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THE ACTUALIZATION OF THE IMPLEMENTATION OF ENVIRONMENTAL AND SUSTAINABLE PRINCIPLES ON INVESTMENT IN THE TOURISM SECTOR

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Abstract

The purpose of this study is to examine and analyze the application of the principles of sustainability and environmental awareness in investment activities in the tourism sector. Investment in the tourism industry brings chaos to values and norms that have an impact on the environmental order and community life in various regions in Indonesia. Often physical development is carried out in areas that endanger the sustainability of the natural environment or by the community. The results of the study indicated that the Principle of Sustainability and Environmental Insight in the legal policy of investment in the tourism sector is a planned principle to integrate economic, environmental, and socio-cultural dimensions to be able to improve the welfare of the community now and in the future. The principle of sustainability and environmental insight is one of the efforts to save natural resources and synchronize aspects of conservation with aspects of wise utilization so that development in the tourism sector does not result in long-term losses.

Keywords: actualization; environmental awareness; investment; sustainable principle; tourism

1. INTRODUCTION

The growth of investment or capital investment today is inseparable from the development of globalization and liberalization that has created a world in global unity with a free market as a manifestation of individual freedom. In the end, the role of the state is reduced resulting in each country inevitably having to survive the changes resulting from these developments.

Economic globalization is also triggered by two important things, namely technology and liberalization of international trade and foreign investment. The existence of liberalization in international trade has a very important role in the development of the world industry so that it can ultimately create opportunities for the economic development of a country (Santosa, 2011). Globalization and liberalization in the modern era like today is inseparable from

the history of the establishment of the three pillars of the world economy through Bretton Woods. The pillars consist of the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), and the General Agreement on Tariffs and Trade (GATT) which later metamorphosed into the World Trade Organization (WTO) (Widiatedja, 2010). Liberalization is interpreted as a way for developed countries to expand in trading for the welfare of their countries through the three pillars of the economy.

The existence of significant disparities between countries around the world is one of the problems of globalization and economic liberalization related to the investment climate. Countries that have a good investment climate, fair dispute resolution programs, and a stable business environment will attract investors. Conversely, countries that hinder investment can reduce the flow of capital itself. This is the result of an uneven

globalization, where benefits and losses are not evenly distributed. Because of these differences, there is a polarization between countries, groups, and individuals. While one party can advance quickly, others are increasingly marginalized.

The application of the principles contained in GATT concerning investment was then accommodated by the establishment of Law No 25 of 2007 concerning Investment (hereinafter referred to as *UUPM*). One of the reasons for the regulation of Law of the Republic of Indonesia No 25 of 2007 concerning Investment is related to the increasingly tight competition between nations so investment policies must be encouraged to create national economic competitiveness to encourage the integration of the Indonesian economy towards the global economy. Investment can cover many things, such as tourism. This study investigated tourism from an investment law perspective. This is an example of investment, where resources are allocated to generate profits. Tourism causes demand for goods and services such as transportation, accommodation, consumption, reactions, attractions, and others.

Investment activities are in principle intended to improve the wheels of the economy in a country to realize welfare and prosperity for all levels of society and meet the demands for goods and tourism services to obtain maximum profit. However, in reality, investment in the tourism industry brings chaos to values and norms that are marked by the process of profanation of holy places for tourism interests (Cakabawa Landra, 2018). This harms environmental management and community life in various regions in Indonesia. Spatial planning based on local wisdom values in the region is ignored, so physical development is often carried out in areas that endanger the sustainability of the natural environment or which are viewed by the community as sacred areas. This problem occurs in almost all regions in Indonesia, such as the Merauke integrated food and energy barn project in Papua (Marr, 2011), in the tourism investment business based on research in Nusa Ceningan related to Indigenous peoples and natural resources as tourism potential (Konsukartha et al., 2003), the division of the Tanjung Paperu sea area, known as Tanjung Souino, resulting in the loss of the main livelihood of the local community (Aliansi Masyarakat Adat

Nusantara, 2013), the exclusion of the living space of the Balinese customary law community, for example in the Ungasan Village area, Badung Bali (Hazliansyah, 2014) and the case of making a boat pier (jetty) accompanied by dredging and filling of material in the coastal area of Semaya, Suana Village, Nusa Penida District (NV, 2018).

Concerning this issue, the role of the state is very much needed to optimize development that is in harmony with environmental protection and management. Therefore, in developing the concept of sustainable development, efforts are needed to describe the global legal framework to ensure sustainable development. Care for the Earth (CE), states that environmental law in a broad sense is the main means to achieve sustainability, which sets standards of social behavior and provides a measure of certainty for policy (Hardjasoemantri, 2018). In the case of Indonesia, the legal basis, also known as legal policy in the field of environment and development, can be found in the 1945 Constitution of the Republic of Indonesia, especially Article 33 paragraph (4), where the concept of sustainable development is called "sustainable development with an environmental perspective." This shows that Indonesia places the importance of the environment in its development policies. So, development is seen from an environmental perspective rather than an economic and human perspective.

Suryani in Syarifa stated that the Job Creation Law in various studies and criticisms is considered to have ignored the principle of environmental protection. It can be seen from the large tendency of decline in the regulation and application of ecologically sustainable development principles in various development policies implemented by the Joko Widodo government, after the enactment of the Job Creation Law and all its derivative regulations including Government Regulations to Presidential Regulations (Maulidyna, 2022). One of the serious studies is regarding the licensing simplification policy. The simplification of licensing in the Job Creation Law is carried out through the integration of environmental permits into business permits. This policy choice is intended to make it easier for business actors not to get caught up in a complex and complicated licensing process so it is expected to increase the rate of investment in Indonesia.

Based on the above research background, the author aims to conduct an analysis related to the application of the principles of sustainability and environmental awareness in investment activities in the tourism sector which are currently very massive. The application of this principle should be followed by the development of progressive laws to ensure that investment activities in the tourism sector that apply these two principles can guarantee sustainable and environmentally aware tourism for our young generation in the future.

2. METHOD

The research method used in this research is Normative Juridical, a legal research method that is carried out by examining library materials or secondary materials only. The types of approaches used in this research are the statute approach and the conceptual approach. The data analysis method is carried out by collecting facts which are data through a review of library materials or secondary data which include primary legal materials, secondary legal materials, and tertiary legal materials, both in the form of documents and applicable laws and regulations related to normative legal analysis of the problems that arise.

3. RESULT AND DISCUSSION

Legal Regulation For Investment In The Tourism Sector In Indonesia

Indonesia is a country of law, it is based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Daniel S. Lev stated that a country of law is a condition sine qua non (absolute requirement) (Soebekti & Tjitrosoedibio, 2005), because, without an effective legal process and system, it is impossible to expect improvements in the economy, politics, social life and justice (Radjagukguk, 2012).

Regulations on the investment legal system do not only cover national law but also international law. The existence of investment in Indonesia can influence the investment legal system which can also protect the interests of investors to attract investors to invest in Indonesia so that it can accelerate national development with the influx of foreign capital in Indonesia (Zulfikar, 2019). The same thing was also expressed by Yusuf Caliskan who stated:

"The international legal framework for foreign direct investment (FDI)

encompasses a variety of national laws and rules of international law, which vary in form, strength, and scope. Many countries have regulations relating to FDI. This is in line with the generally recognized principle that host governments have the right to exercise their sovereignty to regulate all aspects of FDI in their countries. Therefore, a country's laws or national laws are the primary laws to be applied in international investment (Caliskan, 2008)."

The legal regulatory system in Indonesia regarding investment is regulated in Law No 25 of 2007 concerning Investment, which simultaneously revokes the rules on domestic investment (Law No 6 of 1968 concerning Domestic Investment) and foreign investment (Law No 1 of 1967 concerning Foreign Investment).

One of the fields that is declared open to investment is tourism. Tourism growth is progressing very rapidly in line with the times, in addition, the tourism business is also one of the business fields that creates foreign exchange for the destination country.

Tourism activities in Indonesia were proclaimed when Hotel Indonesia was inaugurated in 1962. However, the legal instruments regulating tourism only emerged in 1990, namely with the birth of Law No 9 of 1990 concerning Tourism (Simatupang, 2009). Furthermore, Law No 9 of 1990 concerning Tourism was replaced by Law No 10 of 2009 (hereinafter abbreviated as *UUK*). Article 4 of the new *UUK* stipulates that the objectives of tourism are as follows:

- Increasing economic growth;
- Increasing people's welfare;
- Eliminating poverty;
- Overcoming unemployment;
- Preserving nature, the environment, and resources;
- Advancing culture;
- Raising the image of the nation;
- Fostering a sense of love for the country;
- Strengthening national identity and unity; and
- Strengthening friendship between nations.

The existence of tourism as one of the potential business sectors is considered to

have a very important role in national economic growth and even the world economy by the World Trade Organization (WTO). The concern and commitment of WTO member countries in the field of tourism has resulted in the General Agreement on Trade in Services (GATS). Indonesia as a member of the WTO has also ratified the agreement through Law No 7 of 1994. This is one of Indonesia's commitments in regulating tourism services in GATS.

The concept of international trade in the service sector is also related to foreign investment (PMA), labor migration, and international transactions. In general investment law, the tourism industry is legally related to licensing, capital, business forms, investor status, objects, environmental locations, and others (Simatupang, 2009). Both investment law and tourism law in their implementation strive to realize the welfare and prosperity of the people and expand and equalize business opportunities. So, a holistic regulation is needed to regulate both, to provide legal certainty for both investors and recipients of capital. This is because both fields provide positive contributions to the development of the national economy.

Tourism regulations in Indonesia are also regulated in the Government Regulation of the Republic of Indonesia No 50 of 2011 concerning the National Tourism Development Master Plan for 2010-2025, in this provision, it is stated that the direction of national tourism is organized based on the principle of sustainable tourism development.

The Implementation Of Sustainable And Environmental Principles On Tourism Investment Activities

The regulation of tourism investment activities in Indonesia is carried out due to the pressure of economic globalization which encourages Indonesia to harmonize international legal policies and eliminate various obstacles that complicate the development of tourism investment. Through the development of the world economy that opens access for investors to invest capital, it is hoped that there will be an increase in national economic growth as an effort to realize the welfare of the community as mandated by the 1945 Constitution of the Republic of Indonesia. Tourism is an activity that provides benefits not only for the country but also for the community. It should also be noted that tourism cannot stand alone

because tourism is a multi-dimensional activity, an activity that is related to other elements such as political, economic, social, cultural, legal, and community dimensions including defense and other security.

Tourism as an industry is often exploitative. Tourism activities carried out in various regions encourage exploitation in the use of nature and the environment for tourism interests. Exploitative tourism like this has an impact on the shifting of local wisdom values that live and develop in society in an area due to land conversion or inappropriate land use to meet the interests of investors in the tourism sector. For this reason, efforts are needed to preserve and regulate tourism activities that have the potential to shift local wisdom values that live and develop amid society so that they can be enjoyed later by future generations. Concerning the context of sustainable development, the legal policy of development should be directed towards the implementation of development based on the principles of environmental protection and intergenerational justice. Therefore, development should act as a means to achieve human welfare which functions as an instrument to create a good and healthy environment (Mukhlis, 2010). So that the idea and concept of sustainable development in principle contain the main agenda, namely efforts to synchronize, integrate, and equalize the three main aspects of development, including the economy, socio-culture, and environment. Therefore, the developmentalism paradigm that only prioritizes economic growth should be abandoned and replaced with a more holistic and integrative development approach that seriously concerns on environmental and socio-cultural development (Mukhlis, 2010).

Substantial changes in the Job Creation Law can be categorized as a Developmentalism paradigm that actually reduces environmental protection and only prioritizes development processes that benefit business actors. Policies related to simplifying environmental permits contradict the environmental legal policy in the constitution which is based on the principles of sustainability and environmental insight.

Therefore, in the context of sustainable development, to prevent arbitrary environmental exploitation, it is necessary to strengthen the bureaucracy at the regional level, empower and strengthen

environmental institutions at the regional level, renegotiate business actors who are proven to have violated the law, impose severe sanctions on officials and perpetrators of environmental damage, and strict licensing supervision (Andriansyah et al., 2021).

The principle of sustainability and environmental insight in investment legal policies in the tourism sector is a planned principle to integrate economic, environmental, and socio-cultural dimensions to improve the welfare of the community both now and in the future. However, the impact of implementing investment activities in the tourism sector often causes environmental and ecosystem damage because it is exploitative.

Tjandra in his book, reveals the concept of a welfare state is ideologically considered most appropriate to the goal of creating public welfare, and technically marked by the escalation of the qualitative and quantitative role of the state through the role of regulation and distribution to direct society towards welfare (Tjandra, 2004). The welfare state can be briefly defined as a form of democratic government that places the state as an institution responsible for the welfare of the people, through a series of public policies in integrating economic policies and social policies for the achievement of welfare and social justice (Kurnia, 2019).

Investment in tourism as a rapidly growing industrial development, the principle of sustainability is needed to develop harmony between humans and human behavior and nature both at the national and international levels. To achieve this, an effective and safe political system is needed. The principle of sustainability and environmental insight is one of the efforts to save natural resources and synchronize conservation aspects with wise utilization aspects so that development in the tourism sector does not result in long-term losses.

The current government seems inconsistent in implementing the legal policy of sustainable development which has been mandated in the constitution as the highest legal basis in Indonesia, as well as the spirit of developing global environmental law. Obstacles at the level of legal policy cannot be denied from the many interventions of political interests. Therefore, reform of legal policy is very necessary to be carried out comprehensively and integrated leading to improvements in 6 things, including

(Hardjasoemantri, 2003):

Representative institutions that can carry out effective control functions (effective representative system);

Justice that is free from executive interference, clean (not corrupt), and professional;

Professional government apparatus (bureaucracy) with strong integrity;

A strong civil society that can carry out public control (public watchdog) and pressure functions;

Strong decentralization and regional representative institutions supported by strong local civil society (democratic decentralization);

The existence of a conflict resolution mechanism.

Without any improvement to these six things, it will be very difficult to actualize and implement the two principles, namely sustainability and environmental awareness in development or investment activities in the tourism sector. This is intended so that in the future the legal policy of investment and tourism as outlined in the constitution can be realized in concrete policies that carry sustainable development and eco-development.

4. CONCLUSION

The principle of sustainability and environmental insight in the legal policy of investment in the tourism sector is a planned principle to integrate economic, environmental, and socio-cultural dimensions to improve the welfare of the community both now and in the future. However, the impact of the implementation of investment activities in the tourism sector often causes environmental and ecosystem damage because it is exploitative. Investment in the tourism sector as a rapidly growing industrial development, the principle of sustainability is needed to develop harmony between humans and human behavior and nature both at the national and international levels. To achieve this, an effective and safe political system is needed. The principle of sustainability and environmental insight is one of the efforts to save natural resources and synchronize aspects of conservation with aspects of wise utilization so that development in the tourism sector does not result in long-term losses.

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