

The Nature of Management Tourism Area to Embody Welfare Society (Tourism Law Perspective)

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Abstract

This research aimed is (1) to know and understand the nature of the management of tourism areas for the sake of welfare of indigenous peoples: (2) to find out the regulation concept ideally of the management of tourism areas for the indigenous people's welfare. The research's result showed that the essence of the management of tourism areas is the preservation of natural resources in order to improve the welfare of indigenous peoples. In terms of the regulation concept of the management of tourism areas, it can be classified into three stages: the first stage (1961-1969), the second phase (1969-1998), and the third phase (1999 to now). The management of tourism itself was conducted not only by one party, but also cooperated by amongst tourism company, community, and government. Based on the research, the management of tourism in District Jayapura is managed only by the indigenous people. The implementation of the tourism's management was based on Community Based Tourism (CBT), which was the development of a tourist destination concept through the empowerment of local communities.

Keywords: Tourism Management, Welfare Society.

1. Introduction

Indonesia as a nation has a gift of invaluable diversity. It can be seen that the form of such diversity gifts like a strategically geographical location, diversity of languages and ethnic groups, the condition of nature, flora and fauna, and even heredity from the olden times, historical heredity, art and culture. They are a resource and capital to increase the prosperity and welfare of the Indonesian people as contained in the Preamble to the Indonesian Constitution, 1945.¹ Tourism is growing up fast nowadays. It is not only just to bird watching, horseback riding, tracing the footsteps of the jungle wilderness, but also it is associated with the concept of forest conservation from local people. In this concept, tourism then is a combination of different interests that resulted from some aspects such as environment, economy and social. In other word, tourism cannot be separated with conservation. It can be said therefore that the tourism is a form of journey responsibility.²

Entering the 21st century, the world of tourism is increasing rapidly. On the one hand, it will open up many opportunities for fulfillment and obtaining benefits from tourism activities. However, on the other hand, it also produces unsimple challenges and problems. Global travel market in the future requires the availability of high value production of unique commodities and tends to leave mass-scale tourism products. Tourism activities should be as an activity with economic orientation. The view is currently growing rapidly because in fact the tourism activities either directly or indirectly lead to progress in the economic field. The views basically underlie the increasing number of attractions that have sprung up both artificial sights and attractions that utilizes existing natural potential. It can provide also a tourist attraction for local and foreign tourists.

The tourism is transformed into a tourism industry that produces products to be marketed travel. The tourism industry is a linkage between tourism, travel, recreation, and leisure. The tourism industry is one of the political forces for a very broad impact received regarding industry / business, organization, and human being. Some reasons for the tourism industry developed by some countries, including:

1. The need for travel has become the basic human needs. So, the market is wide open;
2. Tourism is an industry that is relatively free of waste and clean;
3. Tourism has a significant impact on the expansion of employment / business to increase incomes; and
4. Tourism is a cultural arena of social interaction in both national and international levels.

Through tourism, community is able to know the lives of others. It requires that the development of tourism activity can increase the number and frequency of visitors.³

In enhancing prosperity and welfare of the Indonesian people as contained NRI in the preamble of the Indonesian Constitution of 1945, in addition to government and local governments, communities especially indigenous people are also entitled to manage the wealth of the nation, including the area of tourism. Article 1 point 3 of the Law No. 10/2009 stipulates that "tourism shall be various kinds of tour activities supported by

¹ See explanatory of the Law No. 10, 2009 concerning Tourism.

² C. Fandeli, *Discussion of Policy Development of Higher Education in Indonesia*, Paper, STP-Bali, Bali, 2005, p. 3.

³ See <http://scribd.com/doc/121919668/pariwisata-docx>, accessed 21st, August 2013.

various facilities and services provided by the community, entrepreneurs, Government, and Regional Government". Article 3 of the Law then states that "tourism functions to fulfill the physical, mental, intellectual needs of every tourist with recreation and travel and improve the State revenue in order to accomplish the people's welfare".

In developing countries such as Indonesia, the tourism sector becomes as a source of state revenue. The indicator of it can be seen that tourism is known as an invisible export, smokeless industries, and never ending industries. In this situation, the policy makers tend to emphasize to aspects of economic gain rather than the consequences of environmental sustainability. Consideration of aspects of sustainability is often defeated by economic reasons.¹ The existence of such a paradigm leads to a tendency for tourism development done in a massive which affects the degradation of the environment, both physical biotic and social culture of environment. The tourism does not always lead to a positive impact such as increasing the state revenue, employment, and economic growth. It however creates simultaneously negative impacts such as degradation of social and cultural values, and causing environmental pollution either physical or biotic.

The management of tourism areas in fact is managed by the indigenous peoples. This kind of management become a barrier and make the department of tourism of the regional government in difficulties situation to earn regional revenue. According to the former Head of Culture and Tourism of the District Jayapura, Evert N. Meraudje, the tourism potential in Jayapura is huge. However, the management has not been maximized. It is because there are many attractions in the city of Jayapura escaped from the attention of the government and managed entirely by the indigenous people. The consequences of it in the future, those attraction could be damaged and eventually disappear.²

The government actually requires that the attraction can be managed by the government to make it more orderly, but because of his status (the tourism objects) is still customary land, the regional government cannot do much to deal with this problem. Therefore, it is needed good communication between the community and the regional government to fix the situation and to collaborate in order to the tourism objects can be worked out maximally.³ The management of tourism areas in Papua is customary areas. It means that the regional government is difficult to manage the areas due to of the indigenous people claim of the areas.⁴ In national level basically, the tourism regulation is aimed to improve the welfare of the peoples and the Government plays an important role to deal with the tourism areas.⁵

The percentage of poor population in Indonesia based on Susenas March 2013, on the other hand, showed that the poor population of the Eastern Indonesia out of 4 (four) provinces – called Papua, West Papua, East Nusa Tenggara, and Maluku, was Papua - 31.13 percent. The number of poor people in Papua in March 2013 reached 1.017 million (31.13 percent), increased 41 thousand compared with the poor in September 2012 which amounted to 976.37 thousand people (30.66 percent).⁶

Based on the phenomenon and the fact, then the research issue raised in this paper to recognize the nature of the regulation and management of the tourism areas in order to match with the legal substance and fulfill the principle of the the people's welfare, as well as the protection of the natural resources.

2. The Nature of Management of the Tourism Area and its Regulations

2. 1. Conservation of Natural Resources

Tourism can encourage economic growth through investment, job and business opportunity, and ultimately to improve the welfare community. However, the impact of tourism can create negative impacts on social life, culture and the environment. The development of tourism in general aims to introduce, utilize, conserve, and improve the quality of tourism objects in which it is considering conservation issues, the quality of the environment, and survival of the tourism industry itself. It can be said, thus, that between tourism and environment have a good connection and cannot be separated. Tourism, as an activity, directly is touching and involving the community.

The impact of tourism development is such as littering (besides causing odor, also make the plants around it die); waste disposal hotels, restaurants, and hospitals that are damaging rivers, lakes or the sea; destruction of coral reefs as a result of the fishermen bombed coral reefs; and destruction of biological sources that are not controlled. Those impacts can cause the loss of natural attractions. One of the purposes of tourism is to preserve nature, environment and resources. The fulfillment of the purpose will encourage the improvement of quality of the environment, objects and attractions, cultural values of the nation, enhancing the degree of

¹ Gunawan, *The Paradigm of Tourism Development*, Opus, Jakarta, 1997, p. 67.

² See Newsletter of Papua's Star, Wednesday, 15 September 2010.

³ See <http://www.anneahira.com/papua.htm>, accessed 23rd, April 2013.

⁴ See <http://komunitasaman.wordpress.com>, accessed 11, June 21012.

⁵ See Article 14 the Law No. 11, 2001 concerning Special Autonomy for Papua,s Province. See also the replacement of the Law No. 11, 2001, the Law No. 35, 2008.

⁶ See the Statistic Data from the Statistic Beureau Papua Province, 2013.

humanity, morality and public order in order to strengthen the national identity in the context of the embodiment of the archipelago state.

The problems preservation of natural resources and the environment in the area of tourism (tourist destination) are the responsibility of everyone,¹ especially the indigenous people who live around the area, tourists, tourism's entrepreneur, and the government. The empowerment potentially natural tourism is always closely tied to the environmental issues. In connection with it, it is pivotal to be oriented to the preservation of environmental functions. The development of tourism should refer to the Article 12, Article 13 and Article 14 of Law No.32/2009 on Environmental Protection and Management, as follows:

Article 12

- (1) Natural resources shall be utilized on the basis of RPPLH.
- (2) If RPPLH as referred to in paragraph (1) has not been formulated, natural resources shall be utilized on the basis of the support and carrying capabilities of the environment by regarding:
 - a. The continuation of environmental process and function;
 - b. The continuation of environmental production; and
 - c. Safety, living standard and welfare of communities.
- (3) The support and carrying capabilities of the environment as referred to in paragraph (2) shall be stipulated by:
 - a. The Minister, in the case of the support and carrying capabilities of national and insular/archipelagic environment;
 - b. Governors in the case of the support and carrying capabilities of provincial environment and inter-regency/city ecoregion; or
 - c. Regents/mayors in the case of the support and carrying capabilities of regental/municipal environment and ecoregion in a regency/city.
- (4) Further provision on procedures for stipulating the support and carrying capabilities of the environment as referred to in paragraph (3) shall be governed by a government regulation.

Article 13

- (1) Environmental pollution and/or damage shall be controlled in the framework of preserving the environmental functions.
- (2) The control over the environmental pollution and/or damage as referred to in paragraph (1) shall cover:
 - a. Prevention;
 - b. Mitigation; and
 - c. Restoration.
- (3) The control over environmental pollution and/or damage as referred to in paragraph (1) shall be done by the government, regional governments and personnel in charge of businesses and/or activities on the basis of their respective scopes of authority, role, and responsibility.

Article 14

Preventing instruments of environmental pollution and/or damage shall consist of KLHS; layout; quality standard of the environment; standard criteria for environmental damage; AMDAL; UKL-UPL; licensing; economic instruments of the environment; environment-based legislation; environment-based budget; environmental risk analysis; environmental audit; and other instruments in accordance with the need and/or development of science.

In Law No.10 of 2009 concerning tourism, there are criminal provisions for those who intentionally violate by damaging tourism power. Article 64 of the Law states that:

- (1) Any person intentionally violating the law by damaging tourism power of attraction referred to in Article 27 shall be criminally imprisoned for seven (7) years maximum and maximum fine of Rp. 10.000.000.000,00 (ten billion Rupiahs).
- (2) Any person violating the law due to ignorance damaging the physical of minimizing tourism power of attraction referred to in Article 27 shall be criminally imprisoned for maximum one (1) year and/or maximum Rp. 5.000.000.000,00 (five billion Rupiahs).

2.2 Public Welfare

To establish and improve the welfare of the people is one of the functions and purposes of tourism. It is stated in article 3 the Law No. 10 Year 2009 on tourism. Article 3 states that the tourism has function to fulfill the physical, mental and intellectual needs of every tourist with recreation and travel, and improve the state revenue in order to accomplish the people's welfare. Article 4 furthermore states that the objective's of tourism, as following: a. Improve the growth of economy; b. improve the people's welfare; c. eliminate poverty; d. restrain Joblessness; e. preserve nature, environment and resources; f. enhance the culture; g. uphold image of the nation; h. maintain sense of love to the motherland; i. strengthen self-esteem and unity of the nation; and j. tighten friendship inter-nations. The tourism development to improve the people's prosperity and welfare can be found

¹ See article 24-26 the Law No. 10, 2009 on Tourism.

in Pancasila and the Preamble of the Indonesian Constitution 1945.

In connection with the statement as mentioned above, State is not just a keeper of law and order, but it is actively seeking the welfare of its citizens. The state must truly act “fair” and can be felt by all citizens equally and balanced. The state law is not only for the authorities or certain groups, but also for the welfare of all people in this country in accordance with the theory of the state welfare of Kranenburg. According to Kranenburg, the state's goal is not simply maintaining law and order, but also actively seeking the welfare of its citizens. The concept of welfare includes a broad range of different fields, so that the proper purpose of the state is referred to plural. Some goals of the state are:

a. Social Aspects

The more people come to tourism destination, the more impact will be created it. In terms of social aspects, there will be cultural interaction between tourist and the local people. The cultural interaction is expected to bring positive impact particular stimulating the spirit of the local people to accept the tourist in which they remain to hold their own faith or culture. In the context of development of facilities and infrastructure itself, it is expected to the indigenous people to improve their knowledge and awareness of tourism.

b. Economic Aspects

The tourism area in Jayapura economically is not optimal. This is influenced by the average net income and the educational level of the indigenous people. Based on the data found, the average net income of the indigenous people in the tourism area is less than Rp. 2.000.000,00 / month. It is below the Minimum Wage Province of Papua around Rp.2.193.000/month and the Minimum Wage of Jayapura District approximately Rp. 2.258.000/month. In the context of the educational level of the people, they only rent their attraction location to be utilized as earn sum of money.

c. Environmental Aspects

Ambivalence of tourism activity is against to environmental issues. The negative impact of the tourism tend to be harmful the natural environment and local culture. Therefore, development of facilities and infrastructure of tourism is expected to support coastal tourism and to minimize environmental pollution occurs.

Based on the research in the area of attractions both in the city and district of Jayapura, there are a lot of rubbish scattered including wooding-rubbish. This takes place due to the behavior and habits of local people and tourists who harm the environment with litter or illegal logging. The effect of it, the tourist do not enjoy the the tourism location as they dream. Therefore, it is expected the presence of tourism can be directed as a vehicle balance between the interests of human need and environmental sustainability. Tourism should provide a method for managing a sustainable environment through the concept of conservation, renewal of natural resources, and recycling.

2.3. The Government Interest In Tourism Area Management

Tourism as a complex sector consists of industries in the classical sense such as the craft industry, lodging, and transportation. The main objective of economic policy of the government on tourism is to maximize the contribution of tourism to the national economy. The purposes of this contribution includes optimizing the contribution of the balance of payments; setting up regional economic development and regional balance of payments; preparing the workforce, enhancing and distributing of income; contributing to social welfare; and maximizing revenue opportunities. The tourism development should be implemented in a planned and comprehensive in order to bring benefit to the community either economic, social or cultural benefits. Such plans should integrate the tourism development into an economic development program both physical and social aspects of an area.

In addition, the plan must be able to deliver policy framework of the government to encourage and control the development of tourism. The government's role in developing tourism generally is providing infrastructure (not only in physical form), extending various forms of facilities, building a good coordination amongst stakeholders, and promoting those tourism attraction in abroad. The government utilizes tourism as a source of income and resource costs for other sectors. However, in state practices, the tourism is still not prominent role in their activity to increacy the state income including state revenue and local revenue (hereinafter called PAD).

2.4. Potential Tourism in City / District of Jayapura

2.4.1. Potential Nature and Culture Tourism in City of Jayapura

Some potential attraction are:

- 1) Nature tourism (water attraction tourism) consists of: G Base beach, Hamadi beach, Yotefa Gulf, Holtekamp beach, Yambe Skou beach, and Cape of Kaswari Enggros;
- 2) Agro tourism is directed to the eastern part of the city of Jayapura. It provides fairly extensive farmland supported by Dams Muara Tami to farm tours and fishing pond;
- 3) Cultural Tourism in the city of Jayapura consists of a historical tour of Hamadi beach and Base G beach (tank site), Japan's Monument (Hamadi), history of Japan cave in Gulf of Youtefa, history of Japan Warships (Gulf Youtefa), 1 century monument of city Jayapura, and Museum of History in Waena;

4) Art's Galleries. The number of art galleries in the city of Jayapura are 78 (seventy eight) of galleries. They are consisting of 10 galleries of traditional dance, 10 galleries of flute drums, and 58 of creation dance, music, sculpture and art galleries.

2.4.2 Potential Nature and Culture Tourism in District of Jayapura

The potential of tourism in District of Jayapura diverse such as natural beauty, historical heritage, cultural specific areas. Those potential attraction are:

- 1) Nature tourism is such as Sum Back river, Kemiri and Pos Niagaras, Dumang Karay hill, and others;
- 2) Lake tourism includes Lake of Sentani, Bolo Piolu, and Kwopta;
- 3) Beaches tourism consists of Yahim Beach, Britiyayo beach, Amai Beach, Harlem beach, and Tablanusu beach;
- 4) Cultural tourism is such as monument of Mac Arthur, adat house of Kaway Tribe, site of Mega Tutar, Oil Tank War II, Allied Ports, and monument of Efata; and
- 5) Art's galleries. There are 50 dance's galleries and 28 sculpture galleries.

3. The Arrangement of Tourism Area Management to Achieve Public Welfare Currently

3.1 Substance of Tourism Law

Indonesian tourism policy, based on the development of policy makers, are classified into 3 (three) stages: the first stage (1961-1969), the second stage (1969-1998), and the third phase (1999 to the present).

3.1.1 The development of First Phase (1961-1969)

Outlines of National Development Planning in First Stage put tourism under distribution and transportation sectors with the title tourism. This policy includes 3 (three) things:

- 1) enhancing the quality of culture;
- 2) increasing attention to art in central tourism areas; and
- 3) maintaining personality and cultural authenticity in accordance with the personality and originality of each area.

Such policies as mentioned above are very far from economic interests. They are more emphasis on the tourism function as a medium of interaction between nations and legal basis of establishment of the universal culture.

3.1.2. The Development of Second Phase (1969-1998)

The main characteristic of tourism policy in the second stage is the emphasis of tourism as a source of revenue. The tourism policy is patterned to enlarge the revenue. The tourism policy in the Five-Year Development (Pelita) III (1979- 1984) are to:

- 1) increase the revenue and expand employment opportunities;
- 2) arrange a more targeted; and
- 3) develop domestic tourism for the sake of cultural recognition.

3.1.3 The development of Third Phase (2000)

The tourism policy in National Development Program (2000-2004) is moved from economic perspective to social-culture development with the title of "Culture, Art, and Tourism". The policy seemed disengaged from the situation with some tourism requirements to be more rational in terms of the requirements. The development of tourism sector is needed to encourage equality of tourism activities in order to deal with some challenges either in local, national, or global situation. Those challenges indeed to consider to religious values, cultures living in the community, and sustainability and environmental quality.

3.2. Communities

Indigenous peoples around the area of tourism have a very important role in supporting the success of tourism development. The role of the community in maintaining and preserving the environment and the preservation of the culture will be the main reason to attract the tourist and it cannot be ignored. The most important thing is the effort to empower local communities by engaging them in a variety of tourist activities. According to article 19 (2) the Law No. 10/2009, the community's participation can be stated as "...Everybody and/or members of the community within and around tourism place of destination shall have priority right to: a. become worker/laborer; b. enter into consignment; and/or c. management."

Based on the research results, the management of the attractions area in the city and district of Jayapura is managed entirely by the indigenous people. This is done because the indigenous people believe that the tourist attraction area is their customary land. It means that they have rights to manage the area, either in group or individually.

3.3. Government

Government is a party that has the authority to regulate and provide various infrastructure related to tourism needs. It has also responsibility to determine the intended direction of the tourism. The macro policies pursued by the government will become the guideline to tourism stakeholders. Article 18 of the Law No. 10/2009 stipulates that "The Government and/or Regional Government shall govern and manage tourism matters in

accordance with the provisions in the statutory regulation”.

3.4. Employers

The Government and Regional Government encourage both domestic and foreign investment in tourism sector in accordance with the master plan for tourism development in national, provincial, and district / city to support the development of tourism. The development of tourism sector will develop the economic growth for the sake of people's welfare and also to develop the region of the tourism by empowering the communities around the area. Based on the Law No. 10/2009 on Tourism, Tourism business shall be business providing goods and/or services to fulfill tourist needs and implementation of tourism. Tourism Entrepreneur shall be any person or group of persons exercising tourism business activities. Tourism Industry shall be interrelated group of tourist businesses in the context of producing goods and/or services for the fulfillment of tourist needs in the implementation of tourism.

4. The Arrangement of Tourism Area Management in the City and the District of Jayapura Ideally

The concept of tourism area management in the City and the District of Jayapura must be developed to base on community based tourism (hereinafter called CBT). To support the CBT concept, the tourism activities must apply adventure travel, cultural tourism, and ecotourism.

The CBT concept addresses to improve the community's participation in order to increase their income and put them in strong position to get involve in decision making on tourism matters. There are 4 (four) purposes of it, as followings:

1. CBT shall contribute to increase and/or to fix natural conservation and cultural resource, including biodiversity;
2. CBT shall contribute to regional economic development in order to improve the community's income;
3. CBT shall participate the communities particular the indigenous people;
4. CBT has responsibility to provide eco-tourism products to the tourists.

CBT must consider to let in the indigenous people as a compulsory requirement to create sustainability of tourism development. The management of tourism area must be done by the indigenous people to decrease the conflict between them and the tourism activities in general. In this concept (CBT), the communities play an important role actively in tourism matters. They will be embodied systematically as a strategy to build tourism sustainability. Therefore, it can be said that the basic principle of CBT is to open a chance for the community to get involve in development of tourism and earn income from the tourism activities in their area. In addition, the community also has responsibility morally to preserve the tourism resources including its tourism facilities.

5. Conclusion

Referring to those discussion as mentioned above, it can be concluded that:

1. The essence of the management of tourism areas is to preserve natural resources; to welfare the indigenous people around the the tourism area either in economic, social, cultural, and environmental aspects. The government's interest in tourism management is to make tourism as a source of income;
2. The arrangement of Tourism Area Management in Indonesia can be classified into three stages: the first stage (1961-1969), the second stage (1969-998), and the third phase (1999 to the present). The management tourism in a tourist destination cannot only be managed by one party, but it is also a collaboration of various parties such as the entrepreneurs, the community, and the government. Based on the research, the management of tourism areas in the City / District of Jayapura is managed only by the indigenous peoples; and
3. Implementation of the management of the tourism area in the city and the District of Jayapura is based on Community Based Tourism (CBT).

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