Village, Badung Bali (Hazliansyah, 2014) and the case of boat dock (jetty) with the dredging and backfilling of materials in the beach area of Semaya Sub-village, Suana Village, Nusa Penida Sub-district (NV, 2018).

Based on the above description, the research problems could be formulated as follows:

1. What is the principle of investment regulation in developing the local wisdom-based tourism industry?

2. Has the investment regulation in the developing tourism industry been regulated in the laws?
3. What is the model of regulation which regulates tourism industry investment which is based on local wisdom in the future?

Methods

This is a normative study that utilizes the laws approach, conceptual approach, and legal comparison approach. The legal materials used in this study were the primary legal material, secondary legal material, and tertiary legal material. The legal materials were collected by using a documentation study with the snowball technique. The technical analysis of the legal material used descriptive, comparative, evaluative, and argumentative techniques.

Results and discussion

The Nature of Investment Regulation in the Development of the Tourism Industry Based on Local Wisdom

According to Joseph Battat (2010), investment policies reflect what governments see from investment to meet national objectives, as well as the rights and responsibilities they assigned to investors and investment. The investment policies are incorporated later in the investment law, accordingly, the investment policies and investment laws must be harmonious. The regulation in the investment laws must reflect the investment policies because the investment laws and regulations are a legislative instrument for implementing the policy (The World Bank, 2010) and be functional for translating the investment policies into implemented legal terms. Therefore, investment policies must be clear so as not to hinder the establishment process or investment laws regulations since investment policy formulation is a prerequisite to investment legislation drafting (OECD, 2006). The development related to foreign investment arrangement was marked by the General Agreement on Tariff and Trade (GATT) in Uruguay Round in 1994 and further became World Trade Organization (WTO). In this agreement, there is a provision related to an investment called TRIMs. This provision regulates all countries agree to sign an agreement that contains an agreement that all their laws do not differentiate foreign and domestic investment. Further, it became the basis of investment policy regulation in Indonesia by adhering to the principle of equal treatment regardless of country of origin.

The regulation of investment in Indonesia has been established in Law No 25 of 2007 concerning Investment. Based on Article 4 paragraph (2) of Law No 25 of 2007 concerning Investment, the government that establishes a basic policy of investment must concern several issues such as providing the same treatment for foreign and domestic investment by considering national interest. The consequence of the same treatment for foreign and domestic investment is that all opened and closed sectors or kinds of businesses are based on requirements. The opened sector with requirements for foreign and domestic investment is based on some criteria as stated in Article 12 LoI. The policy related to the list of opened and closed business sectors with requirements is known as the Negative List of Investment (NLI) (Negative List of Investment (NLI) is the regulation of closed and opened business sectors with requirements in investment). This policy is the legal

foundation for the investor in investing in Indonesia. Besides that, NLI is aimed at protecting the Indonesian economy as well as allowing the investor to be free in running business activities. One of the biggest incomes of Indonesia comes from the tourism service sector, while the fact of GATS and TRIMs implementation, especially in the tourism service sector causes a weaker position compared to the developed countries in the agreement. It is one of the implications/effects of the implemented liberalization (Dewi, 2021). Tourism is an integral part of national development which is conducted systematically, well-planned, integrated, sustainable, responsible by maintaining protection for the religious values, the culture of the community, environmental sustainability, and quality (Kurnia, 2019).

One of the tourism management principles that is specified in Article 5 letter c is the principle of providing benefits for the welfare of the people, justice, equality, and proportionality. This principle reassures that people's welfare becomes one of the principles that should be considered in managing tourism. Based on the theory of the welfare state, the concept of the welfare state is a foundation for the government's function and position in modern countries. The welfare state that is a modern law state is an antithesis from the concept of formal law state (classic), which is based on the thought to conduct strict supervision upon the state power (especially executive) in which in the absolute monarch era has been proven conducting many cases of abuse of power (Tim Riset PSIK. 2008). Tjandra (2004) in his book explained the concept of the welfare state is ideologically the most appropriate with the purpose of creating people's welfare and technically is marked by the escalation of the qualitative and quantitative roles of the state through the regulation and distribution role to direct the people for welfare. A welfare state is shortly defined as a democratic government that positions the state as an institution responsible for people's welfare, through a series of public policies in integrating economic and social policies for the achievement of welfare and social justice (Kurnia, 2019).

Based on the description, the philosophy of investment regulation policy in the tourism industry which is based on local wisdom can be described as follows:

1. That the investment regulation in the tourism industry is driven by the pressure of economic globalization that demands liberation in investment by eradicating barriers for developed countries to invest in the developing countries. Investment in the tourism industry is an economic pillar that could improve the national economy so it could provide welfare for the people.
2. Indonesia is an archipelago that consists of various ethnicity, culture, and customs. It becomes one of the attractions of tourists to visit. The main commodity of Indonesian tourism could not be separated from natural sources, cultural sources, and local wisdom living in the community.
3. The exploitative tourism industry further threatens the existence of people's life, local cultures and is replaced by the culture of commercialism, liberalism, and individualism. Therefore, there should be a policy that specifically regulates investment implementation in the tourism industry that protects local wisdom so it could create a conducive investment climate, sustainable tourism, and prosperous local community life.

Regulation of Investment Activities in the Development of the Tourism Industry Based on Local Wisdom

Investment activities have been started since colonial times. The history of investment has emerged in European countries, which was initially conducted in Asia, the Middle East, African countries, and other parts of the world. Meanwhile, the history of investment activities in Indonesia has been started since revolution times, i.e., by the issuance of Law of the Republic of Indonesia No 78 of 1958 concerning Foreign Investment. Then, the policy of foreign investment was abolished in 1965 along with the political turbulence at that time, so the Law of the Republic of Indonesia No 78 of 1958 concerning Foreign Investment was abolished. At the time, the purpose of economic development was based on the principle of independence free from imperialism and feudalism. Afterward, the foreign investment activities were restarted in Indonesia in 1967 with the establishment of Law of the Republic of Indonesia No 1 of 1967 concerning Foreign Investment and Law of the Republic of Indonesia No 6 of 1968 concerning Domestic Investment. These two instruments were expected to facilitate both foreign and domestic investors to invest in Indonesia. The goal of the government to accelerate national development that was driven by the global economic change and the membership of Indonesia in several International Partnerships has driven the Indonesian Government to issue Law of the Republic of Indonesia No 25 of 2007 concerning Investment. The ultimate goal of this Law is to improve national economic growth.

In an International Law Framework, the arrangement of investment is regulated through TRIMs. The agreement of TRIMs aims at eradicating the barriers of trade to improve the freedom of investment activities (Janed, 2016). The regulation of TRIMs 1994 is a reaffirmation and provides a time for the GATT countries' members to fulfill the obligation of investment regulation (Hata, 1998). Based on the comparison of regulation from some countries related to the investment regulation policies such as Singapore, Malaysia, Thailand, China, and South Korea, it can be concluded that almost all countries adopt an open system in their investment regulation policies, and there is a limitation policy in various sectors which is regulated for investors. This limitation is established for protecting the host-country national interest and provides economic protection for host-country. From those countries that have been mentioned before, the policy of Thailand is similar to the Indonesian policy, in which the policy of investment considers the values of arts, cultures, people's traditions, natural sources, and environment. It explains that Thailand respects and honors the local wisdom that is living and developing in the community as well as preserving the sustainability aspect in the investment activities. Besides that, Thailand also regulates the limitation of investment upon the citizen economy, so the investment that jeopardizes national security and interest is not allowed by the government.

Model of Regulation of Investment Activities in Tourism Industry Development Based on Local Wisdom

In today's globalization era, there is tight competition in seizing potential investors to invest in a country. One of the efforts to attract investors is exploring the comparative strengths owned by the country to create a more conducive investment climate. One of the sectors that use comparative strength as the material is the tourism sector. Investment in the tourism sector is an industry that orientates on providing services needed by the tourists. John Naisbitt (1994) in global paradoks stated that tourism globalization is the biggest industry in the world. Tourism is the strongest and biggest moneymaker in the global

economy financing. One of the biggest challenges in realizing a conducive tourism investment climate is preventing the environmental damage and the risk of climate change that could threaten the tourism industry. The issues that should be considered in solving those challenges are through the improvement of efficiency by using environmentally friendly energy sources.; using the method of 3R (Reduce, Reuse, Recycle) in processing the garbage; environmental maintenance; mitigation of climate change; and increasing knowledge to the public and tourists about the risks of climate change and how to deal with it.

The development of tourism in Indonesia should be based on principles, ideology based on global tourism ideology, green tourism ideology, and culture tourism ideology based on local wisdom. Indonesia has a magnificent natural potency in developing tourism, so it could provide income for Indonesia that potentially replaces oil and gas. The theory that can be used to find a regulation model for investment in the tourism service industry to create a conducive investment climate so it could protect the communities' values is The Middle Path Theory. This theory helps to identify the benefits of investment as well as the negative impacts caused by the investment so it could develop a fair regulation policy and ultimately drives the development of a Code of Conduct for the investors, especially for the multinational companies in Indonesia. To formulate the model in the reconstruction of investment legal regulation in the tourism industry based on local wisdom in the future, in this case, the Integrative Legal Theory was used to formulate the model of this policy. Integrative Legal Theory provides enlightenment regarding the relevance and meaning of the legal importance in the life of Indonesian as well as reflects the law as the system that regulates human life could not be separated from its people's culture and character, the geographical location of the environment and the way of life of the people.

To realize a policy in the investment law of tourism based on local wisdom, the policy establishment must be formulated to be effective and responsive. Therefore, the method ROCCIPI (Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology) is used to establish regional regulations. This method is based on the concept proposed by Robert B. Seidman, i.e., in formulating laws and regulations that could solve social problems, so the point is that the step of the formulation should be through research that is followed up with a research report and formulation of laws and regulations draft.

Conclusion

- Based on the description above, some conclusions can be drawn as follows:
1. The essence of investment regulation in the developing tourism industry based on local wisdom is driven by the liberation of investment by eradicating barriers for the developed countries to invest in the developing countries. The exploitative tourism industry further threatens the existence of people's life, local cultures and is replaced by the culture of commercialism, liberalism, and individualism.
 2. The investment regulation in developing tourism industry in the laws and regulations still have many problems in case of many related investment regulations are overlapping both in central and regional level as well as inconsistency between one law to other laws, or with the state sovereignty which ultimately reduce the role and participation of the people in protecting the values that is living and developing

in the place. There is no further regulation in the region. The development of the tourism industry is merely based on central government regulation.

3. The model of investment regulation in the tourism industry based on local wisdom for the future is conducted by using the 3R method (Reduce, Reuse, Recycle) in tourism investment management. The policy regulation is conducted by establishing a regulation at the regional level to explore and protect tourism commodity that comes from local wisdom. To ensure the establishment of this regulation is effective and responsive, the method of ROCCIPI (Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology) must be used.

Based on these conclusions, some suggestions are recommended as follows:

1. It is recommended that legislators add provisions and emphasize aspects of local wisdom in LoI especially in the foreign investment activities, to maintain and preserve local wisdom that is mandated in the Pancasila and Constitution of the Republic of Indonesia 1945, so it will not cause inconsistency in the implementation.
2. It is suggested to the local government to formulate a regulation in tourism investment by listing local wisdom that should be protected in the tourism investment activities as well as a form of people's participation in formulating regulation.
3. It is suggested to the people in developing local investment, especially in the tourism sector, they must consider the balance between the state law and customary law, so the management and control of natural resources in the area can be managed properly, and ultimately guarantee the sustainability aspect in the development of tourism industry by proposing local wisdom as the commodity.

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