

Observations on the Regulation of Tourism in Accordance with the Constitution of the Republic of Indonesia 1945 and Relevant Legislation

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Abstract

Tourism plays a crucial role in economic development and the welfare of society. It is essential to note that tourism development must consider the legal regulatory aspects, particularly in the formulation of laws and regulations. Therefore, an assessment of the regulations governing tourism is necessary to ensure the harmonization and synchronization of the tourism sector itself. The objective of this study is to examine and analyze the regulatory aspects of tourism in accordance with the Constitution and prevailing laws and regulations. This research is normative, using legal materials as its primary source. The research employs a legislative approach, a conceptual approach, and a case-based approach. The findings of the study indicate that the assessment of tourism regulations in alignment with the Constitution and existing laws can be carried out in two main ways: first, through the systematization of tourism-related regulations, and second, by evaluating existing tourism regulations, starting from the Constitution itself, followed by the laws, government regulations, ministerial regulations, and regional regulations at both provincial and municipal levels. Additionally, the assessment serves as the most effective means of maintaining the harmony and synchronization of the laws and regulations governing tourism.

1. Introduction

The tourism sector is undeniably one of the largest contributors to the country's foreign exchange earnings, second only to the taxation sector. This consequence places tourism as a key pillar in boosting national revenue while simultaneously serving as a stabilizing factor in maintaining financial balance, particularly amid Indonesia's ongoing need to finance its operational and developmental expenditures.

According to Violetta Simatupang¹ The essence of tourism lies in the entirety of activities related to travel and leisure that are multidimensional and multidisciplinary in nature. It emerges as a manifestation of the needs of individuals and the state, as well as the interactions between tourists and local communities, fellow tourists, the central government, local governments, and business actors.

Furthermore, Murphy argues² that tourism comprises a set of interrelated elements including tourists, tourist destinations, travel, industry, and others that result from travel activities to tourist destinations, provided that such travel is not of a permanent nature.

According to Law No. 10 of 2009 on Tourism, tourism is defined as all matters related to travel activities, including the management of tourist attractions and related business enterprises. Meanwhile, the term *kepariwisataan* (tourism sector or tourism system) refers to all aspects related to the administration and organization of tourism.

Based on the aforementioned definitions, it can be concluded that the meaning or essence of tourism lies in ³ Tourism may be understood as an activity or a set of components related to travel undertaken for the purpose of experiencing a more relaxed atmosphere offered by a particular attraction. In other words, tourism can be seen as a refreshing activity aimed at revitalizing the mind and soul by engaging with specific attractions, thereby relieving fatigue and exhaustion caused by intense daily routines.

Based on the above understanding of the meaning of tourism, it becomes evident that tourism plays a crucial role as a driver of economic growth in supporting the broader needs of national development. Tourism can no longer be underestimated or regarded as a peripheral sector, but must instead be recognized as a vital instrument for achieving economic growth alongside other key sectors such as taxation, natural resources, and others.

In this context, it is important to highlight the findings and perspectives provided by the Organization for Economic Co-operation and Development (OECD)⁴ in its report *Tourism Trends and Policies 2022*, the Organization for Economic Co-operation and Development (OECD) noted that in 2019, the tourism sector contributed 5.0% to Indonesia's Gross Domestic Product (GDP). However, the

¹ Violetta Simatupang, *Hukum Kepariwisata Berbasis Ekspresi Budaya Tradisional* (Bandung: P.T. Alumnus, 2015).

² Pitana Pitana and Gayatri Gayatri, *Sosiologi Pariwisata* (Yogyakarta: Penerbit Andi, 2009). 45

³ Sri Sunarti, Tineke Wolok, and Irma Kharisma Hatibie, *Pengantar Ilmu Pariwisata* (Purbalingga: Penerbit Eureka Media Aksara, 2024). 5

⁴ CS Purwawidhu, "Kian Melesat di 2023, Pariwisata Indonesia Bersiap Menuju Level Prapandemi," *Media Keuangan*, 2023, <https://mediakeuangan.kemenkeu.go.id/article/show/kian-melesat-di-2023-pariwisata-indonesia-bersiap-menuju-level-prapandemi>.

impact of the COVID-19 pandemic in 2020 led to a drastic 56% decline in tourism's contribution, reducing it to merely 2.2% of the national economy.

This highlights the critical importance of safeguarding the existence of the tourism sector as a major contributor to national foreign exchange earnings. Nonetheless, tourism has yet to receive a proportionate legal and institutional position within Indonesia's legislative framework. This is evident from the gap between the constitutional mandate, namely the 1945 Constitution of the Republic of Indonesia, and its derivative regulations.

As a state governed by law (*rechtsstaat*), Indonesia is obliged to place legal instruments as a central component in all aspects of governance, including tourism administration. Ideally, tourism policy and implementation must be aligned with constitutional principles, which should serve as the foundational reference for all subsequent legal and regulatory provisions, down to the lowest levels of legislation.

In accordance with Law No. 10 of 2009 on Tourism⁵ the objectives of tourism development, as stipulated in Law No. 10 of 2009 on Tourism, include the following: First, to stimulate economic growth; second, to enhance public welfare; third, to eradicate poverty; fourth, to reduce unemployment; fifth, to preserve nature, the environment, and natural resources; sixth, to promote culture; and seventh, to elevate the nation's image.

The constitutional basis for these objectives can be found in the Preamble to the 1945 Constitution of the Republic of Indonesia, specifically in the fourth paragraph, which states among the nation's goals: "to protect the entire people of Indonesia and the whole of Indonesia's territory," and "to promote the general welfare."

According to Gede Subha Karma Resen,⁶ The concept of "general welfare" as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, when connected to the fifth principle of Pancasila, "Social justice for all the people of Indonesia" clearly reflects a general directive: to promote equitable public welfare for the entire Indonesian population. This implies that the Republic of Indonesia bears the responsibility to ensure the prosperity and well-being of all its citizens, including those residing across the diverse regions of the country.⁷

It must be acknowledged that the development of the tourism sector, if not supported by sound planning and well-formulated regulatory frameworks, can often generate negative consequences. Poorly regulated tourism development may give rise to various legal implications, including administrative violations such as maladministration, criminal offenses such as alleged corruption, and civil liabilities.

In addition to challenges within the tourism industry itself, other impacts are increasingly apparent particularly environmental degradation. These include deforestation, depletion of extractive resources, increased waste and pollution, and rising noise levels. In accordance with the principles of sustainable development, the tourism industry must ideally be directed toward minimizing such negative externalities.

⁵ Law Number 10 of 2009 concerning Tourism

⁶ Gede Subha Karma Resen, "Pengaturan Badan Usaha Milik Daerah Berdasarkan Good Governance Dan Good Corporate Governance" (Disertasi, Yogyakarta, Universitas Gadjah Mada, 2015).

⁷ Kamal Fahmi Kurnia, "Pengaturan Penyelenggaraan Kepariwisata Dalam Perspektif Negara Kesejahteraan," *Doctrinal* 4, no. 1 (September 16, 2019): 902–15.

These negative impacts must not be allowed to persist, especially considering the critical role of tourism as a contributor to national foreign exchange revenues. What is therefore urgently needed is the establishment of an ideal regulatory framework for tourism. Ideally, the hierarchy of regulations must follow a consistent legal structure in which higher-level legal norms serve as the legal umbrella for subordinate rules. Subordinate laws must not contradict superior ones (*lex superior derogat legi inferiori*). Given this, it is necessary to further examine the regulatory issues in tourism governance.

Based on the background above, the main research problem in this study is: How can the regulatory aspects of tourism be affirmed (*konstataasi*) in accordance with the 1945 Constitution of the Republic of Indonesia and existing statutory regulations? In other words, the constitutional provisions that form the legal basis for tourism must not be in conflict with the derivative regulations that follow.

The objective of this study is to identify and analyze the affirmation of tourism-related regulatory aspects in line with the 1945 Constitution and an ideal legislative framework.

2. Methodology

This research is classified as normative juridical research, which is a type of legal study aimed at identifying legal norms, principles, or *das sollen* (the ideal law). Soekanto⁸ and Mamudji, This normative or library-based legal research includes the study of legal principles, legal systematics, the level of vertical and horizontal harmonization of laws and regulations, comparative law, and legal history.

The type of research applied in this study is doctrinal research, which focuses on the analysis of statutes and scholarly legal literature relevant to the subject matter. It aims to provide a systematic explanation of legal norms within a structured framework. The approaches adopted in this study are as follows: Statute approach,⁹ this approach involves a thorough examination of all relevant laws and regulations that are directly or indirectly related to the legal issues under consideration. It aims to analyze the legal framework by identifying, interpreting, and evaluating statutory provisions applicable to the tourism sector. Conceptual approach¹⁰, this approach is conducted by examining legal doctrines and scholarly opinions in the field of law. It aims to build a theoretical foundation by analyzing the views of legal scholars and conceptual frameworks relevant to the regulation of tourism.. Case approach¹¹ This approach addresses the research problems by examining real-world cases in the professional or practical legal sphere that are relevant to the topic under discussion. It involves the analysis of legal issues as they

⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 17 (Jakarta: Rajawali Pers, 2015). 14

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Jakarta: Prenadamedia Group, 2014). 93.

¹⁰ *Ibid.*94

¹¹ *Ibid.*95



manifest in practice, providing concrete illustrations to support normative legal reasoning.

The significance of this research lies not only in its academic contribution but also in its practical relevance. Theoretically or academically, the research contributes to the development of tourism science as a body of knowledge. Practically, it serves to apply field findings as a reference for policymakers in the formulation of tourism-related regulations and strategies.

The legal sources used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. The analytical methods employed are descriptive and comparative techniques. The legal analysis in this research is conducted through three main stages:

- a. Systematization of legal materials : organizing relevant legal norms into a coherent and structured framework.
- b. Evaluation of legal materials : assessing the adequacy, consistency, and effectiveness of the existing laws and regulations.
- c. Normative determination or reformulation : identifying how the law ought to be, and proposing necessary improvements or legal reform.

3. Analysis and Discussion

Assertion of Regulatory Aspects of Tourism in the Constitution and Statutory Laws

According to the Great Dictionary of the Indonesian Language (KBBI)¹² The term "constatation" can refer to the act of observing or establishing symptoms or indicators of a particular condition or event. Meanwhile, according to the Merriam-Webster Dictionary¹³ The term derives from the French word *constater* combined with the suffix-ation, which roughly translates to "to constitute." It can be interpreted as the act of making a statement or forming a foundational assumption.¹⁴ In the terminology of land law, the term constatation is often associated with the role of a constatation officer an official responsible for conducting examinations of both physical and legal data, whether in the field or at the office, in the context of granting land rights over previously registered land, as well as the extension and renewal of such rights, with the exception of the Right to Cultivate (Hak Guna Usaha).

Based on the aforementioned meaning, constatation as used in this paper refers to the formulation of a basic assumption or statement regarding symptoms or conditions related to the legal regulation of tourism, particularly from the perspective of fundamental legal norms as they relate to subsequent statutory provisions. Accordingly, constatation in this context may be understood as the act of articulating a foundational statement or assumption concerning tourism

¹² Departemen Pendidikan Dan Kebudayaan Republik Indonesia, "Kamus Besar Bahasa Indonesia" (Jakarta: Balai Pustaka Indonesia, 2005).

¹³ - Webster.com, "Merriam-Webster: America's Most Trusted Dictionary," accessed October 25, 2024, <https://www.merriam-webster.com/>.

¹⁴ Fence M. Wantu, "Musyawarah Sebagai Upaya Penyelesaian Sengketa Pertanahan" (Narasumber, Sosialisasi Badan Pertanahan Nasional dan Agraira Tata Ruang Kota Gorontalo, Kota Gorontalo, 2024).

regulations, linking higher-level norms to lower-level legal rules within the hierarchy of legislation.

As outlined above, tourism is in fact already recognized in the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945), specifically in the fourth paragraph, which affirms, among other things, the obligation “to protect the entire nation of Indonesia and all the blood spilled for its sake.” This provision implies that the State of the Republic of Indonesia holds the responsibility to promote the welfare and prosperity of all its people including through the development of the tourism sector. Further elaboration is found in statutory regulations, particularly Article 2 of Law Number 10 of 2009 on Tourism, which stipulates that tourism development shall be based on the principles of benefit, togetherness, fairness, equity, balance, independence, sustainability, participation, continuity, democracy, equality, and unity. These principles are to be realized through the implementation of tourism development planning that respects the diversity, uniqueness, and distinctiveness of local culture and nature, as well as the human need for travel and leisure, with its implementation decentralized to regional governments.

Article 2 also further enumerates the guiding principles for tourism administration in Indonesia, namely: (1) benefit; (2) togetherness; (3) fairness and equity; (4) balance; (5) independence; (6) sustainability; (7) participation; (8) continuity; (9) democracy; (10) equality; and (11) unity. These foundational principles serve as normative guidelines for the execution of tourism governance. However, in practice, these principles have not yet been fully implemented. This is evidenced, for instance, by deficiencies in amenities, accessibility, and attractions. In terms of amenities, there remains a need to improve supporting facilities such as hotels, homestays, clean public restrooms, hygienic and culturally distinctive culinary options, and other infrastructure that ensures the comfort of tourists.

Furthermore, Article 8 of Law Number 10 of 2009 outlines that tourism development in Indonesia shall be carried out based on a tourism master plan, comprising the national tourism master plan, provincial tourism master plan, and district/city tourism master plan. In line with this provision, any form of tourism development must be preceded by the formulation of such master plans. This is intended to ensure that tourism development is carried out in a structured and coordinated manner, ultimately achieving the intended objectives of tourism governance.

However, the reality on the ground is regrettable. Tourism-related regulations often fall short of expectations. The constitutional mandate as stated in the Preamble to the 1945 Constitution, especially in the fifth paragraph has not been adequately reflected in subsequent implementing regulations. Even more concerning is the lack of harmonization between tourism regulations and other laws. For example, discrepancies can be seen between Law No. 10 of 2009 on Tourism and Law No. 6 of 2023, which ratifies Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into law. These inconsistencies highlight the urgent need for regulatory coherence and alignment across Indonesia’s legal framework for tourism.¹⁵

¹⁵ The law itself has been full of controversy since it was first invited with Law Number 11 of 2020 concerning Job Creation. Furthermore, this law is considered formally flawed through the Constitutional Court's decision. The government itself was ordered by the Constitutional Court to

The formal aspects of legislative formation were not fulfilled in the enactment of the Job Creation Law. In practice, the Constitutional Court of Indonesia ruled that the Job Creation Law which includes provisions regulating the flow of tourism services was enacted without proper adherence to the formal legislative procedures required by law. This occurred because the law was seemingly rushed through the legislative process, despite failing to meet the necessary formal requirements of lawmaking.

When viewed in relation to the Preamble of the 1945 Constitution which emphasizes the state's obligation to ensure the prosperity and welfare of the people the philosophical foundation of the Job Creation Law becomes questionable. The attempt to simplify legislative regulation through the Job Creation Law undermines constitutional principles, particularly because it opens the door to liberalization tendencies within the tourism sector, which contradicts the mandate of the Constitution.

It is undeniable that the government had a strong and urgent interest in ensuring the swift passage of the Job Creation Law. This urgency led to widespread public protest against what was perceived as a forced enactment. Labor unions and other segments of society including academics expressed firm opposition to the government's maneuver. The government's rationale, which was to simplify the regulatory framework in order to attract foreign investment, was rejected by labor groups and many others who viewed the measure as constitutionally and socially problematic.

Ideally, such a situation should not occur in the legislative process. Adi Sulistiyono emphasizes that there are at least two fundamental reasons why a law must not contain provisions that contradict the Constitution.¹⁶ First, Indonesia's legal politics aims to guide legal development in a way that promotes sustainable economic growth and ensures legal certainty. Second, the urgency of prioritizing legal development lies in its function as a guiding and facilitating factor to foster a conducive economic climate.

In addition to the issue of normative disharmony between laws and regulations, another pressing problem is that the current regulatory framework for tourism particularly Law Number 10 of 2009 on Tourism is increasingly perceived as outdated and no longer aligned with the dynamic developments in the tourism sector. The existing law is considered inconsistent with the current objectives of tourism development, which demand more adaptive and progressive legal instruments. In response to this concern, the government is currently in the process of drafting a new Tourism Bill that aims to better reflect the values, needs, and socio-cultural context of Indonesian society. This legislative initiative is expected to establish a more relevant legal foundation for the governance and advancement of the tourism sector in accordance with the nation's development goals.

make it work for a year, but the Government issued Government Regulation Number 2 of 2022 concerning Job Creation. Furthermore, the government has enacted this Government Regulation with Law Number 6 of 2023.

¹⁶ Adi Sulistiyono & Muhammad Rustamaji, *Hukum Ekonomi Sebagai Panglima* (Sidoarjo: Masmedia Buana Pustaka, 2009). 16-24

In light of these conditions and realities, Commission X of the House of Representatives of the Republic of Indonesia (DPR RI)¹⁷ In response to the current conditions and realities, Commission X of the Indonesian House of Representatives (DPR RI) has drafted a Bill to Amend Law Number 10 of 2009 on Tourism. According to the legislative drafting cycle, this bill has now reached the stage of synchronization and harmonization at the Legislation Committee of the DPR RI. Commission X has submitted both the Academic Manuscript and the draft bill. The substance of the bill is framed under a new paradigm of tourism, shifting from mass tourism to quality, sustainable, and regenerative tourism. This paradigm shift entails a fundamental transformation in the regulation of tourism, emphasizing sustainable and regenerative tourism practices while integrating cultural values into tourism management. The development and promotion of tourism are now conceptualized based on a tourism ecosystem approach.

Furthermore, Commission X of the DPR RI (2019–2024 term) initiated substantial changes to the direction and content of the tourism bill. These changes aim to strengthen national identity, the economy, and national defense, while preserving social values, customs, natural resources, and cultural heritage as essential elements of national civilization starting with education. Another goal is to establish tourism as a priority sector in national development. In line with this objective, Commission X seeks input on national and regional government policies and strategies, particularly in terms of supervision, institutional involvement, and the management and development of tourism at the local level.

When linked to the mandate and spirit of the Preamble of the 1945 Constitution, the ongoing legislative stagnation surrounding tourism cannot be allowed to persist indefinitely. This concern is further underscored by the fact that, despite the transition from the previous Commission X to the newly inaugurated DPR for the 2024–2029 term, the Tourism Bill has yet to be finalized. Ideally, the enactment of a comprehensive Tourism Law should be expedited to provide a strong legal foundation for the administration of tourism activities in Indonesia.

In light of these developments, a constataion of the legal aspects of tourism regulation may be carried out through two key approaches: First, a systematic review and consolidation of all existing laws and regulations related to tourism, including local government regulations; and Second, a thorough evaluation of the widespread tourism-related regulations to assess their compliance with the formal procedures and principles stipulated in the national legislative drafting framework.¹⁸ Third, there must be a deliberate effort to renew or revise existing tourism-related regulations, evaluating whether they are still relevant or need to be updated in accordance with the legal drafting mechanisms stipulated in Indonesian law.

In this regard, constataion, understood as an initial statement or foundational assumption regarding a particular event or condition, serves to critically examine the state of tourism regulation itself. This means that the various fragmented

¹⁷ Commission X of the House of Representatives of the Republic of Indonesia for the period of 2019 to 2024. Currently, the membership period of the DPR, including Commission X, has changed with the inauguration of members of the DPR for the period 2024 to 2029.

¹⁸ Law Number 12 of 2011 concerning the Establishment of Laws and Regulations



regulations governing tourism should ideally be harmonized to ensure coherence and avoid legal inconsistency.

The constataion of tourism regulation must begin by establishing its foundational legal basis, specifically the Fifth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, which provides the philosophical and constitutional justification for tourism governance. Subsequently, existing legislation particularly Law Number 10 of 2009 on Tourism must be adapted to accommodate the dynamic development of the tourism sector.

Likewise, other sectoral laws that include tourism-related provisions must be harmonized with one another and with lower-level regulations such as Ministerial Regulations, Provincial and Municipal/Regency Regulations, in order to prevent overlapping and contradictory provisions. Most importantly, the hierarchy of laws must be respected, ensuring that higher-level regulations are synchronized with subordinate ones, thus avoiding ambiguous interpretations that could hinder stakeholders especially foreign investors and tourism operators from participating confidently in Indonesia's tourism industry, particularly at the regional level.

Ultimately, it can be asserted that constataion of tourism regulation in accordance with the Constitution and statutory legal framework has become an urgent and non-negotiable necessity for advancing the national tourism sector. Such efforts are vital to preserve consistency, especially in ensuring that tourism continues to serve as one of Indonesia's most reliable sources of foreign exchange income. Furthermore, this approach helps to sustain the harmonization and synchronization of tourism laws and regulations themselves.

A regulation may only be considered effective and credible when it is firmly rooted in and responsive to existing national conditions, particularly regarding the harmonization and synchronization of legal instruments. If this is achieved, Indonesia's tourism sector will not only remain resilient and competitive, but also welcoming to international tourists and investors, who will feel legally and economically secure in contributing to the development of tourism across the archipelago.

3. Conclusion

The constataion of tourism regulatory aspects in accordance with the Constitution and statutory laws can be carried out through several key measures. First, by systematizing all regulations related to tourism to ensure clarity, coherence, and accessibility. Second, by conducting a comprehensive evaluation of existing tourism regulations, starting from the Constitution itself, statutory laws, interrelated acts, government regulations, ministerial regulations, and regional regulations both at the provincial and municipal/regency levels.

Furthermore, constataion serves as one of the most effective approaches to maintaining harmonization and synchronization across the legal framework governing tourism. Through this method, the regulatory system can avoid overlaps and contradictions, ensuring that tourism governance remains constitutionally grounded, legally consistent, and conducive to both national development and international engagement.

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