

IMPLEMENTING THE REGULATION OF TOURISM SERVICES TRADE BUSINESS CERTIFICATION THROUGH STAKEHOLDERS SYNERGY MODEL

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ABSTRACT

The tourism service business is one of the important components in tourism activities. In order to fulfill the needs of tourists and the right to tourism, professional and good quality business management is needed, one of which is through the fulfillment of tourism service business certification obligations. This study aims to examine regulations related to tourism service business certification and the relevance of the Penta Helix synergy model in increasing the obligations of entrepreneurs in business certification. This is a normative legal research. The results of the study show that the legal construction on tourism service business certification is characterized by legal norms that oblige tourism service business actors to standardize their service businesses through business certification as regulated in the Tourism Law, implementing regulations and Ministerial Regulations. However, its implementation still needs to be improved in the context of sustainable tourism. The synergy of the Penta Helix model, namely the synergy between entrepreneurs, government, academics, society and the media are relevant to be put forward to improve the implementation of the obligation to standardize and certify tourism services businesses.

Keywords: Certification, The Tourism Service Business, Synergy, Stakeholders Model.

INTRODUCTION

In the era of revolution industry 4.0, the creative and educational tourism service trade activities are increasingly needed to fulfil the wants and needs of tourists who carry out tourism activities. Information related to creative services in the tourism sector offered by tourism entrepreneurs rapidly be known by consumers through technological media based on advance in internet technology which characterize the 4.0 era (Supasti Dharmawan, Dewi Kasih, and Stiawan 2019). The need for traveling in its development has changed along with the development of the era nowadays.

The paradigm regarding tourisms activities in developing countries is not as same as in developed countries. In the beginning, there was a tendency in developing countries to view tourisms activities as something that was not very important, in fact it was not uncommon to have a view that visiting a certain tourism object was considered sufficient. However, in its

development such a paradigm has changed and developed along with the development of the era itself.

Nowadays, traveling is a necessity and very important to be able to improve the quality of life. After carrying out a tiring work routine and often full of both pressure and demands for predetermined achievement, which can be considered as heavy burden put someone wants a time for them. In that context, an activity that can restore the quality of life is needed, a comfortable life situation without pressure, and most importantly can enjoy various interesting and fun tourism attributes that bring joy and happiness.

Tourism activities are seen as one of the activities that can be restore the stresses of a demanding life into a life with a higher quality, better and more comfortable. Even after a tour, it is likely being reborn as someone who is ready to work with prime energy. Such phenomena have made traveling as necessity. The development of the tourism activities, increasing the visibility of tourist attractions or developing tourism economy actually quite important in order to reduce poverty (Li, Zhang, and Wang 2018).

Tourism activities are part of human rights (Dharmawan, Sarjana, and Samshitawrati 2017). In tourism business activities, it is important to ensure the stability of the tourism climate in order to maintain the sustainability of the existence of tourism.

In order to fulfill the tourism needs, it is undeniable that the existence of creative and educational tourism trade it one of its important components. Service trade activities as a system that is oriented towards the provisions of tourism services include all activities of providing tourism services provided by service providers and supplied to meet the needs of tourism service consumers, namely tourists (Putra 2015).

The tourism service businesses that can be offered by entrepreneurs are very varied and are multi-dimensional and multi-disciplinary. Various aspects of tourism activities influence one another. As a multi-complex system, in its development tourism plays an important role both as a driving force for the community's economy and affecting the socio-cultural changes in tourism destinations (Santosa and Saraswati 2020).

According to Article 14 paragraph (1) Law of the Republic of Indonesia Number 10 of 2009 about Tourism (hereinafter "Tourism Law") it stipulated that tourism business shall cover, among others: tourist attractiveness, tourism area, tour transportation service, tour travel service, food and beverage services, accommodation provision, entertainment and recreation activities administration, meeting, incentive travel, conference and exhibition organization, tourism information service, tourism consultant service, guide service, water tourism and spa. In order to run the business well, these business activities must meet the standards of Good Corporate Governance (hereinafter "GCG"). The implementation of GCG Standards in the development of the tourism service industry is expected to have a positive impact, such as meeting the needs and expectations of tourists, as well as having a positive impact on various aspects of community life, including for employees who work in tourism service businesses and community's round tourism activities.

A study conducted by Zahrowati, Z., & Saputra, I. confirms that the principles of GCG are related to the values transparency, responsibility, accountability, and fairness which refer to the Organization for Economic Co-Operation and Development (OECD). In this context, the affirmation is the way of company management in deciding a responsible decision and its ability to provide value-added to its shareholders. In accordance, the Asian Development Bank stipulated that GCG contains four values, namely accountability, transparency, predictability and

participation (Zahrowati and Saputra 2020). Related to the tourism service business, the company's concern for the existence of a tourism service business certification can be categorized as a manifestation of the implementation of the principles of GCG with the values contained therein. In this context, accountability can be interpreted not only for shareholders but also for stakeholders including tourists.

By looking at the principles of GCG, which are also related to the values of participation, it can be argued that concern for the implementation of GCG, including the decision making to carry out Business Certification in the field of tourism services, cannot be separated by involving the participation or participation of related parties or stakeholder components. Stakeholder participation in relevant tourism activities refers to the Penta Helix model, which is a participation model that promotes synergy between government, business actor, academics, society, and the media in realizing in action plan.

The existence of a tourism service business certification owned by a tourism service entrepreneur can be categorized as an embodiment of the GCG standard. The existence and significance of service certification position in the implementation of trade in tourism services, the regulation as refers to Tourism Law and Government Regulation Number 52 of 2012 concerning Competency Certification and Business Certification (Aryati 2019).

The existence of regulations relating to the significance of the position of the Certification is often not maximally implemented in reality. In fact, compliance with a regulation, including those related to tourism service business certification, has a positive impact on the frequency of tourism service transactions for entrepreneurs, and in the end can increase the source of government and community income. Das sollen is not always in accordance with Das sein, as is the phenomenon of tourism service business certification.

Legal problems arising from the phenomenon of neglecting the certification of tourism service products will interfere with the tourism sustainability program so that it has implication for government and community revenues. The function of regulation in certification arrangements for tourism service is needed in the framework of legal protection, legal certainty and justice. Hence, the purpose of this study is to examine the legal certainty of regulation related to certification and institution that have the authority to carry out the certification. This study also aims to examine the roles and synergies of tourism stakeholders in increasing the existence of tourism service business certification in the context of realizing sustainable tourism activities.

RESEARCH METHODOLOGY

This writing originated from the results of tracing legal material using normative research methods. The type of doctrinal method is considered relevant to be used because of the problematic norms, partial regulation and does not provide legal certainty for the community, especially tourism service trading business actors. In this research, a study was conducted on the provisions relating to the laws and regulations governing tourism as a form of government policy in the tourism sector. The normative study of this research is focused on certification regulations in the tourism services trade business, through a statute approach, an analytical and conceptual approach to primary, secondary and tertiary legal materials, for further analysis. Interpretation technique using grammatical and systematic interpretation. Grammatical interpretation is used to describe or explain the meaning of the law according to daily common language. Meanwhile,

systematic interpretation is used to connect one article to another in the tourism provisions so that their meaning is clear and understood. The analysis in this writing uses a qualitative descriptive analysis.

RESULT AND DISCUSSION

Legal Certainty of Certification and Authorized Institutions Regulation

Universally, the concept of tourism according to The United Nations World Tourism Organization (hereinafter “UNWTO”) is an activity wherein the tourists or people who “travel and stay in places outside their usual environment for not more than one consecutive year leisure, business and other purposes not related to the exercise of an activity remunerated from within the place visit”. The term tourism can mean all processes caused by the flow of traffic and people from outside or foreigners coming and going from and to a place, region, or country and everything that has to do with these processes such as transportation, food and drink, accommodation, interesting object, entertainment attractions and other services (Pendit Nyoman 2005).

Tourism can also be seen as a traveling process that results in interactions and relationship both individually and in groups, which basically consists of: the human element as the actor of tourism activities, the element of place as the location of a tourism destination and the element of time is an element of time spent in tour and while staying at the destination. In general, it often can be understood that tourism as a vacation, traveling to enjoy something beautiful or having fun in a different environment to enjoy and discover new things (Thama and Dharmawan 2019).

Internationally, according to Article 1 of the Global Code of Ethics for Tourism (GCET) stipulated that tourism refers to the activities of visitors, whether tourists or excursionists. Tourist means a person taking a trip which includes an overnight stay to a main destination outside his/her usual environment, for less than a year, for any main purpose (business, leisure or other personal purpose) other than to be employed by a resident entity in the country or place visited. Excursionist means a person taking a trip which does not include an overnight stay to a main destination outside of his/her usual environment. Nationally, according to article 1 paragraph (3) Tourism Law, it stipulated that “tourism shall mean many types of tour activities and supported by many facilities and services provided by the community, businessmen, Government, and Regional Government.”

With regard to service facilities to support tourism activities, entrepreneurs as one of the stakeholders in tourism activities can develop various types of creative tourism business as regulated in the provisions of Article 14 of the Tourism Law. The tourism business is generally categorized as a trading business in the tourism services sector. The affirmation as a service trading business can be observed from the scope of Article 14 of the Tourism Law which includes: tour transportation service, food and beverages services; tourism information service; tourism consultant service; tour travel service; accommodation provision, tour guide service.

The tourism services trade is a tourism service trade system that includes various components including: actors, form of services, service consumers, and service transactions that connect service suppliers with consumers. Thus, the concepts used as the basis for tracing certification in the tourism services trade business are: (a) tourism businesses as service

providers and service suppliers; (b) tourists as service consumers; and (c) the government as the regulator controlling tourism activities through policies particularly certification is a service component that can control the service trade system through government policy. Tourism regulation is the government's authority to regulate and control tourism activities as a tool to ensure tourism stakeholders are always in the policy corridor.

Tourism services can be classified into commercial services and non-commercial services. Commercial services are tourism services that are profit-oriented, while non-commercial services are tourism services that are cultural, historical and natural, which are carried out by the government and society which are oriented towards natural, historical and cultural goals. While, tourism management services are services that greatly determine the existence of the tourism service trade. With the globalization of world trade which expands the reach of economic activities, it has consequences where tourism activities are not limited to one country only. Tourism activity is a global activity that is no longer limited to the territory of the country. Boundaries between countries are no longer consider as obstacle for tourists to carry out tourism activities (Gelgel 2006).

In 1994, Indonesia has ratified the Final Act Embodying the Result of Uruguay Round of World Trade Organization through Law Number 7 of 1994. With this ratification, Indonesia is consent to be bound by all attachments to the World Trade Organization agreement, such as the General Agreement on Trade in Services (hereinafter "GATS"), which aims to liberalize international trade in service. In this case, Indonesia has given its commitment and liberalized the tourism service sector.

In fulfilling the obligations and commitments in this agreement, every each of member must take appropriate steps to ensure the implementation of the agreement by the government, regional and non-governmental organization in their territory. In this case, services shall be means as all services in all sectors except those supplied for government purposes. Service provided in connection with the government are services provided neither commercially nor in competition with one or more service providers. The tourism business has its own regulatory system, institutions, traditions, principles, regulations, standards, mechanisms and procedures different from trading in goods. Likewise, in terms of transaction techniques, determining the basis of transactions, transaction material, contract elements, forms of accountability, ways of calculating risk and determining the legal responsibility of actors and consumers (Putra 2003).

Regulation is a form of function of regulatory law function, which is a form of legislative action through the formation of rules by the legislative body. The substance and function of the law are determined by the quality of the policy substance. Regulations can be made through three forms of legislative action, namely: formation, amendment and revocation or cancellation. The three actions according to Siedmann are related to the function of law as a medium of change (Seidman, Seidman, and Abeyesekere 2001).

In connection with the function of law as a medium of change, in tourism activities such a legal function also exists. In this context, it can be argued that the existence of regulations related to tourism business certification. The existence of tourism service business certification is intended as a process of granting certificates to tourism businesses to support the improvement of the quality of tourism products, services and management of tourism businesses through audits. Tourism Business Certification aims to improve the quality of tourism services and the productivity of tourism businesses.

Two important components in the certification of tourism services, namely Business Certification and Professional Certification. These two things are basic components that are absolutely necessary in the world of tourism business. Apart from facilities, service is also a very important focus. Tourism business operators can be found in almost every place even in rural areas; however, to establish a tourism business it must meet the standards set by statutory regulations, namely Tourism Law and Government Regulation Number 52 of 2012 concerning Competency Certification and Business Certification in the field of Tourism.

Tourism Business Certification and Tourism Professional Certification are crucial because they relate to meeting business standards covering products, services and management. However, this has not been responded positively by business actors. This is due to bureaucratic process and/or procedures that not all business operators understand, and the costs incurred are not small, which makes the organizers not respond well. Moreover, there is a lack of socialization about tourism business certification. A lot of tourism industry do not know about advantages and criteria in order to get tourism business certification. One of the important criteria is the tourism business shall have tourism business registration certificate (*Tanda Daftar Usaha Pariwisata*/TDUP). Without that they could not get the tourism business certification. In fact, for example in Jakarta, between 500 – 1.000 spa industries, there are only 17 (seventeen) which already have TDUP (Prodjo 2017). Tourism business certification and professional certification in the tourism sector are two things that can be distinguished but cannot be separated considering that the two certifications are intended to provide recognition of the competence of business entities and workers to ensure quality and competitiveness. In addition, professional certification guarantees the conformity of work with job description that have been determined in their respective fields.

According to the provisions of Article 5 of Government Regulation Number 67 of 1996 concerning the Implementation of Tourism, it is stipulated that the Tourism Services Business includes planning services, services and organizing tourism services. Tourism service businesses must have certification both in term of competence and from a business perspective. Certification is regulated in Article 53 paragraph (1) of Tourism Law, which stipulates that “The manpower in the tourism sector shall have the competence standard”. This competency standard is carried out through competency certification. According to paragraph (2) and paragraph (3) determine that competence certification shall be carried out by a professional certification institution already obtaining license according to the provisions of the legislation.

Furthermore, the provisions of Article 54 of Tourism Law determine that the product, service, and management of tourism business shall have the business standard. Business standard as referred to in paragraph (1) shall be made through the business certification. And the business certification as referred to in paragraph (2) shall be carried out by the competent independent institution according to the provisions of the legislation as stipulated in paragraph (3).

Further provisions regarding competency certification and business certification are further regulated by the Republic of Indonesia Government Regulation Number 52 of 2012 concerning Competency Certification and Business Certification in the Tourism sector. Tourism Business Certification is the process of granting certificate to tourism businesses to support the improvement of the quality of tourism products, services and tourism business management through audits. The Tourism Business Standard is a formulation of tourism business qualifications and/or tourism business classification covering aspects of products, services and tourism business management. Furthermore, Article 3 of Government Regulation Number 52 of

2012 concerning Competency Certification and Business Certification in the Tourism Sector stipulated that “Tourism Business Certification aims to improve the quality of tourism services and the productivity of tourism businesses”.

Tourism Business Certificate is a written evidence provided by a tourism business certification agency to a tourism business that has met the tourism business standards as stipulated on Article 1 paragraph 7 of Government Regulation Number 52 of 2012 concerning Competency Certification and Business Certification in the Tourism Sector. The Tourism Sector Certification Business Institution (hereinafter “Tourism Sector-LSU”) is an independent institution that carries out business certification in the tourism sector in accordance with the provisions of the statutory regulations as stipulated on Article 1 paragraph 13 of Government Regulation Number 52 of 2012 concerning Competency Certification and Business Certification in the Tourism Sector. In 2014, there are 17 (seventeen) Indonesia Tourism Sector-LSU in various tourism services which are already legalized by Minister of Tourism and Creative Economy. The 17 (seventeen) Tourism Sector-LSU are spreading in Jakarta (PT Sucofindo Internasional, PT Sai Global Indonesia, PT Mutu Indonesia Strategis Berkelanjutan, PT Tribana Jasa Wisata, etc.); Bandung (PT Enhai Mandiri 186, PT Karsa Bhakti Persada); Yogyakarta (PT Bhakri Mandiri Wisata Indonesia, PT Bhakti Mandiri Wisata Indonesia); Surabaya (PT Megah Tri Tunggal Mulia; Semarang (PT Sertifindo Wisata Utama); Denpasar (PT Sertifikasi Usaha Pariwisata Nasional, PT Pariwisata Bali Mandiri) (Sucofindo 2014).

By tracing the regulations concerning the Tourism Service Business Certification, it can be argued that the existence of the certification is a legal obligation for the tourism service business. In other words, the fulfillment of certification is mandatory. Fulfillment of company obligations related to tourism service business certification regulations is a form of compliance with good corporate governance, which is not only the company’s responsibility in fulfilling GCG principles internally to shareholders, but also the responsibility of the company to stakeholders. Tourist are one of the stakeholders of a tourist service company. Companies that are transparent and accountable have shown compliance with the standards and quality of their services, so that tourists traveling will get a service according to predetermined standards, such as international standard service in the field of food and beverages business service and accommodation services.

According to Article 14 of Tourism Law, it has been stipulated clearly that tourism business shall cover several components to support the tourism service business in tourism activities. Although these types of business are not explicitly regulated, the provisions of Article 26 of Tourism Law actually imply regulations regarding the obligation of every tourism service business to carry out certification obligations. According to Article 26 point h of Tourism Law, it is stipulated that “every tourism businessman shall: ... increase the manpower competency through training and education”. Furthermore, according to Article 26 point n of Tourism Law it also stipulated that “apply the business standard and competency standard according to the provisions in the legislation”.

The obligation of standardize and certification have been regulated clearly according to Article 53 until 55 of the Tourism Law. The obligation related to the standard competency for the manpower has been stipulated on Article 53 of Tourism Law, it also regulated that the competence certification shall be carried out by professional certification institution already obtaining license according to the provisions of the legislation, named Tourism Sector-LSU. In addition to the mandatory certification for the manpower in tourism activities, further through

Article 54 and Article 55 of the Tourism Law which regulated the product, service, and management of tourism business shall have the business standard which shall be made through the business certification carried out by the competent independent institution according to the provisions of the legislations. As the implementation of the Article 55 of the Tourism Law, the Government Regulation Number 52 of 2012 concerning Competency Certification and Business Certification in the Tourism Sector has been issued by the Government of Indonesia.

Based on the Article 1 point 3 of the Government Regulation Number 52 of 2012 it concerns that “The Tourism Business Certification is a process in granting certificates to tourism business to support the improvement of the quality of tourism products, services, and tourism business management through audits.” The existence of an independent institution that has the authority to carry out business certification in the Government Regulation is confirmed by the provisions of Article 1 point 12 which determines that “the Tourism Sector Professional Certification Agency (hereinafter LSP-Tourism Sector) is a professional certification institution in the tourism sector that has received a license in accordance with the provisions of laws and regulations”.

Normative construction regarding sustainable tourism service businesses also continues to be regulated, for example in the tour guide service is as regulated based on the Regulation of the Minister of Tourism of the Republic of Indonesia Number 13 of 2015 concerning Standards for Guiding Services Business, as well as regulations regarding business certification in the tourism travel service business that have been regulated on Regulation of the Minister of Tourism and Creative Economy Number 8 of 2014 concerning the Amendments to the Regulation of the Minister of Tourism and Creative Economy Number 4 of 2014 concerning Travel Service Business Standards.

Normative construction regarding sustainable tourism service businesses also continues to be regulated, for example in the tour guide service business is regulated based on the Regulation of the Minister of Tourism and Creative Economy of the Republic of Indonesia Number 13 of 2015 concerning Standards for Guiding Services Business, as well as regulations regarding business certification in the tourism travel service business have been regulated based on Regulation of the Minister of Tourism and Creative Economy Number 8 of 2014 concerning Amendments to the Regulation of the Minister of Tourism and Creative Economy Number 4 of 2014 concerning Travel Service Business Standards. Related to the tourism service business, there are 3 standards which is mandatory to be fulfill, namely: in the aspect of product, services and management (Innez Primantara 2015). Whereas, the certification regulation is not only an obligation of the tourism entrepreneurs, it can be reviewed from the aspect of responsibility of states towards the tourists. The regulation concerning standardize and certification can also be observed reflecting the state’s responsibility (Pranawasidhi and Salain n.d.).

Stakeholders Synergy in Increasing the Existence of Tourism Service Trade Business Certification

The regulations regarding the existence of tourism service business certification as previously stated can be observed both in the provisions of the Tourism Law and in Government Regulation Number 52 of 2012 concerning Competency Certification and Business Certification in the Tourism Sector. However, the implementation has not been maximal. In order to maximize the number of tourism service business certifications, it is important that tourism

service business entrepreneurs be supported by the participation of other related stakeholders. Support and participation from stakeholders are deemed relevant by observing the provisions of Article 2 of the Tourism Law, which determine that one of the principles in the administration of tourism is the participatory principle. In this context, it can be interpreted that the participation of stakeholders is very important in realizing and accelerating the existence of certified tourism service businesses in the context of supporting sustainable tourism.

The Penta Helix model is relevant to be put forward in order to accelerate and improve the implementation of regulations that require tourism entrepreneurs to standardize their businesses and products through business certification. Legally, it is known that the adage “everyone is considered to know the law”, but in relation to that it is not like that as a whole. There is still, maybe even many people, parties, or entrepreneurs who do not know the existence of a regulation, one of which is the regulation related to the obligation to certify tourism services businesses. Related to this phenomenon, the synergy or related stakeholders is an important role to help tourism entrepreneurs with regard to their business certification activities.

Penta Helix is a socio-economic development model that aims to support the knowledge economy to pursue innovation and entrepreneurship through collaborations and profitable partnership between academia, government, industry, the social sectors, and social entrepreneurs. In this synergy, all the key players come together to benefit from innovative research projects cultured in Education (S Halibas, Ocier Sibayan, and Lyn Maata 2017). Penta Helix originated from Triple-Helix (University, Industry and Government), this synergy model developed, until finally it became known as the Penta Helix Model which essentially promotes synergy between academia, business sector, government, society and the media (Rizkiyah, Liyushiana, and Herman 2019).

In the context of helping tourism companies that are categorized as Small and Medium Enterprises, the results of the study by Supasti Dharmawan et. al shows that in their efforts to build quality and business reputation in the tourism services sector, including the registered trademark ownership, the Penta Helix model is relevant to be applied, as well as relevant in order to develop community-based tourism, such as in the tourism sector in Bali (Dharmawan et al. 2020). Furthermore, it is also stated that the model is in line with the philosophy of Pancasila and the Balinese philosophy of Tri Hita Karana which also emphasizes the importance of cooperation as humans to create a prosperous society. The alignment of the Penta Helix model with the Pancasila philosophy and legislation in Indonesia can be observed from various provisions such as Article 4, Article 17, and Article 19 of Tourism Law. Likewise, the GCET also emphasizes the importance of participation and synergy from stakeholders in the context of sustainable tourism. The issue of business certification, which in essence also aims to improve the quality of business will eventually lead to sustainable tourism.

CONCLUSION

Based on the description of the results and discussion, it can be argued that the legal construction on tourism service business certification is characterized by legal norms which oblige tourism service business actors to standardize their service businesses through business certification as regulated in the Tourism Law, implementing regulations and Ministerial Regulations. However, the implementation still needs to be improved in the context of sustainable tourism. The synergy of the Penta Helix model, namely the synergy between

entrepreneurs, government, academics, society, and the media are relevant to be put forward to improve the implementation of the obligation to standardize and certify tourism services business.

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