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RESEARCH ARTICLE

**THE POSITION OF INDEGENOUS PEOPLE
IN THE CULTURE AND TOURISM
DEVELOPMENTS: COMPARING
INDONESIA AND EAST TIMOR TOURISM
LAWS AND POLICIES**

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ABSTRACT

The expansion of development brings many impacts, including in the discourse of indigenous peoples in the midst of tourism development. On the one hand, culture and indigenous peoples are the main pillars in the use of culture-based tourism such as in Bali, Indonesia, but on the other hand, tourism development raises questions about legal

protection for indigenous peoples. This study aims to analyze and compare various laws and policies in tourism development in Bali (Indonesia) and Atauro (Timor Leste) and the position of indigenous peoples in the midst of various tourism policies. By comparing several related policies, this research found and confirmed that existing cultural arrangements were limited to the cultural identity of indigenous peoples and as a tourist attraction for Indonesia, but there are no regulations that give a definition of culture as an economic resource. In Timor Leste, Ecotourism management in Beloi Village is still far from the plan. The government as policy makers and facilitators impressed walk alone in terms of management tourist.

Keywords: Legal Protection; Tourism Management; Indegenous People; Culture; Law and Policy

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INTRODUCTION

TOURISM IS AN ETYMOLOGICAL Sanskrit word, meaning "*pariwisata*" in Indonesian and derived from dutch or English "*tourism*". Synonyms of the word tourism are the same as "*tour*". This thought is based on the tourism world which is consists of two syllables namely the word "*pari*" and the word "*wisata*". Beheading the word *pari* itself has the understanding of circling, while tourism has the meaning of doing a trip.¹ So the word tourism means an activity related to travel to surround or go to one place to another.

Tourism is a trend of center for the Indonesian economy that can support state revenues in a matter of fast or instant and is considered very efficient. The global market has made countries in the world race to make tourist products to offer to tourists. Competition in tourism promotion and being able to survive in global market competition must be accompanied by adequate public services.² For Indonesia, the importance of tourism had been strongly stated in the Outlines of State Policy 1998, it is stated that, "Tourism development is directed at the development of tourism as a major and superior sector in a broad sense is capable of being one foreign exchange earner, stimulate of the economic growth, increase the local revenue, empower the community's economy, expanding of the employment and business opportunities, and improve recognition and marketing of national products in order improve the welfare of the people by constantly maintaining the national identity, religious values as well as the

¹ I. Gusti Ayu Ketut Giantari, Ida Bagus Ketut Surya, Ni Nyoman Kerti Yasa, Ida Bagus Anom Yasa, *Development and revitalization strategies for traditional markets in Bali*, 45 INTERNATIONAL JOURNAL OF SOCIAL ECONOMICS 1058-1070 (2018).

² Michel Picard, *BALI: PARIWISATA BUDAYA DAN BUDAYA PARIWISATA* (Jakarta, Kepustakaan Populer Gremaedia, 2006).

preservation of function and quality of the environment”³. It is clearly dictated that tourism is developed to become a main sector in the national economic development; while at the same time maintains the national identity and environmental sustainability.

Tourism has become a priority sector in the economic development of Indonesia. It is more emphasized by the statement of the President of the Republic of Indonesia, Joko Widodo since 2015 that boosted tourism as a source of foreign exchange through some policies, such as increased promotion in foreign policy and add to the visafree for some countries. The current trend of world tourism is the development of special interest tourism where special interest tourism leads more to the utilization of local resources. Cultural and landscape differences in every country in the world are invaluable wealth and become the main potential of tourism⁴. The tourists are more visiting tourist attractions based on nature and culture; this is due to the saturation of the tourism frenzy such as tourism that develops in South Bali.⁵

Bali province in Indonesia is a small island with an area of 5,632.86 km. Not only “South Island” and “Beach”, but also it attracts tourists all over the world with the impression of “rich nature”, “the island where many kinds of gods live”, and “the island of culture and art”. Indonesia is the largest Muslim country globally, with Muslims accounting for 88.1% of the total population. On the other hand, in Bali, more than 90% of the island's total population is Hindu, and they are called Balinese Hindus. Furthermore, Balinese Hinduism is a particular case of inheriting the original Hindu culture, although it is

³ Veronica H Long & Sara L Kindon, *Gender and tourism development in Balinese villages*, in GENDER, WORK AND TOURISM 99–128 (2005).

⁴ Mark P Hampton, *Heritage, local communities and economic development*, 32 ANN. TOUR. RES. 735–759 (2005).

⁵ Stroma Cole, *A political ecology of water equity and tourism: A case study from Bali*, 39 ANN. TOUR. RES. 1221–1241 (2012).

called soft Hinduism because of its milder discipline, unlike Indian Hinduism⁶.

The island of Bali has the power to be developed sustainably in the field of tourism. The potential of tourism has been recognized by the world with the value of customs, traditions, Hinduism, and Balinese culture has fused into a potential to be developed into a strength, ability, capability and competitiveness. Hinduism in Bali has a unique religious ceremony, customs, and traditions in each of the traditional villages, livelihoods, and arts of Balinese people that can not be found in any part of the world. This potential can be developed as a tourist attraction. The arrival of tourists to Bali will strengthen the bonds of the Balinese against their cultural traditions by revitalizing values of culture and traditions that live in the local communities⁷.

Tourism in Bali began in the 1920s during the Dutch colonial era. After Indonesia got independent as a nation, President Suharto's in 1972 made tourism development a top priority for economic growth in Bali. The story of the tourism industry in Bali had led to relieving extreme poverty for the most impoverished region in Indonesia. As the number of foreign tourists increased, the tourists, mainly Westerners, had deep interests in Balinese natural unique resources and traditional culture, rather than the Indonesian government's closed rich resort. Western tourists had moved to more attractive targets, private beach and luxury hotel enclosed had become the destination for tourists having some limited purpose⁸.

⁶ I Ketut Budarma & Ketut Suarta, *The role of local value in global sustainable tourism development paradigm. The case of tourism in Bali*, 2 J. BUS. HOSP. TOUR. 218–233 (2017).

⁷ I Gede Mudana, Ni Made Ernawati & Mihai Voda, *Analysis of the Evolving Cultural Tourism Implementation in Bali Indonesia*, 7 MULTICULT. EDUC. 608–619 (2021).

⁸ Robert Shepherd, *Commodification, culture and tourism*, 2 TOUR. STUD. 183–201 (2002).

Many foreign tourists like western had admired cultural and ethnic tourism. Tourism in Bali is currently being expanded on two different axes, selling ethnic culture and beach life. Ethnic tourism involves the first experience and the meet of another culture to provide tourists with a more “intimate” and “authentic” experience. According to ethnic tourism defines as “travel motivated by the tourist's desire for direct, genuine and intimate contact with people of different ethnic and cultural backgrounds from the tourist”. And the purchase of souvenirs is an opportunity to experience different cultures, and through this act, tourists can form a space for cross-cultural and social negotiation⁹.

The change in tourist orientation has encouraged tourism policies pursued by the government to develop natural and cultural tourism attractions. Economic resources are an important factor related to goods and services. Economic resources consist of human factors, such as labor and management, while non-human factors consist of land, capital, financial resources, technology, including culture. As is known, Bali shows how culture is an important asset in the implementation of tourism services business. It cannot be denied that this cultural attraction has made Bali a reputable tourist destination. Culture is not only a source of tourism economy, but also as the root of national identity. Thus, the destruction of culture as a tourism economic resource will further destroy the identity of a nation.¹⁰

Thus, culture is very important for the implementation of tourism in Bali. The culture in Bali is closely related to the existence of indigenous peoples, they always create a very diverse culture and will

⁹ I Wayan Geriya, *The impact of tourism in three tourist villages in Bali*, GLOBALIZATION IN SOUTHEAST ASIA: LOCAL, NATIONAL, AND TRANSNATIONAL PERSPECTIVES. (2003).

¹⁰ *Id.*

never get bored to enjoy. This culture is also combined with the natural beauty of Bali which adds to the attraction of outsiders to visit.¹¹

Tourism is a very important industrial sector in the life of the nation and state therefore tourism should be considered because this is very important to determine the direction and future of tourism for the community. Therefore, researchers are very interested to see Bali tourism development policy. Because Bali has a strong culture and the hospitality of the Balinese people.¹² Bali has amazing cultured society and beautiful nature, which is the unique culture and beautiful natural panorama has always been a charm and attraction for tourists. Bali is famous as one of the world's tourism destinations, no wonder this island becomes a place for foreign tourists to travel so that its role in the tourism industry does not need to be contested anymore.¹³

Tourism is the leading sector that has the main focus in development, therefore tourism must have a clear development policy. Even in some areas show that the tourism industry is able to boost the area from developmental delay to a major source of income. Bali province basically has a lot of tourism potential that can be developed as a creative tourist attraction. The impact of tourism development on traditional culture has positive and negative aspects, but it is the negative aspect that is serious for sustainable development. There are severe warnings about the negative aspects. The issue arises whether the Bali Provincial Tourism Development Policy can increase people's economic income in the long term while

¹¹ Desak Putu Dewi Kasih et al., *The Exploitation of Indigenous Communities by Commercial Actors: Traditional Knowledge and Traditional Cultural Expression.*, 8 J. ETHN. CULT. STUD. 91–109 (2021).

¹² Alexandra Law et al., *Transitioning to a green economy: the case of tourism in Bali, Indonesia*, 111 J. CLEAN. PROD. 295–305 (2016).

¹³ Adi Laksana and Ida Bagus, *PEDOMAN DALAM PENGEMBANGAN DESA WISATA DI PROVINSI BALI* (Denpasar, Dinas Pariwisata Provinsi Bali, 2017).

maintaining the preservation of nature and the environment and culture of the local community.¹⁴

Meanwhile, in East Timor, ecotourism management in Beloi Village is currently still dominated by the government and the private sector. the lack of involvement of local communities causes local communities to be unable to directly benefit in the event that this is an economic benefit. The government prioritizes development programs that are prioritized in the fields of health, education, agriculture and infrastructure. Currently Timor-Leste relies on the oil and gas sector as the main source of income, but in the 2030 planning, it has listed tourism as the main source of divisa for the country. Tourism can be expected to be a determining and balancing factor in managing or developing the development of other sectors gradually. Many countries today have paid special attention to the tourism industry. Development program. This tourism has resulted in more intense competition in the tourism industry, so it is very important to plan tourism to compete with other countries.

HISTORICAL BACKGROUND

BALI AS ONE of the most popular destinations in Indonesia can be said to be the leading economic sector of Bali, which is directly or indirectly the majority of Balinese people.¹⁵ Put their lives in the tourism industry. Bali is also a cultural heritage of the archipelago that continues to be guarded. One of the interesting global phenomenon today is the growing tourism becomes one of the main pillars of the

¹⁴ Cole, *supra* note 5.

¹⁵ Joseph Wasonga, *National heritages, global capital accumulation and collective socioeconomic impact: A critique of tourism industry in Kenya*, 8 J. TOUR. CHALLENGES TRENDS 55–77 (2015).

world economy. The development of global tourism, among others, is driven by advances in communications, information technology and transportation. On the other hand, the development of global tourism is influenced by the 4T Revolution: Transportation, Telecommunication, Trade, and Tourism. In addition, the most important thing is the increasing welfare of the community, so that tourism becomes one part of lifestyle, become one of the basic needs in addition to food and clothing¹⁶.

However, in reality, Balinese culture is managed and organized independently by the community, but the benefits of tourism services business tend to be enjoyed only by the government and tourism service entrepreneurs. Here it is seen that there is no good reciprocity, this is because there is no clear economic relationship between the government, businessmen and indigenous peoples in Bali¹⁷. Thus, it can be identified that on the one hand culture is used as a tourism economic resource, but on the other hand, culture has not been defined as the economic resource of tourism. Thus, it results in a culture in an unclear position.

This happens because there is no regulation that provides the definition, recognition, and protection of culture as an economic resource for tourism. For example, Law No. 10 of 2009 on Tourism (hereinafter referred to as the *Tourism Law*) does not explicitly recognize and protect culture as a tourism economic resource. The term "culture" is only contained in Article 1 paragraph (5) of the Tourism Law within the framework of the definition of tourist

¹⁶ I Wayan Budiasa & IGAA Ambarawati, *Community based agro-tourism as an innovative integrated farming system development model towards sustainable agriculture and tourism in Bali*, 20 J. INT. SOC. SOUTHEAST ASIAN AGRIC. SCI. 29–40 (2014).

¹⁷ WORLD TOURISM ORGANIZATION, *INTERNATIONAL TOURISM: A GLOBAL PERSPECTIVE* (1997).

attractions.¹⁸ Likewise, Article 1 paragraph (2) of Bali Provincial Regulation No. 2 of 2012 on Bali Cultural Tourism (Perda on Balinese Cultural Tourism) which only emphasizes the definition of culture to the elements of the formation of a culture but does not show that the existence of culture is one of the tourism economic resources.¹⁹

Based on the forest, it has once again been shown that no one provides the definition, recognition and protection of culture as a source of tourism economy. In other words, there are governing legal norms recognizing and protecting the culture of the community complete with culture in Bali as a tourism economic resource. This treatment has resulted in the destruction of various markers of Balinese cultural identity which in fact is another fundamental pillar of Balinese culture.

The concept of sustainable tourism has brought greater awareness towards maintaining the economic and social advantages of tourism development whilst ensuing the industry is socially, culturally, and environmentally sustainable. A central objective within sustainable tourism industry is to empower local indigenous people's ability to harness the economic advantages of tourism whilst maintaining their natural heritage, environment, and biodiversity. Sustainable tourism also advocates respecting the socio-cultural authenticity of host communities, which together along with stakeholder will ensure viable, long-term economic operations resulting in socio-economic benefits to all parties. Despite an underlying philosophy of enhancing indigenous advancement through sustainable tourism, there still remains significant social and

¹⁸ Cole, *supra* note 5.

¹⁹ Dyah Permata Budi Asri, Legal Protection of Culture Through UNESCO World Heritage Centre, 25 J. HUK. IUS QUIA IUSTUM 256–276 (2018).

legal impediments which restrict indigenous people from fully engaging in the sustainable tourism industry²⁰.

Environmental and cultural protection are critical for survival of indigenous peoples, since their traditional way of living is likely to have a closer relationship with surrounding environment and a higher dependency on nature. Indigenous people also have historical cultural knowledge about their community structures, beliefs and surrounding environment. Sustainable tourism, unlike other resource intensive industries, has the potential to achieve development in communities in a suitable manner if managed properly. While indigenous people have participated in the tourism industry, the expansion of economic activities associated with tourism has sometimes resulted in economic leakage from the region, or an unfair distribution of wealth²¹. Compounding the unequal distribution of

²⁰ Law et al., *supra* note 12.

²¹ S Sarath Mathilal De Silva, *Linking Human Rights and the Environment*, DAILY NEWS, retrieved from < <https://www.dailynews.lk/2016/06/20/features/85126>> (2016). In a further context, development implies a decrease in the quality of the environment, even though access to a healthy environment is one of the important things that is part of human rights. See Berliana Arthanti and Nabilla Eka Pramudhita, *Law and Human Rights in Addressing Labor Problems During the Pandemic to Achieve Sustainable Development Goals*, 4 LEX SCIENTIA LAW REVIEW 39-54 (2020); Purniawati Purniawati, Nikmatul Kasana, and Rodiyah Rodiyah, *Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management)*, 2 THE INDONESIAN JOURNAL OF INTERNATIONAL CLINICAL LEGAL EDUCATION 43-56 (2020). In fact, access to the environment, including how indigenous peoples are protected from the various impacts of tourism development, is a form of social justice. See also Winda Indah Wardani, *How Can the Law Protect the Forest?*, 2 JOURNAL OF LAW AND LEGAL REFORM 527-538 (2021); Ridwan Arifin, *Human Rights Aspect on Natural Resources Issue in Indonesia*, 1 LAW RESEARCH REVIEW QUARTERLY 160-174 (2015); Adiguna Bagas Waskito Aji, Puji Wiyatno, Ridwan Arifin, and Ubaidillah Kamal, *Social Justice on Environmental Law Enforcement in Indonesia: The Contemporary and Controversial Cases*, 2 THE INDONESIAN JOURNAL OF INTERNATIONAL CLINICAL LEGAL EDUCATION 57-72 (2020).

wealth, there is also conflicting beliefs about collective models of land ownership versus the individual nature of the tourism industry.

In organizing tourism in Bali Province, the role of law can not be ignored. In this case, the law as a means of social control, as stated by Roucek, Soerjono Soekanto, named the mechanism of social control “everything that is done to carry out planned and unplanned processes to educate, invite, or even compel the local community to adapt with the customs and values of people’s lives²².

THE CONDITION ON CULTURAL & ECONOMIC ACTIVITIES IN BALI

REFLECTION AND LEGAL construction and the context of Balinese cultural values in relation to Balinese cultural tourism between “blessings” and “disasters” that appear in the dynamics and phenomenon of Balinese life. Many blessings of Bali tourism cases that end also brings “*disastrous*”. Thus tourism is an integral part of national development that is carried out systematically, planned, integrated, sustainable, and responsible while providing protection for religious values, culture that lives in society, environmental sustainability and quality, and national interest²³. The importance of

²² I WAYAN GERIYA, *PARIWISATA DAN DINAMIKA KEBUDAYAAN LOKAL, NASIONAL, GLOBAL: BUNGA RAMPAI ANTROPOLOGI PARIWISATA* (1995).

²³ Diane Elson, *Gender justice, human rights, and neo-liberal economic policies*, *GEND. JUSTICE, DEV. RIGHTS* 78–114 (2002). In several cases and conditions, especially in Indonesia, the conflict between national interests (investment and economic improvement) and environmental sustainability is often one of the obstacles. On the one hand, the development carried out, including tourism development, cannot be denied a direct impact not only on the sustainability of culture and indigenous peoples which may be threatened, but also on environmental sustainability. See IGN Parikesit Widiatedja, *Towards Liberalization of Services in ASEAN: Challenges and Opportunities of Asean Framework Agreement on Services*

tourism development, that the development of tourism is needed to encourage equality of business opportunity and benefit and able to face the challenges of changing local, national and global life.

In addition to cultural protection, related to the formation of tourist villages in support of the culture, there are no regulations governing it, this will also have implications for the development of tourist villages as a support for culture itself. This is because, a tourist village is a model of tourism development based on rural potential with all its attractions and uniqueness developed as a tourist attraction to attract tourists. Referring to the purpose of tourism implementation contained in Article 4 of the Tourism Law, the development of tourist villages is believed to be able to increase economic growth, preserve nature, environment, and resources, and promote Balinese culture by developing economic activities in rural based tourism activities.²⁴

The Balinese population has adjusted quickly to the global demand for digital and IT-friendly skills brought to the fore by the boom in tourism. This includes access to the internet and its usage for booking accommodation and travel, on-line orders of food and for financial and insurance services, as well as taking advantage of on-line travel services, etc. Among associated negative effects of tourism,

(AFAS) on *Tourism*, 10 *INDONESIAN JOURNAL OF INTERNATIONAL LAW* (2012); Fenny Budi and Rahayu Subekti, *Aspek Hukum Pemanfaatan Hutan Lindung Untuk Tempat Wisata*, 7 *JURNAL KOMUNIKASI HUKUM (JKH)* 540-549 (2021).

²⁴ Kasih et al., *supra* note 11. Furthermore, it is even emphasized on the protection of socio-cultural aspects in tourism development, which is not only oriented towards economic improvement but also cultural and natural preservation. See also A.A. Istri Eka Krisna Yanti, *Community Based Tourism dalam Menyongsong New Normal Desa Wisata Bali*. 7 *JURNAL KOMUNIKASI HUKUM (JKH)* 72-86 (2021); Prasetyo Hadi Purwandoko, Adi Sulistiyono, and M. Hawin, *The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 regarding Copyright*, 18 *INDONESIAN JOURNAL OF INTERNATIONAL LAW* (2021).

environmental degradation, is highlighted by increasing water scarcity, but also extends to degradation of heavily used tourist locations such as coastal and marine environments. For example, excessive water use in tourist facilities has been blamed for falling levels of ground water and reduced water availability for local consumers. Though rigorous analysis of these issues is sparse, anecdotal evidence suggests that rapid growth in tourism is likely to be placing considerable pressure on the natural resource base and environmental assets²⁵.

Such problems include negative externalities are not associated only with growth of tourism; economic growth through industrialisation has historically been associated with high levels of environmental degradation. The challenge is to formulate and effectively enforce an appropriate regulatory regime that can conserve natural resources such as water and other environmental assets while enabling Bali to benefit from the growth of the tourist industry. This is an issue that requires urgent policy attention particularly because the sustainability of the tourist industry itself is critically dependant on Bali's natural beauty and pristine environment²⁶. While some of these negative influences on the environment have received attention, it is also important to recognize some of the positive external effects of tourism.

In various laws and regulations in Indonesia, the term "tourist village" is stated, but there is no single legislation that defines or establishes the norms for the establishment of a tourist village. The hierarchical arrangement of tourist villages can be found in Article 29 paragraph (3) letter b of Government Regulation No. 50 of 2011 on the National Tourism Development Master Plan 2010-2025 stipulates that

²⁵ Dik Roth, *Environmental sustainability and legal plurality in irrigation: the Balinese subak*, 11 CURR. OPIN. ENVIRON. SUSTAIN. 1–9 (2014).

²⁶ Budarma and Suarta, *supra* note 6.

the strategy of increasing the potential and capacity of regional resources through the development of productive businesses in the tourism sector is one of them by developing the potential of local resources through tourist villages.²⁷

The law as a means of control as used by Satjipto Rahardjo is the law in relation to social change that a process influences people to behave in accordance with the expectations of society. As described above in the history of the birth of tourism in Bali, controlling by law is exercised in various ways and through customary village bodies and individuals and legal entities. In the context of Tourism Law, every person and/or society within and around a tourism destination has priority rights: become a worker; consignment; and/or management²⁸.

The existence of Tourism Village is also contained in Bali Provincial Regulation No. 10 of 2015 on The Master Plan for Tourism Development of Bali Province 2015-2029 (hereinafter referred to as Regulation No.10 of 2015) which in Article 10 paragraph (1) stipulates that the development of tourist villages involving community participation is one of the destinations of Bali tourism development. In the provisions of Article 10 (2) it is mentioned that the indicator of Bali tourism development targets listed in paragraph (1) of Regulation No.10 of 2015 is listed in Annex I²⁹.

However, Annex I of Regulation No.10 of 2015 does not include indicators of the development of Tourist Villages. This of course becomes the norm of vacuum in an effort to maximize the

²⁷ ADI LAKSANA & IDA BAGUS, PEDOMAN DALAM PENGEMBANGAN DESA WISATA DI PROVINSI BALI (2017).

²⁸ I Gusti Ayu Ketut Giantari et al., *Development and revitalization strategies for traditional markets in Bali*, INT. J. SOC. ECON. (2018).

²⁹ Anak Agung Istri Atu Dewi et al., *Strengthening The Economy Of Desa Adat Based On Local Resources: Strategy And Regulation Context*, 24 J. LEG. ETHICAL REGUL. ISSUES 1-9 (2021).

development of tourist villages. The absence of norms in the formation of tourist villages that has implications for the difficulty of developing cultural-based tourist villages, especially during the Covid-19 pandemic as it is today, the development of cultural-based tourist villages that are expected to improve the welfare of people who have been down in the midst of the Covid-19 pandemic.³⁰

Balinese indigenous culture is an economic resource for tourism. Unfortunately, the people of Bali are relatively unable to enjoy these economic benefits. The government and tourism service entrepreneurs are stakeholders who have tended to benefit the most. This situation certainly requires tracing and research into legal instruments that regulate culture, society, and tourism³¹. In addition, it is also necessary to analyze the issue of whether the relevant national laws and regulations have regulated and protected the culture of indigenous peoples as one of the economic resources of tourism.³² The local traditions of indigenous villages in Bali have the potential to be excavated to explore Bali's tourism culture. Hinduism and local law (*Awig-awig* and *Pararem*) can serve as an update tool in regulating tourist villages in cultural tourism activities, in addition to state law. The philosophy of Tri Hita Karana as a guide to format cultural tourism as a control to provide legal certainty, nobility and tourism culture of Bali. Indigenous villages have the right to manage a community based tourist village of Balinese customary law³³. The

³⁰ Muchsin Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, THESIS (SURAKARTA, UNIVERSITAS SEBELAS MARET, 2003).

³¹ Gede Sugiarta, Putu Budiarta & Minggu Widyantara, *Environmental Management Regulation For Sustainable Tourism Development in Bali*, 24 J. LEG. ETHICAL REGUL. ISSUES 1–11 (2021).

³² I Wayan Budiasa & IGAA Ambarawati, *Community based agro-tourism as an innovative integrated farming system development model towards sustainable agriculture and tourism in Bali*, 20 JOURNAL OF THE INTERNATIONAL SOCIETY FOR SOUTHEAST ASIAN AGRICULTURAL SCIENCES 29–40 (2014).

³³ GÉRARD FRANCILLON, *BALI: TOURISM, CULTURE, ENVIRONMENT* (1979).

management rights may be further regulated in the local indigenous village law.

This research is a normative legal study that primarily analyzes primary legal materials in the form of laws and regulations. The results showed that existing cultural arrangements were limited to the cultural identity of indigenous peoples and as a tourist attraction for Indonesia, but there are no regulations that give a definition of culture as an economic resource. This situation proves that there are empty norms of cultural regulation that have not been recognized and protected by culture as one of the economic resources of tourism.³⁴ Law No. 10 of 2009 on Tourism that does not explicitly recognize and protect culture as a tourism economic resource. This situation certainly requires the dissemination and research of legal instruments that regulate culture, society, and tourism. This article recommends to the Government to revise the current laws and regulations or establish new laws and regulations in response to these issues.

THE CONDITION ON CULTURAL & ECONOMIC ACTIVITIES IN BELOI VILLAGE, ATAURO ISLAND, TIMOR- LESTE

TIMOR-LESTE is a newly independent country and was recognized by the United Nations (UN) on May 20, 2002, After being recognized as a state of the Democratic Republic of Timor-Leste and its government was immediately underway, a development program was immediately planned. Georgafis Timor-Leste, Atauro Island,

³⁴ Wasonga, *supra* note 15.

which is located on the coast of the Wetar Strait or to the north of the capital city of Dili, is a district (Posto Administrativo) located in the territory of the Regency (Camara Municipio) of Dili. This orro island has the potential for a very beautiful tourist attraction. One of the areas that has a fairly potential ecotourism potential in Timor-Leste is Atauro Island in general and in Beloi Village in particular.

This orro island has five villages and has different tourism potentials in each village. The villages are as follows: Maquili Village, Vila Village, Beloi Village, Biqueli Village and Macadade Village. Geographically, Beloi Village is the largest village, and it is located along the East and West Coasts of Atauro Island. Beloi village has a good tourist area, for example looting caves in the post-second world war era, old buildings left by the Portuguese colonization and rocks along the coast, marine parks and various types of colorful fish. The ecotourism found in Beloi Village is very beautiful and must be well laid out. because the development of tourism in an area will bring a value that has a positive and negative influence on the surrounding population both economically, socially, and culturally. Therefore, this study aims to obtain an ecotourism management model that is considered (assumption) better than the previous management model in Beloi Village, East Timor. Ecotourism is the cheapest type of tourism because it only sells services to tourists. But it must be managed properly. Marine ecotourism in Beloi Village is currently running but management is not optimal, so there is a need for a better management model than before.

LEGAL PROVISIONS RELATING TO THE CULTURAL PROTECTION OF THE INDIGENOUS PEOPLES OF BALI

THE EXISTENCE OF TOURISM in Bali as the main sector of the regional economy because the island of Bali has a dazzling natural beauty, friendly society, and diversity of traditions, which causes tourism activities in Bali to continue to exist from time to time. The beauty of nature and all these uniqueness coupled with religious strength and combined with culture so that it is united is very strong in the side of people's lives.³⁵ In the context of this public policy, the role of executive and legislative "state" in producing regulations and legislation in tourism primarily provides protection for religious values, living culture in society, sustainability and environmental quality, and national interests³⁶.

Regional autonomy is the authority, rights, and obligations related to the task to regulate its autonomous region implemented by the autonomous regional government. Based on this understanding it is seen that the central government gives the right to regulate and take care of the interests of the regional household. This right and authority is expected by local governments to be able to utilize their natural resources well and improve the quality of existing human resources. The existence of the 1945 Constitution of the Republic of Indonesia is reflected in the formation of the Indonesian state based on legal unity and not on power alone. Thus, making the constitution the basis for an absolute government system, including in the

³⁵ MICHEL PICARD, *BALI: PARIWISATA BUDAYA DAN BUDAYA PARIWISATA* (2006).

³⁶ CHARLES VICTOR BARBER, *THE STATE, THE ENVIRONMENT, AND DEVELOPMENT: THE GENESIS AND TRANSFORMATION OF SOCIAL FORESTRY POLICY IN NEW ORDER INDONESIA* (BERKELEY, UNIVERSITY OF CALIFORNIA, 1989).

relationship between the division of authority in government, especially related to tourism³⁷. On this basis, the regional government is handed over affairs by the central government that are included with the authority owned by the local government in accordance with the laws and regulations.

Authority is a power that lies in the maintenance of rights and obligations in carrying out a group. The Local Government as intended in Law No. 23 of 2014 in article 1 number (2) is to exercise the widest autonomy.³⁸ Therefore, in its implementation, it is necessary to increase competitiveness by taking into account human factors and natural resources, technological advances, and institutions which are expected to make each region at the same level of quality³⁹.

For this role, bringing Bali to adulthood is now one of the areas with the largest tourism visits in Indonesia. The increase in the number of tourists who come can be inspired as a good impact, especially on the economic aspects of society. Tourism based on society is an important economic activity that when managed appropriately can have a good impact on the development order, poverty reduction, community harmony, local economic development, natural resource management, and sustainable environment.⁴⁰ The economic aspect that can be utilized by the community is the rapid development of tourism means coupled with

³⁷ MICHAEL J ROUSE, INSTITUTIONAL GOVERNANCE AND REGULATION OF WATER SERVICES (2013).

³⁸ I Nyoman Yatna Dwipayana Genta and I Made Sarjana, *Pengaturan Kearifan Lokal Dalam Peraturan Daerah Provinsi Bali Nomor 2 Tahun 2012 Tentang Kepariwisata Budaya Bali*, 4 KERTHA NEGARA: JOURNAL ILMU HUKUM 1-5 (2016).

³⁹ PICARD, *supra* note 36.

⁴⁰ Mark Poffenberger & Mary S Zurbuchen, *The economics of village Bali: three perspectives*, 29 ECON. DEV. CULT. CHANGE 91-133 (1980).

the formation of new tourism accommodation such as hotels, villas, travel, and others that can open jobs for the surrounding community. On the other hand, the development of the tourism industry must put forward the principle of environmental sustainability, so that in its management can be felt in a lower way.

The division of affairs between the local government and central government, is a form of division of concurrent government affairs. So in connection with the division of power of concurrent government affairs where regional officials has their authority to take care of all the needs and needs of the regional household. The authority also includes the authority to form a law in its area. Related to service indicators that can be carried out and managed by local governments are related to management in the tourism sector and the environment. Bali province which is an autonomous region that has an attachment to the world of tourism as one of the economic drivers of the regional community must have regulations to regulate the course of tourism activities.⁴¹

This regulation can be established by the Government of Bali in accordance with the provisions applicable in article 18 of the Indonesian Constitution related to regional autonomy. The Government of Bali in its implementation has formed regulations related to the tourism sector, but we need to note that tourism activities are not a single sector but have an influence on other sectors, especially the environmental sector. The development of tourism is very influential on the environment both positive and negative aspects.⁴²

⁴¹ Long and Kindon, *supra* note 3.

⁴² Sriyono Sriyono and Amin Purnawan, *Legal Protection of Participants Applications for Land Certificates Through Complete Systematic Land Registration (PTSL) in Blora Regency*, 3 JURNAL DAULAT HUKUM 171–178 (2020).

Indigenous and cultural peoples are not only owned by Bali, but also by a number of regions in Indonesia in general. The culture of indigenous peoples in Bali is part of local wisdom and as a tourism economic resource. Therefore, the regulation of the cultural existence of indigenous peoples (Bali) will be seen from relevant national or local legal instruments. It aims to emphasize that indigenous culture is a valuable asset as an economic resource for tourism. The following is a description of this rule:⁴³

1. Law No. 10 of 2009 on Tourism

Based on Article 1 paragraph (5) of the Tourism Law, it explicitly specifies that culture is one of the tourist attractions owned by Indonesia. Given the importance of culture to Indonesia, especially in Bali, tourism should always pay attention to aspects of cultural diversity and local wisdom, as outlined by Article 6 of the Tourism Law which specifies that tourism takes into account cultural peculiarities.

2. Bali Provincial Regulation No. 2 of 2012 on Bali Cultural Tourism Culture based on Article 1 paragraph (12) of the Regulation on Balinese Cultural Tourism is all ideas, behavior and work of humans and/or groups of people. Based on this definition, culture is considered human creativity, taste, and wealth, both tangible and intangible. There is absolutely no statement that states that culture has economic value for the life of Balinese people so that it becomes the development of a tourist village and becomes one of the economic resources of tourism.⁴⁴

⁴³ I GUSTI AYU PUTRI KARTIKA, PENGATURAN HUKUM DAN PENEGAKAN HUKUM TERHADAP BENDA CAGAR BUDAYA DI PROPINSI BALI. THESIS (SURABAYA: UNIVERSITAS AIRLANGGA, 2003)

⁴⁴ WORLD TOURISM ORGANIZATION. INTERNATIONAL TOURISM: A GLOBAL PERSPECTIVE. (1997).

Under the regulations, culture, tourism and indigenous peoples are recognized and their existence has been regulated. Existing cultural arrangements are limited to the cultural identity of indigenous peoples and as a tourist attraction for Indonesia, but there are no regulations defining culture as an economic resource.⁴⁵ This situation proves that there are empty norms of cultural regulation that have not been recognized and protected by culture as one of the economic resources of tourism. The void of legal norms caused by the absence of laws and regulations that ensure legal protection for indigenous cultures as one of the economic resources of tourism can be resolved through the creation of related laws and regulations. In this case, the government can revise the Tourism Law by adding some norms related to culture as a tourism economic resource starting from its definition, utilization, and management, or can form special regulations (*lex specialis*) related to culture as one of the economic resources of tourism.⁴⁶

The complexity of the problems that occur in the tourism industry is closely related to the development of tourism which also has an impact on the environment. Reflecting on the impact caused, environmental conservation efforts are needed. Conservation efforts can be done by enacting regulations related to tourism whose content regulates the protection of the environment.⁴⁷ Through the authority of local government autonomy granted by the central government. Local governments have the right to form regulations that are included in concurrent government affairs. The Government of Bali as the implementer of regional autonomy issued Regulation No. 58 of 2012, and Regulation No. 2 of 2012. Local regulations have indicated

⁴⁵ MICHEL PICARD & ROBERT E WOOD, *TOURISM, ETHNICITY, AND THE STATE IN ASIAN AND PACIFIC SOCIETIES* (1997).

⁴⁶ Shepherd, *supra* note 8.

⁴⁷ Geriya, *supra* note 9.

environmental observations of tourism activities in Bali. Both for the community, business owners, and tourists are contained in the elucidation points of the article which oblige in carrying out tourism activities in the context of preserving nature. Related to this, the legal consequences that arise if the provisions in Regional Regulation number 2 of 2012 are violated, criminal sanctions will be imposed in accordance with article 27 paragraph (3) and paragraph (4)⁴⁸.

Based on the substance of Governor Bali Regulation No. 58 of 2012 concerning Culture and Protection Program for Bali Cultural Tourism, and Bali Provincial Regulation No. 2 of 2012 concerning Balinese Cultural Tourism has shown observations and regulations on the environment in terms of prevention of the impact caused by tourism development.⁴⁹ But in the procurement of a rule must be accompanied by the implementation of the article listed. Law enforcement to business entities or individuals who violate the provisions of the article must be subject to strict sanctions as contained in the regulations. So, the issue of a rule must be balanced with strict supervision and also strict enforcement, so that the points protected from the regulation can be implemented properly on the ground.

The state has a role to defend the rights of indigenous villages in Bali because it has a uniqueness that is not owned by other countries, so the concept of cultural tourism can be sustainable according to the expectations of indigenous Balinese Hindus. Today indigenous peoples and adat villages in Bali are faced with the concept of tourism neoliberalism / capitalism that competes with capitalism funders. The inclusion of tourism capitalism in Bali globally needs serious handling to give local people a driving force for Balinese cultural tourism as a concept that is sustainably championed in global tourism. To that end,

⁴⁸ Genta & Sarjana, *Supra* note 36.

⁴⁹ *Id.*

the role of the state becomes very important in regulating, protecting indigenous peoples and traditional Balinese villages based on Hinduism and the philosophy of Tri Hita Karana⁵⁰.

Bali's tourism policy with the concept of cultural tourism provides a role for the government to produce "tourism laws" that favor the rights of the Balinese people both in concept and in implementation for the benefit of indigenous villages in sustainable tourism management for the welfare of the Balinese people in particular and the community Indonesia generally. The role of Bali's legislative and executive should contribute to the support of Balinese culture in a sustainable manner⁵¹. Tourism activity in Bali, law must be able to anticipate not to happen social lag, economic lag, or cultural lag, that is backwardness experienced by certain groups in indigenous society of Bali which social religious, which only as "spectacle of tourism", country able to give the protection of sustainable tourism business law that is aligned with Bali's indigenous peoples.

AUTHORITY OF THE PROVINCIAL GOVERNMENT OF BALI IN THE DEVELOPMENT OF CULTURAL-BASED TOURISM VILLAGES IN BALI PROVINCE

TOURISM LAW associated with Desa Pakraman states that the management of tourist attraction can be done by Provincial Government, Pakraman Village, traditional institution, individual and business entity. Furthermore, it is mentioned that Pakraman villages and traditional institutions have the right to develop rural

⁵⁰ Dewi et al., *supra* note 30.

⁵¹ Giantari et al., *supra* note 29.

tourism according to local potential; and managers of tourist attraction are entitled to provide special guides (Article 26 paragraph (2.3)). In this context, customary institutions (Adat villages/Pakraman villages), traditional institutions have the right to develop rural tourism according to local potential; in this case also that the management of Attraction is entitled to provide special guides. In the development of Bali tourism, the provincial government may provide financial support for the development of tourism managed by indigenous villages or pakraman villages⁵².

In line with the Tourism Village Development Acceleration Program implemented by the government through the Ministry of Tourism in synergy with the Ministry of Village Development of Disadvantaged Regions and Transmigration to realize 2000 more tourist villages. The Bali Provincial Government has only succeeded in realizing 179 Tourist Villages as of 2021 until now as shown on Figure 1 and Table 1.

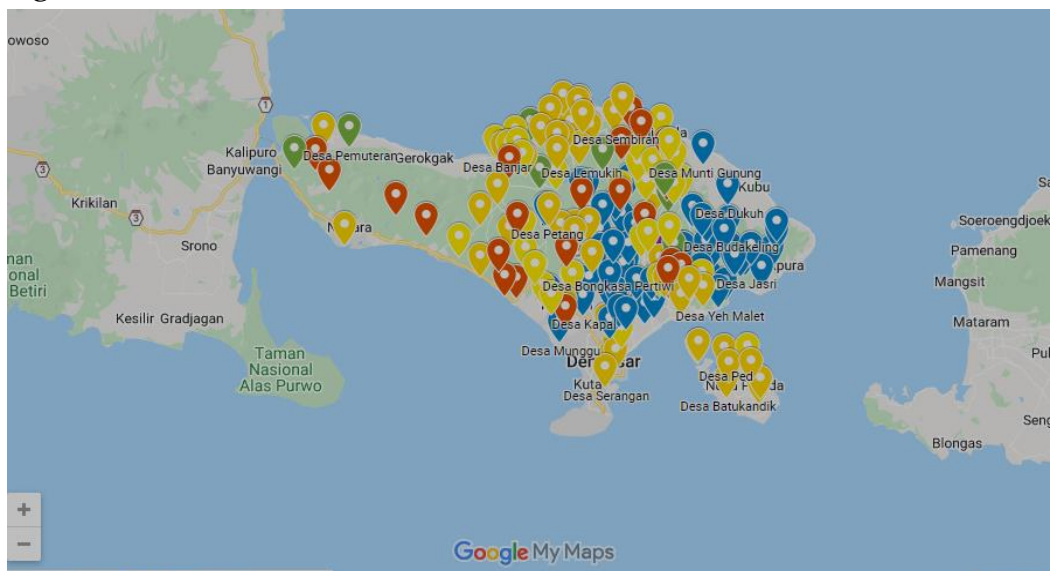


FIGURE 1. Map of Tourist Villages in Bali Province

Source: Bali Government Tourism Office (<https://disparda.baliprov.go.id/category/desa-wisata/>)

⁵² Laksana and Bagus, *supra* note 28.

TABLE 1. Tourist Village Data in Bali Province of 9 districts in Bali with 179 temporary tourist villages

No.	County Name	Number of Tourist Villages
1.	Badung	11
2.	Denpasar	6
3.	Gianyar	24
4.	Buleleng	31
5.	Jembrana	7
6.	Karangasem	26
7.	Tabanan	24
8.	Bangli	31
9.	Klungkung	19
Total		179

Source: Bali Government Tourism Office (<https://disparda.baliprov.go.id/category/desa-wisata/>)

The development of tourist villages is not easy and requires commitment from its managers, village officials and the active participation of its citizens, as well as the implementation of the Bali Regional Regulation and The Indonesian National Law. Village tourism is an ideal model to realize community-based tourism development and encourages the participation of local communities in managing village tourism destinations. Ecotourism development through ecological tourism villages can reduce the mass tourism industry's potential to degrade the quality of the environment⁵³.

The tourism industry often exploits the potential of nature (agricultural land); thus, it has affected land conversion, and this trend is increasingly widespread. Tourism also involves the potential for the emergence of hedonic behavior, the shifting of traditional values of local cultures, and insufficient community involvement. In rural communities, the socio-cultural life values are manifested,

⁵³ *Id.*

maintained, preserved as important customs and known as local wisdom or local indigenous traditions. The values of local indigenous contain adaptive forms of mitigation for the community in managing their ecological area. Ecotourism management model is unique because the villagers perform all the roles⁵⁴.

In the context of social construction toward the reality of branding village ecotourism in Bali, it cannot be separated from the values of Bali's local indigenous people. The values of local indigenous people and the concept of the Balinese cosmology system are manifestations of the sacred teachings of Hinduism. These values are a way of life in the socio-cultural life of the Balinese people. With a touch of local aesthetic values and local architecture, the Balinese lifestyle has a character of uniqueness, authenticity, and originality. Related to the importance of the idea to pay attention to and carry out the values of local indigenous people in the development of ecological tourism villages⁵⁵.

Balinese culture is the main foundation of Bali tourism, to maintain the continuity of Bali tourism the Provincial Government of Bali established Bali Provincial Regulation No. 2 of 2012 on Bali Cultural Tourism, (hereinafter referred to as the Bali Cultural Tourism Regulation).⁵⁶ In various laws and regulations in Indonesia, the term "tourist village" is stated, but there is no single legislation that defines or establishes the norms for the establishment of a tourist village. The hierarchical arrangement of tourist villages can be found in Article 29 paragraph (3) letter b of Government Regulation No. 50 of 2011 on the National Tourism Development Master Plan 2010-2025 stipulates

⁵⁴ Kasih et al., *supra* note 11.

⁵⁵ Dewi et al., *supra* note 30.

⁵⁶ LENI ERVIANA, MAKNA SESAJEN DALAM RITUAL TILEM DAN IMPLIKASINYA TERHADAP KEHIDUPAN SOSIAL KEAGAMAAN (STUDI PADA UMAT HINDU DI DESA BALI SADHAR TENGAH KECAMATAN BANJIT KABUPATEN WAY KANAN). THESIS (LAMPUNG: UIN RADEN INTAN, 2017).

those strategies to increase the potential and capacity of regional resources through the development of productive businesses in the tourism sector one of them by developing the potential of local resources through tourist villages.⁵⁷

Article 1 paragraph (3) of the Indonesian Constitution affirms that Indonesia is a state of law. This means that in the implementation of the administration must be based on the provisions of the constitution of the laws and regulations, including the Regional Regulation. Regarding the implementation of tourism implementation authority related to Tourism Village, Law No. 10 of 2009 on Tourism (hereinafter referred to as tourism law) is not the only source although it is true is the first reference.⁵⁸ The local government referred to in this study is the Governor of Bali as an element of the implementation of government affairs with the Provincial Parliament of Bali in the establishment of the Tourism Village Regulation.⁵⁹

Article 18 of the Indonesian Constitution can be said to be the starting point for the autonomy of local governments in Indonesia in taking care of their own households. Regional autonomy is the embodiment of a decentralized system that divides the authority of the central government into local governments. Through regional autonomy, the region has the right, authority and obligation in running the government in the region. Article 18 paragraph (2) of the NRI Constitution specifies that provincial, district, and municipal governments regulate and take care of their own government affairs according to the principle of autonomy and assistance duties.⁶⁰ Furthermore, in Article 18 paragraph (6) of the Indonesian

⁵⁷ Shepherd, *supra* note 8.

⁵⁸ Genta and Sarjana, *supra* note 49.

⁵⁹ Mohammad Mulyadin and Priasukmana Soetarso, *Pembangunan Desa Wisata: Pelaksanaan Undang-undang Otonomi Daerah*, 2 INFO SOSIAL EKONOMI 37-44 (2001).

⁶⁰ Laksana and Bagus, *supra* note 28.

Constitution it is determined that the local government has the right to establish local regulations and other regulations to carry out autonomy and assistance duties.

In Article 12 paragraph (3) of the Local Government Law it is expressly stated that tourism is a government business of choice, part of the concurrent government affairs submitted by the center to the region and which must be organized by the region in accordance with the tourism potential owned by the area. The potential in question is the availability of resources in areas that have been and will be managed that have an impact on improving the welfare of the community.⁶¹

The Provincial Government of Bali as the organizer of the government given the mandate by the Law should utilize its authority in the establishment of the Bali Provincial Regulation on Tourist Villages in Bali. It is important for the Provincial Government of Bali to fill the void of norms at the Provincial level so that there is a reference for the Regency/City Government in Bali in the implementation of tourist villages while ensuring legal certainty in the implementation of tourist villages in Bali through the establishment of provincial regional regulations on tourist villages based on Balinese culture.⁶² In the general provisions of Article 1 number 1 of the PPPU Law it is determined that what is meant by the establishment of legislation is a process that includes the stages of planning, preparation, discussion, endorsement or determination and promulgation.

Previously, The Customary Village in Bali was referred to as *Pakraman* Village in Bali Provincial Regulation No. 3 of 2001 on

⁶¹ A. A Istri Eka Krisna Yanti, *Kewenangan Pengelolaan Desa Wisata dalam Perspektif Peraturan Daerah Provinsi Bali Nomor 4 Tahun 2019 Tentang Desa Adat di Bali*. 16 KERTA DYATMIKA 59-68 (2019).

⁶² Roth, *supra* note 26.

Pakraman Village as amended by Bali Provincial Regulation No. 3 of 2003 (hereinafter referred to as *Pakraman* Village Regulation) which has now been replaced with Regional Regulation of Adat Village, because *Pakraman* Village regulation is considered to be not in accordance with the current legal development and conditions of Bali, including the development of Bali tourism.⁶³

Padruwen Adat Village which is immaterial is a belief system, traditional values, customs, arts and culture, as well as local wisdom imbued with Hinduism, while what *Padruwen* means Adat Villages that are material is the *wewidangan* Adat Village, Adat Village land, natural resources, economic resources that are the traditional rights of Adat Villages, sacred areas, sacred places, sacred buildings belonging to Adat Village, buildings belonging to Adat Villages, objects of a magical religious nature, finance and *sarwa mulé*; and other material wealth. In the management of *Padruwen* Adat Village as a Tourist Village can be managed by The Customary Village if it is a right of origin and local scale, as contained in Article 25 of the Customary Village Regulation.⁶⁴

The Provincial Government of Bali, namely the Governor of Bali and the Provincial Parliament of Bali has the authority in the establishment of the Bali Provincial Regulation on Tourist Villages to ensure legal certainty in the formation and management of tourist villages in Bali.⁶⁵ The traditional village is the "home" of Balinese culture which is the main attraction of Bali tourism. Before the enactment of the Customary Village Regulation, it was not specifically regulated the authority that Indigenous Villages have in the management of tourism destinations, especially tourist villages.⁶⁶

⁶³ PICARD, *supra* note 36.

⁶⁴ Poffenberger and Zurbuchen, *supra* note 41.

⁶⁵ Kasih et al., *supra* note 11.

⁶⁶ Poffenberger and Zurbuchen, *supra* note 41.

The existence of Tourism Village is also contained in Bali Provincial Regulation No. 10 of 2015 on The Master Plan for Tourism Development of Bali Province 2015-2029 which in Article 10 paragraph (1) states that the development of tourist villages involving community participation is one of the targets of tourism builders. Bali In the provisions of Article 10 (2) it is mentioned that the indicators of Bali tourism development targets listed in paragraph (1) of Regulation No.10 of 2015 are listed in Annex I.⁶⁷

However, in Appendix I of Regulation No. 10 of 2015 does not list indicators of tourism village development, this of course becomes the norm of emptiness in efforts to maximize the development of tourist villages.⁶⁸ The absence of norms in the formation of tourist villages that has implications for the difficulty of developing cultural-based tourist villages especially during the Covid-19 pandemic as it is today, the development of cultural-based tourist villages that are expected to improve the welfare of people experiencing a slump in the midst of the Covid-19 pandemic⁶⁹.

Based on the above, the Local Government has the authority to form local regulations to develop traditional culture-based tourist villages as a source of tourism economy in Bali.⁷⁰ The Provincial Government of Bali should be able to provide legal certainty in the implementation of Tourist Villages in Bali, considering the number of tourist villages in Bali even provide high economic value for the community.⁷¹ In the Customary Village Regulation, it is quite clear to spell out the authority owned by Adat Village in the management of

⁶⁷ Genta and Sarjana, *supra* note 49.

⁶⁸ MICHEL PICARD & ROBERT E WOOD, TOURISM, ETHNICITY, AND THE STATE IN ASIAN AND PACIFIC SOCIETIES (1997).

⁶⁹ Mulyadin and Soetarso, *Supra* note 59.

⁷⁰ ADE ARIF FIRMANSYAH, WAN SATRIAWAN, SITI KHOIRIAH, AND YUSNANI HASYIMZOEM, HUKUM PEMERINTAHAN DAERAH (2017).

⁷¹ Shepherd, *supra* note 8.

Tourism Village. However, the dualism of Indigenous Villages that applies today in Bali causes the overlap of indigenous village and village dinas organizations, for that there needs to be a special supervision team in the implementation of Tourism Villages so that the implementation is able to prosper *Krama Adat Villages*⁷².

Balinese culture is built through a very long civilization process, from prehistoric times to modern civilization, and the global era. In the pressures and effects of the fast and complex system of modern and global civilization, Balinese culture exhibits dynamic, selective, flexible, and effective nature. Pariwisata activity is a multi-aspect activity, national and international, has function as agent of economic development and agent of cultural development covering multidimensional aspects, therefore tourism law policy must be directed to tourism law must be able to consider the characteristic, function, and all aspects of tourism business activities⁷³.

The policy of Bali Provincial Government in revitalizing the culture, by always considering Hinduism as the basis and the buffer of Bali tourism is a supporting factor that resulted in Bali remains a tourist destination with tourism objects and attractions that are characteristic of Balinese culture and religion Hindu. Law as one element of culture in a regulatory system, that can be understood anatomy with jabaran that, the law is one of several institutions in society that helped create order. In this context tourism and culture must be able to provide welfare, happiness for humans in Bali, especially Hindus as a supporter of culture⁷⁴.

⁷² Poffenberger and Zurbuchen, *supra* note 41.

⁷³ I K G Bendesa & I M Sukarsa, *An economic survey of Bali*, 16 BULL. INDONES. ECON. STUD. 31–53 (1980).

⁷⁴ Shepherd, *supra* note 8.

AUTHORITY OF THE ECOTOURISM MANAGEMENT IN BELOI VILLAGE, ATAURO ISLAND, TIMOR-LESTE

ECOTOURISM MANAGEMENT in Beloi Village is currently still dominated by the government and the private sector. The lack of involvement of local communities causes local communities to be unable to directly benefit in the event that this is an economic benefit. Based on the phenomenon that occurred in Beloi Village, it was found that local communities do not have full rights in involvement in the field of tourism in terms of planning, implementing, and managing ecotourism businesses and their profits. Because almost all tourism facilities are fully owned by the government and investors.

In addition to the limping of ecotourism management in Beloi Village, the impact of participation that must be considered is due to the lack of local community involvement. Because the role of local communities is less involved by the government or does not take part in the planning and implementation of tourism programs. Inter-sectoral cooperation in government agencies that aims to spur the progress of tourism is less than optimal. As a result, the overall performance of the tourism industry has been low, concerning the sharing of benefits or profits. The ownership of tourism facilities dominated by the government and investors caused the local people of Beloi Village to not feel any economic benefits at all. There is not even a form of cooperation between the government and investors and local communities regarding profit sharing. The government has a role in regulating, providing, and allocating infrastructure related to tourism needs. Not only that, but the government is also responsible for determining the destination of the tourist trip. The government's

macro policy is a guide for other stakeholders in playing their respective roles.

The government and investors must develop a clear plan regarding environmental carrying capacity efforts to carry out this very strategic role, such as what is the range of capacity or capacity of the location for tourists, where the location of accommodation, parking lots, parks, attractions, accessibility routes to tourist destinations and around tourist areas. In addition to the government and investors who have an important role in managing ecotourism, local communities are also one of the stakeholders who must be involved in ecotourism management. Local people, especially indigenous people who live in tourist destinations, become one of the actors in ecotourism, because basically those who participate provide most of the attractions and also determine the quality of tourist products. In addition, local residents are the direct "owners" of tourist attraction products offered as well as consumed by tourists. Water, land, forests, and scenery that are tourist resources consumed by tourists and other tourist actors are in the hands of the local community. The management of ecotourism in Beloi Village can be said to be far from what it should be. The government as a policy maker and facilitator seems to be running alone in terms of tourism management. Likewise, investors as capital providers only care about their own profits.

The local community as the owner of the attraction is not involved in the development of tourism in their own area at all. The management of a tourism destination should involve three stakeholders who each have a role and support each other. These three stakeholders are needed so that the management of a destination is not limping and each party supports each other and no party is harmed. Seeing the phenomenon that occurs in Beloi Village, management like this is of course very necessary so that not only the

government and investors who benefit from tourism but especially local people as owners and who will continue to interact with the attraction feel the direct benefits. Ecotourism management in Beloi Village is still controlled by the government and capital owners which can be seen from the ownership of tourism facilities such as lodging and transportation tools.

The government and investors each run independently for the benefit of each party. The government should as a policy maker embrace local communities in terms of tourism management. The government should also be able to work with investors so that ecotourism management in Beloi Village has the same goal, namely advancing Beloi Village as a tourism destination and prospering the local community. The involvement of local communities is needed in the management of a tourism destination. Apart from being the owner of the destination, the local community will then come into direct contact every day with the destination so that it is appropriate for the local community to be involved in every management process. Local communities must be included in every development plan, involved in the management of an organization, included in decision making and of course must be involved in managing destinations every day. The involvement of local communities aims to help the welfare of local communities in terms of income, in addition to that the community always maintains its belongings which are used as an attraction which in this case is all natural resources, culture, and man-made hands. By maintaining the resources owned, then the destination is in demand by tourists.

Therefore, the involvement of local communities is needed so that the destinations they want to develop which as a place for people to live are visited by tourists. In addition to maintaining the resources owned, the involvement of local communities, especially so that local communities can feel the economic benefits directly. To realize an

ecotourism management model in Beloi Village that is better than before, it is necessary to involve local communities both in terms of planning, implementation, and management. What is meant by the ecotourism management model is to use a method or method in management that is even better than before so as to provide benefits and not harm any party, both local communities, governments and investors involved in the management of marine ecotourism in Beloi village. Therefore, further policies are needed to regulate the rights and obligations of local communities in managing tourist villages.

CONCLUSION

This research concluded that culture, tourism, and indigenous peoples have been recognized and regulated in Indonesia. In Indonesia, issues regarding traditional villages and their policies sometimes experience inequality. Where, the existing cultural arrangement is only limited to the cultural identity of indigenous peoples and as a tourist attraction for Indonesia. However, there is no regulation that defines culture as an economic resource. This situation proves that there are empty norms of cultural regulation that have not been recognized and protected by culture as one of the economic sources of tourism. So that further policies are needed by the government. Furthermore, it is also emphasized that the condition in Bali Indonesia is different from what happened in Timor Leste, precisely in the tourist village of Beloi. In fact, there is absolutely no participation of indigenous peoples in the development of tourist villages. Whereas the participation of local communities is the key to developing a tourist village. Therefore, a policy is needed to utilize Human Resources firmly and effectively, instead of just blaming the lack of Budget.

REFERENCES

- Aji, Adiguna Bagas Waskito, Puji Wiyatno, Ridwan Arifin, and Ubaidillah Kamal. "Social Justice on Environmental Law Enforcement in Indonesia: The Contemporary and Controversial Cases". *The Indonesian Journal of International Clinical Legal Education* 2, No. 1 (2020): 57-72. <https://doi.org/10.15294/ijicle.v2i1.37324>.
- Arifin, Ridwan. "Human Rights Aspect on Natural Resources Issue in Indonesia". *Law Research Review Quarterly* 1, No. 3 (2015): 160-174. <https://doi.org/10.15294/lrrq.v1i3.39146>.
- Arthanti, Berliana, and Nabilla Eka Pramudhita. "Law and Human Rights in Addressing Labor Problems During the Pandemic to Achieve Sustainable Development Goals". *Lex Scientia Law Review* 4, No. 2 (2020): 39-54. <https://doi.org/10.15294/lesrev.v4i2.40947>.
- Asri, Dyah Permata Budi. "Legal Protection of Culture Through UNESCO World Heritage Centre". *Jurnal Hukum Ius Quia Iustum* 25, No. 2 (2018): 256-276. <https://doi.org/10.20885/iustum.vol25.iss2.art3>
- Barber, Charles Victor. *The State, the Environment, and Development: The Genesis and Transformation of Social Forestry Policy in New Order Indonesia* (University of California, Berkeley, 1989).
- Bendesa, I K G, and I M Sukarsa. "An Economic Survey of Bali". *Bulletin of Indonesian Economic Studies* 16, No. 2 (1980): 31-53. <https://doi.org/10.1080/00074918012331333769>.
- Budarma, I Ketut, and Ketut Suarta. "The Role of Local Value in Global Sustainable Tourism Development Paradigm. The Case of Tourism in Bali". *Journal of Business on Hospitality and Tourism* 2, No. 1 (2017): 218-233. <https://dx.doi.org/10.22334/jbhost.v2i1.58>.
- Budi, Fenny, and Rahayu Subekti. "Aspek Hukum Pemanfaatan Hutan Lindung Untuk Tempat Wisata". *Jurnal Komunikasi Hukum (JKH)* 7, No. 2 (2021): 540-549.

<https://doi.org/10.23887/jkh.v7i2.37986>.

- Budiasa, I Wayan, and IGAA Ambarawati. "Community Based Agro-Tourism as an Innovative Integrated Farming System Development Model towards Sustainable Agriculture and Tourism in Bali". *Journal of the International Society for Southeast Asian Agricultural Sciences* 20, No. 1 (2014): 29–40.
- Cole, Stroma. "A Political Ecology of Water Equity and Tourism: A Case Study from Bali". *Annals of Tourism Research* 39, No. 2 (2012): 1221–1241. <https://doi.org/10.1016/j.annals.2012.01.003>.
- De Silva, S Sarath Mathilal. "Linking Human Rights and the Environment", *Daily News*, retrieved from <<https://www.dailynews.lk/2016/06/20/features/85126>> (2016).
- Dewi, Anak Agung Istri Atu, Cokorda Dalem Dahana, I Gede Agus Kurniawan, Putri Triari Dwijayanthi, and Dewa Gede Sudika Mangku. "Strengthening The Economy of Desa Adat Based on Local Resources: Strategy And Regulation Context". *Journal of Legal, Ethical and Regulatory Issues* 24, No. 4 (2021): 1–9.
- Elson, Diane. "Gender Justice, Human Rights, and Neo-Liberal Economic Policies". *Gender Justice, Development and Rights* (Oxford: Oxford University Press, 2002), pp. 78–114. <https://doi.org/10.1093/0199256454.001.0001>.
- Erviana, Leni. "Makna Sesajen Dalam Ritual Tilem Dan Implikasinya Terhadap Kehidupan Sosial Keagamaan (Studi Pada Umat Hindu di Desa Bali Sadhar Tengah Kecamatan Banjit Kabupaten Way Kanan)". *Thesis* (Lampung: UIN Raden Intan, 2017).
- Firmansyah, Ade Arif, Iwan Satriawan, Siti Khoiriah, and Yusnani Hasyimzoem. *Hukum Pemerintahan Daerah*. (Jakarta: PT Raja Grafindo Persada, 2017).
- Francillon, Gérard. *Bali: Tourism, Culture, Environment*. (UNESCO, 1979).
- Geriya, I Wayan. *Pariwisata dan Dinamika Kebudayaan Lokal, Nasional Global: Bunga Rampai Antropologi Pariwisata* (Denpasar: Upada Sastra, 1995).
- Geriya, I Wayan. "The Impact of Tourism in Three Tourist Villages in Bali." in *Globalization in Southeast Asia: Local, National, and*

- Transnational Perspectives*. (New York: Bingham Books, 2003).
- Giantari, I Gusti Ayu Ketut, Ida Bagus Ketut Surya, Ni Nyoman Kerti Yasa, and Ida Bagus Anom Yasa. "Development and Revitalization Strategies for Traditional Markets in Bali." *International Journal of Social Economics* 45, No. 7 (2018): 1058-1070. <https://doi.org/10.1108/IJSE-09-2017-0414>.
- Hampton, Mark P. "Heritage, Local Communities and Economic Development". *Annals of Tourism Research* 32, No. 3 (2005): 735-759. <https://doi.org/10.1016/j.annals.2004.10.010>.
- Genta, I Nyoman Yatna Dwipayana and I Made Sarjana. "Pengaturan Kearifan Lokal Dalam Peraturan Daerah Provinsi Bali Nomor 2 Tahun 2012 Tentang Kepariwisata Budaya Bali". *Kertha Negara: Journal Ilmu Hukum* 4, No. 2 (2016): 1-5.
- Kartika, I Gusti Ayu Putri. "Pengaturan Hukum Dan Penegakan Hukum Terhadap Benda Cagar Budaya di Propinsi Bali." *Thesis* (Surabaya: Universitas Airlangga, 2003).
- Kasih, Desak Putu Dewi, Ni Ketut Supasti Dharmawan, Ida Bagus Wyasa Putra, Kadek Agus Sudiarawan, and Ayu Suci Rakhima. "The Exploitation of Indigenous Communities by Commercial Actors: Traditional Knowledge and Traditional Cultural Expression". *Journal of Ethnic and Cultural Studies* 8, No. 4 (2021): 91-109.
- Laksana, Adi, and Ida Bagus. *Pedoman dalam Pengembangan Desa Wisata di Provinsi Bali*. (Dinas Pariwisata Provinsi Bali, Denpasar, 2017).
- Law, Alexandra, Terry De Lacy, Geoffrey Lipman, and Min Jiang. "Transitioning to a Green Economy: The Case of Tourism in Bali, Indonesia". *Journal of Cleaner Production* 111 (2016): 295-305.
- Long, Veronica H, and Sara L Kindon. "Gender and Tourism Development in Balinese Villages", in *Gender, Work and Tourism* (London: Routledge, 2005), pp. 99-128.
- Muchsin, Muchsin. "Perlindungan dan Kepastian Hukum bagi Investor di Indonesia", *Thesis* (Surakarta, Universitas Sebelas Maret, 2003).
- Mudana, I Gede, Ni Made Ernawati, and Mihai Voda. "Analysis of the

- Evolving Cultural Tourism Implementation in Bali Indonesia". *Multicultural Education* 7, No. 6 (2021): 608-619.
- Mulyadin, Mohammad, and Priasukmana Soetarso. "Pembangunan Desa Wisata: Pelaksanaan Undang-undang Otonomi Daerah." *Info Sosial Ekonomi* 2 No. 1 (2001): 37-44.
- Picard, Michel, and Robert E Wood. *Tourism, Ethnicity, and the State in Asian and Pacific Societies*. (Hawaii: University of Hawaii Press, 1997).
- Picard, Michel. *Bali: Pariwisata Budaya dan Budaya Pariwisata* (Jakarta: Kepustakaan Populer Gramedia, 2006).
- Poffenberger, Mark, and Mary S Zurbuchen. "The Economics of Village Bali: Three Perspectives". *Economic Development and Cultural Change* 29, No. 1 (1980): 91-133.
- Purniawati, Purniawati, Nikmatul Kasana, and Rodiyah Rodiyah. "Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management)". *The Indonesian Journal of International Clinical Legal Education* 2, No. 1 (2020): 43-56. <https://doi.org/10.15294/ijicle.v2i1.37328>.
- Purwandoko, Prasetyo Hadi, Adi Sulistiyono and M. Hawin. "The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 regarding Copyright". *Indonesian Journal of International Law* 18, No. 4 (2021). <https://doi.org/10.17304/ijil.vol18.4.823>.
- Republic of Indonesia. *Bali Provincial Regional Regulation No. 2 of 2012 concerning Bali Cultural Tourism, Bali Provincial Regional Gazette of 2012 Number 2, Additional Bali Provincial Regional Gazette Number 2* (Provinsi Bali, 2012).
- Republic of Indonesia. *Bali Provincial Regulation No. 10 of 2015 concerning the Master Plan for Tourism Development of Bali Province 2015-2029* (Provinsi Bali, 2015).
- Republic of Indonesia. *Government Regulation No. 50 of 2011 concerning the National Tourism Development Master Plan 2010-2025* (Jakarta: Sekretariat Negara, 2011).
- Republic of Indonesia. *Law No. 10 of 2009 on Tourism. State Gazette of*

- the Republic of Indonesia of 2009 Number 11, Supplementary State Gazette of the Republic of Indonesia Number 4996* (Jakarta: Sekretariat Negara, 2009).
- Roth, Dik. "Environmental Sustainability and Legal Plurality in Irrigation: The Balinese Subak". *Current Opinion in Environmental Sustainability* 11 (2014): 1–9
- Rouse, Michael J. *Institutional Governance and Regulation of Water Services* (London: IWA Publishing, 2013).
- Shepherd, Robert. "Commodification, Culture and Tourism". *Tourist Studies* 2, No. 2 (2002): 183–201.
- Sriyono, Sriyono, and Amin Purnawan. "Legal Protection Of Participants Applications for Land Certificates Through Complete Systematic Land Registration (PTSL) in Blera Regency." *Jurnal Daulat Hukum* 3, No. 1 (2020): 171–178. <http://dx.doi.org/10.30659/jdh.v3i1.8431>
- Sugiarta, Gede, Putu Budiarta, and Minggu Widyantara. "Environmental Management Regulation for Sustainable Tourism Development in Bali". *Journal of Legal, Ethical and Regulatory Issues* 24, No. 6 (2021): 1–11.
- Wardani, Winda Indah. "How Can the Law Protect the Forest?". *Journal of Law and Legal Reform* 2, No. 4 (2021): 527-538. <https://doi.org/10.15294/jllr.v2i4.48757>.
- Wasonga, Joseph. "National Heritages, Global Capital Accumulation and Collective Socioeconomic Impact: A Critique of Tourism Industry in Kenya". *Journal of Tourism Challenges and Trends* 8, No. 2 (2015): 55–77.
- Widiatedja, IGN Parikesit. "Towards Liberalization of Services in ASEAN: Challenges and Opportunities of Asean Framework Agreement on Services (AFAS) on Tourism". *Indonesian Journal of International Law* 10, No. 1, (2012). <https://doi.org/10.17304/ijil.vol10.1.286>.
- World Tourism Organization. *International Tourism: A Global Perspective*. (Madrid: World Tourism Organization, 1997).
- Yanti, A. A. Istri Eka Krisna. "Kewenangan Pengelolaan Desa Wisata dalam Perspektif Peraturan Daerah Provinsi Bali Nomor 4

Tahun 2019 Tentang Desa Adat di Bali". *Kerta Dyatmika* 16, No. 2 (2012): 59–68. <https://doi.org/10.46650/kd.16.2.738.59-68>.

Yanti, A.A. Istri Eka Krisna. "Community Based Tourism dalam Menyongsong New Normal Desa Wisata Bali". *Jurnal Komunikasi Hukum (JKH)* 7, No. 1 (2021) :72-86. <https://doi.org/10.23887/jkh.v7i1.31458>.

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