



SYNERGY BETWEEN TRADITIONAL VILLAGE AND LOCAL GOVERNMENT IN TOURISM INVESTMENT MANAGEMENT WITH PARTNERSHIP DEVELOPMENT PATTERN BASED ON TRI HITA KARANA IN BALI

**Lis Julianti¹, I Wayan Agus Vijayantera², Agustina Ni Made Ayu Dharma
Pratiwi³, Anak Agung Adi Lestari⁴**

¹⁾²⁾³⁾⁴⁾ Faculty of Law, University of Mahasaraswati Denpasar

E-mail: lisjulianti@unmas.ac.id

Abstract

Tourism investment activities in Bali today encourage the transformation of land as much as possible, the transfer of functions of very productive agricultural land, and areas that store historical, socio-cultural values that are very unique to become centers of tourism business activities. Such transformations are not infrequently accompanied by the elimination of certain societal values and systems, exploitation of the community in all its aspects of life, treatment of the people in setting and implementing policies. As a result, policies at the regional level and local Traditional Villages often clash, due to the lack of synergy between the Regional Government and Traditional Villages in managing investment activities in the tourism sector. For this reason, a partnership development pattern is needed in its management while still paying attention to the Tri Hita Karana concept in building sustainable Bali tourism. This study uses a normative legal research method using a conceptual approach and an approach to legislation. The data analysis method is carried out by collecting facts which are data through the study 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 relating to the normative juridical analysis of problems that arise.

Keywords: Traditional Village, Tourism Investment, Tri Hita Karana

I. INTRODUCTION

I.1. Research Background

Tourism is familiar for Indonesian people. It has been established as a national policy object since Indonesia determined its development policy. The main characteristic of tourism policy is focusing on tourism as state foreign exchange. Positioning foreign exchange as tourism policy orientation has trapped tourism to be an ambitious object, such as mass tourism, and consequently to be exploitative and irrational.¹

Tourism is an attractive sector for investors who want to invest in Indonesia. It is proven by the data issued by Investment Coordinating Board (*BKPM*) which stated that in 2015 the Domestic Investment (*PMDN*) contributed IDR 4.02 trillion and Foreign Investment (*PMA*) contributed IDR 9.24 trillion. In 2016, *PMDN* and *PMA* contributed IDR 2.21 trillion and IDR 16.65 trillion consecutively. In 2017, *PMDN* contributed IDR 6.30 trillion and *PMA* contributed 18.15 trillion. Meanwhile, until the first semester in 2018 *PMDN* contributed IDR 3.6 trillion and *PMA* has contributed IDR 7.4 trillion.²

These numbers showed the huge level of investment in tourism both from domestic and foreign investment. Based on these data, there should effective policies and efforts from the government to maintain and even improve these investments so it could contribute to the economic growth which is finally contributing to the prosperity of the people.

Tourism is principally emphasized on uniqueness and distinctiveness of culture and nature, as well as human relations. Tourism development in Indonesia should maintain the national characteristics, protection of local community assets, protection from negative impact, and environmental sustainability.³ Tourism activity in Indonesia comes from the values of culture, religion, and local wisdom of the Indonesians.

In the regional autonomy era, tourism has an important role in supporting the local economy through the acceleration of regional economic growth. Tourism development based on local wisdom values will provide great benefits to other

¹ Ida Bagus Wyasa Putra, et.al, 2001, *Hukum Bisnis Pariwisata*, Refika Aditama, Bandung, pages. 3-4.

² Putri Syifa Nurfadilah, 2018, "Pemodal Asing Sektor Pariwisata "Betah" Investasi di Bali", Kompas.com," <https://ekonomi.kompas.com/read/2018/09/27/062419126/pemodal-asing-sektor-pariwisata-betah-investasi-di-bali>. Accessed on 27 September 2018.

³ A.J Muljadi and H. Andri Warman, 2014, *Kepariwisata dan Perjalanan*, Raja Grafindo Persada, Jakarta, page. 35.

economic sectors through added value improvement and the improvement of people's income. Labor use improvement in tourism development is not only expected to improve people's income, but also to create jobs, decrease unemployment and poverty.

One of the regions in Indonesia that contributes high foreign exchange from the tourism sector is Bali. Tourism development in Bali as an industry has contributed multiplier effect on people's prosperity improvement directly and indirectly, yet the success of development has experienced a decline caused by various accumulated problems that do not support the development of the tourism sector.⁴ In today's regional autonomy era, a community-based tourism model has been developed. There is social change that many Balinese people are getting up and appearing to manage the tourism potential in their region collectively through the traditional village.⁵

The traditional village as an existing Unity of Customary Law Community (*KMHA*), their existence and traditional rights are protected by Constitution (*UUD NRI* 1945) Article 18B paragraph (2). It means that the constitution recognizes that traditional villages have the legal capacity to protect their traditional rights before the court. This legal capacity is not only upon the personal action but also state action.⁶

The people of the traditional village have a strategic role in managing their tourism area, policy to manage tourism potency in their area including preservation of culture and asset owned by the traditional village. The paradigm of cultural tourism management is a scheme to position a traditional village as the owner or cultural platform as the manager because there is an integral bond between culture and people of the traditional village as the main supporting subject.

Regulation of Bali No 2 of 2012 concerning Balinese Culture Tourism, positions government or private sector in the development of Balinese Culture Tourism, in the tourism business, tourism destination, marketing, or tourism institution. Therefore, it will create new construction in a system of Balinese culture management. Government

⁴ I Putu Gelgel, 2009, *Industri Pariwisata Indonesia dalam Globalisasi Perdagangan Jasa Implikasi Hukum dan Antisipasinya*, Refika Aditama, Bandung, page. 2.

⁵ I Nyoman Darma Putra, 2015, *Pariwisata Berbasis Masyarakat Model Bali*, Study Program of Master of Tourism Studies, University of Udayana, page. x.

⁶ Ida Bagus Wyasa Putra, 2017, *Landasan Teoritik Pengaturan Pelestarian Warisan Budaya: Bali sebagai Suatu Model*, Udayana University Press, Denpasar, Bali, page.

and private sector as an external party to be involved active component in Balinese culture tourism management.

Lately, there are no laws and regulations which specifically regulate foreign investment activity in traditional village-based tourism, especially if the relationship between the foreign investor and the traditional village is established in a commitment in form of agreement, so to provide legal certainty, there should be a review through harmonization of the existing laws and regulations to find out the Government's precepts.

Similarly, for the purpose of legal development, law-oriented policy formation can be used as a medium to regulate foreign investment activity in traditional village-based tourism. For harmonization of laws and/or law policy formulation, law politics can be indicated with social change consideration which is caused by current development.⁷ Through this description, so there should be a partnership development pattern in implementing tourism investment in Bali based on Tri Hita Karana philosophy as the basis of local wisdom, so the tourism investment activity keeps maintaining harmonization and balances the relationship among God, people, and environment.

Based on the research background, so the authors are interested to conduct research entitled **"SYNERGY BETWEEN TRADITIONAL VILLAGE AND LOCAL GOVERNMENT IN TOURISM INVESTMENT MANAGEMENT WITH PARTNERSHIP DEVELOPMENT PATTERN BASED ON TRI HITA KARANA IN BALI"**.

I.2. Research Problem

Based on the above research background, so the research problems can be formulated as follows:

1. How is the role of Traditional Village in managing tourism investment in Bali?
2. How is the partnership development pattern based on Tri Hita Karana in the tourism investment management in Bali?

I.3. Research Methods

⁷ I Nyoman Agus Prabawa, 2018, "Kebijakan Investasi Asing Pada Pariwisata Berbasis Adat", Raad Kertha, Vol. 01, No.02 August 2018.

This is normative legal research. It is legal research that is conducted by studying library materials. It means that this study is conducted by examining norms, principles, philosophy, or legal doctrines and principles in library materials. This legal research is also conceptualized as law in books or norms that are considered appropriate as a standard of behavior. This study used the Statute Approach dan the Analytical and Conceptual Approach which is appropriate with the character and nature of normative legal research. The source of legal material used three legal materials namely, primary legal material, secondary legal material, and non-legal material which is relevant to analyze the problem of this study.

II. DISCUSSION

II.1. The role of Traditional Village in Tourism Investment Management in Bali

The community of customary law as customary law support has a crucial and strategic role. To gain the rights of tourism regional management, there are some existences of customary law community that should concern with the policy of cultural tourism management in their area including maintenance under the ownership of traditional village. The paradigm of cultural tourism management is a scheme to position a traditional village as the owner or cultural platform as the manager because there is an integral bond between culture and people of the traditional village as the main supporting subject. In line with this, it is important to fulfill the elements such as the community is still in form of *paguyuban (rechtsgemeenschap)* and living in the area of its customary law; there is a functional institution in form of customary official (Structure of Customary Institution); Having an area of customary forest with clear borders and recognized/agreed upon by the community and among the surrounding customary law communities; There are customary law institutions related to forests and they are still being followed, and the customary court is still in effect; The community concerned is still carrying out the utilization and collection of forest products in the surrounding forest for the fulfillment of daily life and or there are still religious and community relations with their customary forest.

Traditional Village in Bali is called *Desa Pakraman* in Regulation of Bali No 3 of 2001 concerning *Desa Pakraman* (Traditional Village) as amended by Regulation of Bali No 3 of 2003 (hereinafter is mentioned as Regulation of *Desa Pakraman*) which is

amended by Regulation of *Desa Adat* (Traditional Village) because Regulation of *Desa Pakraman* is considered not appropriate with current legal developments and conditions in Bali, including the development of tourism in Bali. Regulation of *Desa Adat* which came into force on 28 May 2019 made new concepts in strengthening the rights of traditional villages, including management of Tourist Village through *Padruwen Desa Adat* (Traditional Village Ownership). *Padruwen Desa Adat* means all assets of the Traditional Village which are material or immaterial. The immaterial *Padruwen Desa Adat* includes belief system, values of tradition, customs, arts and culture, local wisdom which are inspired by Hinduism, while the material *Padruwen Desa Adat* includes the territory of the traditional village, land of the traditional village, natural resources, economic resources which is a traditional right of the traditional village, sacred area, holy place, the sacred building belongs to a traditional village, buildings owned by a traditional village, magical religious objects, financial and *sarwa mulé*; and other material assets.

In managing the *Padruwen* of Customary Village as a Tourist Village, it can be managed by a Customary Village if it is a right of the origin and on a local scale as regulated in Article 25 of Bali Province Regulation No 4 of 2019 as follows:

- a. Sacred places and sacred areas;
- b. Customary forest;
- c. Water sources;
- d. *Padruwen* of the customary village;
- e. Agriculture, plantation, fishery, and animal husbandry;
- f. Coastal and sea;
- g. Food industry and folk crafts;
- h. Customary Village Market and *Tenten* Market;
- i. Boat moorings;
- j. Public baths;
- k. Art, cultural and *pasraman* studios;
- l. Libraries and reading places;
- m. Tourist destinations and/or attractions; and
- n. *Krama* residential environment

Based on the above explanation, it can be understood that traditional village has a local authority in managing tourism investment based on the values of customs, religion, tradition, arts, and culture, and local wisdom on the *Padruwen Desa Adat* in the implementation involving local community of the traditional village.⁸ Many laws and regulations in various sectors implicitly recognize the existence of the customary law community. The recognition from the government is not enough to protect the existence of the customary law community in Indonesia. The 1945 Constitution has firmly emphasized that the existence of customary law community and its local wisdom will be regulated in Laws. It mandates the establishment of technical regulations to the lowest level such as Local Regulations, and it becomes urgent so the customary law communities in the regions have a legal umbrella and the local government surely knows about the communities and their local wisdom within their territory.⁹

The government does not take a role as the preserver of Balinese culture, but as regulator and even as a connoisseur of the results of Balinese cultural tourism management. This position can lead to a problem in the system of Balinese cultural tourism management, even there could be a gap or disconnection between the owner community and Balinese culture preserver with the external party as the regulator.

II.2. The Pattern of Partnership Development based on Tri Hita Karana in Tourism Investment Management in Bali

A partnership means a relationship or cooperation relationship as a partner. Partner is a friend, coworkers, work partners, colleagues. Based on the above explanation, a partnership could be formed if it meets the terms and conditions. The terms and conditions of partnership are two or more parties, which can be a government, traditional village, private sector, and community. These parties should have the same vision in achieving their goals, the availability of agreement among the cooperated parties in tourism management which contribute positively to the economy of surrounding people. Mutual needs among the parties who do the partnership and having

⁸ Made Sumerti Asih , Nyoman Sri Ratnawati , I Wayan Wirawan, Kebijakan Investasi Asing Dalam Pengembangan Pariwisata Yang Berbasis Desa Adat Di Provinsi Bali, Jurnal Kajian dan Terapan Pariwisata, No. 2, Vol. 1, 2 May 2021, pages 84-85

⁹ Ni Ketut Sari Adnyani, Perlindungan Hukum Kesatuan Masyarakat Hukum Adat Dalam Pengelolaan Pariwisata Berbasis Kearifan Lokal, Jurnal Media Komunikasi FPIPS. No.2, Vol. 20, Agustus 2021, hal. 76

their respective roles and needs each other. The partnership that is implemented in the development and management of tourism should have a clear concept and contribute to surrounding people.

In the partnership, the activity should be based on the principles and purposes of the partnership, i.e., improving micro-economy of the community, improving added value for the partners, improving and empowering people who have a micro business and improving rural economy, creating jobs, and improving the economy of the community.

The partnership between the government and traditional village in tourism investment in Bali should have three key principles that should be understood in building a partnership namely equality, transparency, and mutual benefits. These principles are important to consider in building the partnership among the parties because building a partnership should consider the characteristics of the mutual principles.

Besides acting as a regulator based on the position of government in the public law perspective, the Local Government can also act from the civil law perspective as well as the policy of some Regency Governments in Bali that establish agreements with traditional villages in tourism management.

When investigated, the agreement that is aimed for welfare is a government policy that positions the government equally with the traditional village based on the equality principle as one of the principles in agreement.¹⁰ Therefore, foreign investment policy on tourism based on the traditional village is a crucial move that can be implemented to develop the villages to provide welfare for the local communities.

The traditional village as *Desa Dresta* is a Unity of Customary Law Community in Bali that has a unity of tradition and manners of the social life of the Hindu community from generation to generation in the bond of *Kahyangan Tiga (Kahyangan Desa)* with its territory and assets and has a right to manage their domestic issues. To guarantee, foster, and develop traditional Balinese values to enrich, preserve and develop a national culture in general and Balinese culture specifically, based on *paras-paros salunglung sabayantaka/* deliberation for consensus.¹¹

¹⁰ I Nyoman Agus Prabawa, *Op.Cit.* page. 26.

¹¹ I Wayan Wesna Astara, 2010, "Pertarungan Politik Hukum Negara & Politik Kebudayaan, Otonomisasi Desa Adat di Bali", Udayana University Press, page. 40.

Further development, the Regulation of Bali No 6 of 1986 concerning Traditional Village was revoked and amended with the Regulation of Bali No 3 of 2001 concerning *Desa Pekraman* (Traditional Village), so the concept of the traditional village was replaced with *Desa Pakraman* in which the meaning of traditional village and *Desa Pakraman* was the same just the Article changed to be Article 1 number (4). Regulation of Bali No 3 of 2001 concerning *Desa Pekraman*, in conjunction with 2003, Article 6, *Desa Pakraman* has the following authorities

- a. Solving customary and religious dispute under its territory with maintaining peace and tolerance among the villagers based on the customs regulations and local customs:
- b. Being active in taking decisions in the development within their territory especially for the decisions related to *Tri Hita Karana*;
- c. Conducting law actions inside and outside of *Desa Pakraman*.

Based on Law No 10 of 2009 concerning Tourism, Article 5, the tourism is conducted based on the following principles:

- a. Uphold religious norms and cultural values as the embodiment of the concept of life in the balance of the relationship between humans and God Almighty, the relationship between humans and fellow humans, and the relationship between humans and the environment.
- b. Uphold human rights, cultural diversity, and local wisdom;
- c. Providing benefits for people's welfare, justice, equality, and proportionality;
- d. Preserving nature and environment;
- e. Empowering local communities.

Furthermore, based on Regulation of Bali No 2 of 2012 concerning Balinese Cultural Tourism, Article 11, the development of tourism destination must consider the following terms:

- a. Local wisdom such as Balinese people's belief which is based on *Tri Hita Karana* and spirited by Hinduism;
- b. Preservation of culture and environment, such as traditions, Balinese customs, and regulations concerning the environment;
- c. Economical potency of the communities such as providing chances for local businesses both in handicrafts and agricultural products to show their products in the hotels and other tourism spots; and
- d. Tourism business sustainability.¹²

¹² I Wayan Wesna Astara, A.A.Gde Oka Wisnumurti, I Nyoman Putu Budiarta, et.al, Model Pengelolaan Desa Wisata Berbasis Desa Adat di Desa Adat Kiadan-Pelaga-Badung- Bali (Pemerdayaan

To develop a traditional village in managing tourism investment which is called a tourist village that has natural, cultural, and economic potencies, we need to clarify the emerging partners need to be given assistance and counseling to manage the tourism investment management based on the traditional village. The real form is how the concept of *Tri Hita Karana* can be described in real life in the traditional village both in economic and socio-cultural fields. In developing tourism investment based on traditional village, there are two partners, namely:

1. Local Government, which regulates and controls based on the needs of Traditional Village to develop its potency in managing the tourism investment to be in the concept of *Tri Hita Karana*.
2. Traditional village, which must know exactly the tourism investment, understanding of how to develop and manage tourism object in the village to be the purpose in developing village economy.

The local government and traditional village should have a synergy and deep understanding of the importance of formulating and implementing good policy in tourism activity. Tourism is only related to the phenomenon in which individual travels but also affects other issues such as achievement of socio-cultural purposes, foreign policies, economic development, protection of the environment, and sustainable development plan.

The existence of a legal drafter is important at the level of local government and traditional village to accommodate the rights and obligations of the traditional village in managing the tourism area. In triple helix mutual synergy to develop Balinese tourism, Service Village and Traditional Village are the two related components that cannot be separated. The traditional village becomes the spearhead to connect the people and government to conduct the government programs, especially in the field of tourism.

III. Conclusion and Suggestion

III.1 Conclusion

Based on the above explanation, the summary can be drawn as follows:

1. Traditional village has local authority to manage tourism investment based on the values of custom, religion, tradition, arts and culture, as well as local wisdom on *Padruwen Desa Adat* (Traditional Village Assessts) in the implementation involving the role of local communities.
2. The concept of *Tri Hita Karana* can be described in reality in a traditional village in the field of economy and socio-culture. In developing tourism investment based on traditional village, there are two partners, namely:
 - a. Local Government, which regulates and controls based on the needs of Traditional Village to develop its potency in managing the tourism investment to be in the concept of *Tri Hita Karana*.
 - b. Traditional village, which must know exactly the tourism investment, understanding of how to develop and manage tourism object in the village to be the purpose in developing village economy.

Local Government and Traditional Village should have a synergy and deep understanding of the importance of formulating and implementing good policy in tourism activity.

III.2. Suggestion

Based on the above conclusion, some suggestions can be delivered as follows:

1. There should be improvement and training of human resources for the traditional village officials in managing tourism.
2. There is cooperation between the Local Government and Traditional Village to create a tourist village that emphasizes values of culture, religion, and local wisdom based on *Tri Hita Karana*.

References

Laws:

Constitution of The Republic of Indonesia year 1945

Law No 10 of 2009 concerning Tourism

Regulation of Bali No 3 of 2003 concerning *Desa Pekraman* (Traditional Village)

Regulation of Bali No 2 of 2012 concerning Balinese Cultural Tourism

Books:

Ambar Teguh Sulistiyani, 2004, *Kemitraan dan Model-Model Pemberdayaan*, Yogyakarta: Gaya Media

Pitana, I.G. 1999, *Pelangi Pariwisata Bali*, Denpasar: Bali Post

S. S, Hadiwijoyo, 2012, *Perencanaan Pariwisata Pedesaan berbasis Masyarakat*, Yogyakarta : Graha Ilmu

Taringan R, 2006 *Perencanaan Pembangunan Wilayah*, Jakarta : PT bumi Aksara

Journals:

Astara, I Wayan Wesna, 2010, *Pertarungan Politik Hukum Negara & Politik Kebudayaan, Otonomisasi Desa Adat di Bali*, *Udayana University Press*

I Wayan Wesna Astara, A.A.Gde Oka Wisnumurti, I Nyoman Putu Budiarta, et.al, 2019 *Model Pengelolaan Desa Wisata Berbasis Desa Adat di Desa Adat Kiadan-Pelaga-Badung- Bali (Pemerdayaan Masyarakat Adat Pada Desa Binaan Universitas Warmadewa di Bali)*, *Jurnal Universitas Warmadewa*, No. 1, Vol. 2.

Made Sumerti Asih , Nyoman Sri Ratnawati , I Wayan Wirawan, 2021, *Kebijakan Investasi Asing Dalam Pengembangan Pariwisata Yang Berbasis Desa Adat Di Provinsi Bali*, *Jurnal Kajian dan Terapan Pariwisata*, No. 2, Vol. 1.

Ni Ketut Sari Adnyani, *Perlindungan Hukum Kesatuan Masyarakat Hukum Adat Dalam Pengelolaan Pariwisata Berbasis Kearifan Lokal*, *Jurnal Media Komunikasi FPIPS*. No.2, Vol. 20.

