

## **SUSTAINABLE DEVELOPMENT AND LEGAL TOURISM: READING SUSTAINABLE DEVELOPMENT PRINCIPLES IN BALI PROVINCIAL LEGISLATION ON TOURISM**

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### **ABSTRACT**

This paper intends to discuss the implementation of sustainable development in tourism law, with case examples Bali tourism legislation. The question to be answered is: (1) How does the Bali Provincial Legislation implement the principles of sustainable and environmentally sound development? (2) How to place the principle of sustainable development in the Principle of the Establishment of Good Legislations? The discussion is conducted using the method of legal science, including identifying, systematizing, and interpreting legal texts, producing a number of important statements as a final note. *First*, the principle of sustainable development or sustainable principle is used as a principle in the legislation, especially in Bali Province Regional Regulation No. 2 of 2012 and Bali Province Regional Regulation No. 10 of 2015. Its use in two forms, as a principle in the implementation of the Legislation and as a principle which is reflected in the content of the Laws and Regulations (Principles for the establishment of Good Material Lawful Rules). *Second*, the principle of sustainable development or sustainable principle does not exist either in Article 5 or Article 6 of Act Number 12 of 2011 regarding the principle of the establishment of good legislation. Particularly Article 6 Paragraph (2) of Act Number 12 of 2011, which enables "other principles in accordance with the field of law of the relevant Regulations", cannot be interpreted to exist in Article 6 paragraph (2), because of the principle of sustainable development or the principle of sustainability is reserved for the field of Regulation in general, not specific to a particular legal field, such as Environmental Law. *Third*, the habit of formulating legislation formulating the principle of sustainable development or sustainable principle needs to be continued, besides also need to consider to make it positive law as the principle of formation of a good constitution of material law (a principle which must be reflected in the content of Regulations).

Keywords: sustainable development, tourism law

### **INTRODUCTION**

The basic principles of sustainable and environmental friendly are regulated in the 1945 Constitution of the State of the Republic of Indonesia. Sustainable is one of the principles of the National Economy (Article 33 paragraph (4)) and is environmentally sound as well as a principle of the National Economy as well (Article 28H Paragraph (1))

The constitutional provisions indicate the policy direction that national development should be based on sustainable and environmentally sound principles. In this regard, Act Number 25 of 2004 on National Development Planning System sets out constitutional provisions it into Article 2, "National Development is organized on the basis of democracy with principles of togetherness, fairness, sustainability, insight environment, and independence by maintaining the balance of progress and National unity. Thus, development based on sustainable principles is a principle of sustainable development.

One part of national development is Act No. 10 of 2009 on Tourism in Considering letter c states, "Tourism is an integral part of national development which is carried out systematically, planned, integrated, sustainable, and responsible while maintaining the protection of religious values, living culture in society, sustainability and environmental quality, as well as national interests ". In essence, adopted tourism sustainable and environmentally friendly.

Based on the description, it can be understood that sustainability is related to the concept of sustainable development (Asshiddiqie 2009). According to A. Sonny Keraf (2006), the sustainable development paradigm is not widely implemented, in fact, it is still not widely understood and known.

This paper intends to discuss the implementation of sustainable development in the law of tourism, with examples of cases of tourism regulation of Bali. The question to be answered is:

1. How does the Bali Provincial Regulation implement the principles of sustainable and environmentally sound development?
2. How to place the principle of sustainable development in the Principle of the Establishment of Good Laws?

To get answers to the first question, a reading of the Bali Provincial Regulations in the field of tourism using the principle of sustainable development as an instrument. Next, use the Principle of Establishment of Good Laws to get answers to the second question. The discussion was conducted using legal science method, including identifying, systematizing, and interpreting legal texts (Sidharta 2013), then draw conclusions.

#### **PUTTING THE VIEWS**

Jimly Asshiddiqie (2009) commented on Article 33 Paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia, that the word "sustainable" is related to the concept of sustainable development. Both of these terms - sustainable and environmentally sound - are closely related to each other. Sustainable development is one manifestation of the environmental insight referred to in the 1945 Constitution of the State of the Republic of Indonesia. Conversely, the principle of sustainable development should also be applied in environmentally friendly development policies. There is no sustainable development without the environment as the main ingredient, and there is no environmental insight without sustainable development.

Sustainability and environmental insight are closely related to each other, also in the opinion of A. Sonny Keraf when talking about a new culture of sustainable society. A. Sonny Keraf (2014) argues, that in the culture of sustainable society, all members of society organize their lives based on considerations of the importance of environmental protection and conservation.

Associated with national development, Jimly Asshiddiqie (2010) argues, the implementation of national development must be pro-environment or protect the environment in accordance with the principle of sustainable development that ensures the survival and maintenance of environmental carrying capacity for the lives of future generations.

Thus, the principle of sustainable development is that development organized on the basis of sustainable principles, which in it contains a pro-environment or environmental meaning. A. Sonny Keraf (2006) provides an understanding of sustainable development from 2 (two) sides. *First*, the three aspects of development, and *second*, the three principles of sustainable development. Regarding the three aspects of development, A. Sonny Keraf (2006) argues, the ideals and main agenda of sustainable development are none other than efforts to synchronize, integrate, and give equal weight to three main aspects of development, ie economic, socio-cultural, and environmental aspects. The goal to be achieved with sustainable development is to shift the center of development from economic development to social-cultural and environmental development.

Regarding the three principles of sustainable development, A. Sonny Keraf (2006) argues that the three aspects of development are possible only if the three principles of sustainable development are operationalized as a development policy:

1. The principle of democracy, ensuring that development is carried out as the embodiment of the common will of all peoples for the common good the whole people.
2. The principle of justice, in principle, is to ensure that all people and community groups have equal opportunities to participate in the development process and productive activities and participate in the enjoyment of development outcomes. The principles of justice include an understanding of the principle of intergenerational justice, which demands that there be equal opportunities for future generations to benefit equally or proportionally from existing economic resources.
3. The principle of sustainability requires to design the development agenda in the long-term visionary dimension, to see the impact of both positive and negative development in all its aspects not only in short-term dimensions. This principle ultimately supports the principle of intergenerational justice, which basically demands to be cautious and prudent in any development policy so that short-term benefits gained do not lead to long-term losses that are not worth the short-term benefits.

Based on the definition of sustainable development, it can be understood the definition of sustainable development as defined in Presidential Regulation No. 2 of 2015 on Development plan National Medium Term 2015-2019:

Sustainable development is defined as (i) Development that keeps improving the economic welfare of society continuously; (ii) Development that maintains the sustainability of community social life; and (iii) Development that maintains the quality of the community's environment with the governance of development implementation that is capable of maintaining the quality of life from one generation to the next (Attachment of Presidential Regulation No. 2 of 2015, Book II of Development Agenda for Fields).

In line with the authentic understanding in Presidential Regulation No. 2 of 2015, Act No. 32 of 2009 on Environmental Protection and Management provides a sense of sustainable development, that

sustainable development is a conscious and planned effort that combines environmental, social and economic aspects into a strategy development to ensure wholeness environment and safety, capability, welfare, and the quality of life of the present generation and future generations (Article 1 number 3 of Act Number 32 of 2009).

Legislation not only provides an understanding of sustainable development but also makes sustainability (pro-environment or environmentally friendly) and sustainability as the basis for the organization of the content of the content it regulates. For example, Act Number 10 of 2009, in Article 2, provides, "Tourism is organized on the basis of: ... sustainability; ... sustainable ". Similarly, Act Number 32 of 2009, in Article 2, provides, "The protection and management of the environment shall be carried out on the basis of the principle: ... b. sustainability and sustainability;... Elucidation of Article 2 Sub-Article b of Act Number 32 of 2009 explains:

"The principle of sustainability and sustainability" is that every person assumes the obligations and responsibilities of future generations and for each other in one generation by conserving and supporting the ecosystem and improving environmental quality.

The authentic definition of sustainable development encompasses three aspects of development: economic, social (socio-cultural), and the environment, and a principle that is clearly present in the authentic sense of sustainable development is the principle of intergenerational justice in the formulation "quality of life from one generation to the next ".

## RESULTS AND DISCUSSION

### Material Related Content and/or Associated with Sustainable Development Principles

Used 2 (two) Regional Regulations of Bali Province in the field of tourism as a study unit, namely:

1. Bali Province Regional Regulation No. 10 of 2015 on Master Plan of Regional Tourism Development of Bali Province 2015-2029 *Lembaran Daerah Provinsi Bali* 2015 No. 10, Supplement to the Regional Gazette of Bali Province Number 8).
2. Bali Province Regional Regulation No. 2 of 2012 on Balinese Culture Tourism (Bali Province Gazette of 2012 No. 2, Supplement to Bali Province Gazette Number 2).

The following content material of each Regional Regulation is concerned and/or related to the principle of sustainable development. *First*, Bali Provincial Regulation No. 10 of 2015 contains materials related to and/or related to the principle of sustainable development, namely:

1. The vision of the development of regional tourism, namely the realization of quality and tourism culture and sustainable competitiveness based *Tri Hita Karana* that is able to encourage regional development and people's welfare (Article 7).
2. The mission of development of regional tourism, including a. realizing a safe, comfortable, attractive tourism destination by promoting the richness and diversity of potential tourist attractions eco-based on Balinese culture inspired by Hinduism based on *Tri Hita Karana*; b. creating synergistic, quality, and superior tourism marketing, responsible for increasing the

- domestic and foreign tourist visit; c. to create a competitive, credible tourism industry, open wide public participation space, responsible for environment and socio-culture; and D. realizing effective, efficient provincial, private and community government organizations, human resources, regulations and mechanisms to promote sustainable tourism (Article 8).
3. The direction of development of regional tourism, including among others: a. development of quality, community-based and regional tourism sustainable; and b. development of regional tourism oriented towards equitable distribution of economic growth, increased employment opportunities, poverty reduction, and cultural and environmental preservation (Article 11).
  4. The Special Tourism Area is defined by criteria, inter alia, its development is severely restricted to be more directed towards preservation cultural and environmental (Article 15).
  5. Tourism Development is carried out on the basis of principles, among others, competitive and conservation efforts to preserve the environment and sustainability of resources (Article 19).

Characteristics shown are the three aspects of development (A. Sonny Keraf 2006), which provides high economic benefits with minimal negative environmental and social impacts (General Elucidation of Bali Provincial Regulation No. 10 of 2015). Also shows the three principles of sustainable development (A. Sonny Keraf 2006), the democratic principle of "community-based tourism" is tourism which is born and developed by the community and cultivated for society (General Elucidation of Bali Provincial Regulation No. 10 of 2015) and open space public participation broadly as the mission of development of regional tourism; the principle of justice and the principle of sustainability, namely tourism which not only prioritizes the present generation, but also takes into account the interests of future generations (General Explanation of Bali Provincial Regulation No. 10 of 2015).

*Secondly*, Bali Province Regional Regulation No. 2 of 2012 on Balinese Culture Tourism. At the time this Regional Regulation comes into force, Provincial Regulation No. 3 of 1991 on Cultural Tourism, is revoked and declared null and void (Article 36). The content material related to and/or related to the principle of sustainable development is:

1. The implementation of Balinese Cultural Tourism is carried out based on the principle of benefit, kinship, independence, balance, sustainability, participatory, sustainable, equitable and equitable, the value of Hinduism by applying the philosophy of Tri Hita Karana (Article 2).
2. Bali tourism culture aims to, among others: a. preserving culture Balinese Inspired by religious values Hindu; b. increase economic growth; c. improve the welfare of the people; d. creating business opportunities; e. create jobs; f. conserve nature, environment, and resources (Article 3).

3. Development of Bali Cultural Tourism is directed to a. enhance dignity and dignity, and strengthen the identity of Balinese society; b. improving the welfare of society Balinese Equally and sustainably; and c. preserving the natural environment of Bali as a base buffer society and culture Balinese Manner a sustainable (Article 4).
4. The development of tourism destinations should be done with due regard to a. local wisdom such as the beliefs of the Balinese people based on Tri Hita Karana and imbued by Hinduism; b. preservation cultural and environmental, such as traditions, Balinese customs, and environmental rules; c. the economic potential of the community such as providing opportunities to local businesses in both handicrafts and agricultural products to showcase their works in hotels, restaurants, and other tourist attractions; and D. sustainable tourism business (Article 11).

The essence of the principle of sustainable development appears in the above list of sustainability and environmental sustainability principles including natural resources. The three aspects of development, namely economic aspects, social aspects, and environmental aspects, and the existence of sustainable principles (A. Sonny Keraf 2006) color the Bali Province Regional Regulation No. 2 of 2012.

The principle of sustainability as one of the principles of sustainable development is used as a principle in Legislation as already mentioned in the previous description. It's use in two forms, namely as a principle in the implementation of the Laws and Regulations as the principles reflected in the material content of the Laws and Regulations (Principles of the Formation of Good Laws that are material).

#### **Principles of Sustainable Development as the Principle of the Establishment of Good Laws**

The Principle of the Establishment of Good Laws, which theoretically covers the Principles of the Formation of Good and Formal Laws and Principles for the Establishment of Good, Materialistic Laws (A. Hamid S. Attamimi, 1990. IC Van Der Vlies, 2005).

The principle of the establishment of good formal legislation is set forth in Article 5 of Act Number 12 of 2011 concerning the Establishment of Laws and Regulations, as "the principle of the establishment of good Laws Regulation", which includes: a. clarity of purpose; b. the appropriate institutional or organ of formation; c. conformity between the type and content material; d. can be implemented; e. usefulness and usability; f. clarity of formulation; and g. openness.

The material principles of the establishment of good legislation are regulated in Article 6 paragraph (1) and paragraph (2) of the Act Number 12 of 2011, namely: the content material of Laws and Regulations contains the principles, presented in the following table:

**Table: Principles of Legislative Establishment Good Law, Material Based on Article 6 clause (1) and paragraph (2) of Act Number 12 of 2011 and Elucidation**

Article 6 of Act Number 12 of 2011	Elucidation Article 6 of Act Number 12 of 2011
Paragraph (1) The content of Laws and Regulations reflecting the principle:	
a. protection	that any Content of the Regulatory Content should serve to provide protection to create public peace.
b. humanitarian	that every Content of the Laws and Regulations Content must reflect the protection and respect of human rights and the prestige and dignity of every citizen and the Indonesian population proportionately.
c. nationality	that any Content of the Laws and Regulations must reflect the nature and character of a plural Indonesian nation while maintaining the principle of the Unitary State of the Republic of Indonesia.
d. kinship	that any Content of Regulatory Content should reflect deliberations to reach consensus in any decision-making.
e. the municipality	that every Content of Laws and Regulations is always concerned with the interests of the whole of Indonesia and the Content of Legislation Regulations made in the regions is part of the national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia
f. bhinneka tunggal ika	that the Content of Laws and Regulations must pay attention to the diversity of population, religion, tribe and class, a special condition of area and culture in the life of society, nation and state.
g. justice	that any Content of the Laws and Regulations must reflect proportional justice for every citizen.
h. equality before the law and government	that any Content of Regulatory Material shall not contain things that are distinguishable based on background, inter alia, religion, ethnicity, race, class, gender, or social status.
i. order and legal certainty	that every Content of the Laws and Regulations Content must be able to realize order in society through the guarantee of legal certainty.
j. balance, harmony, and harmony	that every Content of the Laws and Regulations must reflect balance, harmony, and harmony between individual interests, society and the interests of the nation and state.
Paragraph (2) Rules and regulations may contain other principles in accordance with the legal field of the relevant Legislation.	among others: a. in the Penal Code, for example, the principle of legality, the principle of no penalty without error, the principle of guiding the prisoner, and the presumption of innocence; b. in the Civil Code, for example, in the treaty law, inter alia, the principle of agreement, freedom of contract, and goodwill.

Source: Arranged from Article 6 paragraph (1) and paragraph (2) of Act Number 12 of 2011 and Explanation

Principles of sustainable development or sustainable principles are not found in Article 5 or Article 6 of Act Number 12 of 2011. Particularly Article 6 Paragraph (2) of Act Number 12 of 2011, which enables "other principles in accordance with the field of law of the relevant Regulations", cannot be interpreted to exist in Article 6 paragraph (2), because of the principle of sustainable development or the principle of sustainability is reserved for the entire field of law of Legislation, not just concerning Environmental Law, for example.

It is interesting to listen to Article 44 of Act Number 32 of 2009, every drafting of legislation at national and regional level shall pay attention to the protection of environmental functions and the principles of environmental protection and management in accordance with the provisions stipulated in this Law. Next, it should be noted that Article 2 of Act Number 32 of 2009, environmental protection and management is carried out based on the principles, among others: sustainability and sustainability. Systematic interpretation (Manan, 2004. Koesnoe, 2010), any drafting of legislation at the national and regional levels shall observe the principles of sustainability and sustainability.

Pursuant to constitutional provisions concerning sustainable and environmentally sound in Article 33 paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia; customs formulation of legislation formulating principles of sustainable development or sustainable principles as the principle in formulating content material, and the provision of Article 44 of Act 32/2009, habits of formulating legislation formulating principles of sustainable development or sustainable principles should be continued, it is necessary to consider the positives as the basis for the establishment of good and material legislation (principles which should be reflected in the content of the Laws).

## **CONCUSLION**

Based on the above description above, it is necessary to rephrase a number of important statements. *First*, the principle of sustainable development or sustainable principle is used as a principle in the legislation, especially in Bali Province Regional Regulation No. 2 of 2012 and Bali Province Regional Regulation No. 10 of 2015. It's use in two forms, namely as a principle in the implementation of the Legislation Regulation- invitation and as a principle which is reflected in the content of the Laws and Regulations (Principles for the establishment of Good Material Lawful Rules).

*Secondly*, the principle of sustainable development or sustainable principle does not exist either in Article 5 or Article 6 of Act Number 12 of 2011 regarding the principle of the establishment of good legislation. Particularly Article 6 Paragraph (2) of Act Number 12 of 2011, which enables "other principles in accordance with the field of law of the relevant Legislation", cannot be interpreted to exist in Article 6 paragraph (2), because of the principle of sustainable development or the principle of sustainability is reserved for the field of law Regulation in general, not specific to a particular legal field, such as Environmental Law.

*Thirdly*, the habit of formulating legislation formulating the principle of sustainable development or sustainable principle needs to be continued, besides also need to consider to make it positive as the



principle of formation of a good constitution of material law (a principle which must be reflected in the content of Law Regulation).

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