

The Control of Spatial Utilization in the Tourism Areas Oriented to Public Welfare and Justice

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Abstract

The rapid development of tourism in Indonesia, particularly in Bali, is a challenge in controlling and utilizing spaces. The establishment of local protected areas (sacred areas, borders, green open spaces), as part of protected areas through the Regional Regulation of Bali Province Number 16 of 2009, is considered unfair by a group of people because it delimits the utilization of property rights to land in the area. As a result, numerous violations occur in spatial regulations in tourism areas, especially in the areas designated as protected areas. This study aims to find, discover and formulate a model for controlling the spatial utilization in tourism areas that is oriented towards justice and welfare of the community. The research method used in this study is normative legal research method supported with statute approach and conceptual approach. The research materials used included primary legal materials and secondary legal material collected through note-taking technique. The analysis of the legal materials was carried out qualitatively assisted with reasoning and legal argumentation techniques. The results are then presented descriptively. Based on the presentation of the results of the research and the discussion, it can be concluded that the ideal model of the spatial utilization and control comprises the model that is based on the concept of bioregionalism, that is to say, the concept of developing and fulfilling the living needs through adjusting the ecosystem of local communities by preserving and fostering the ecosystem to support the life of the economy. The model encompasses the concept of fusion within the control of the spatial utilization by not damaging the existing ecosystem environment, and on the other hand, economically the community is not harmed in meeting their needs and welfare. The model is also in accordance with the provisions of Article 2 letter h of Law Number 32 of 2009, which stipulates that the environmental protection and management is carried out based on the principle of ecoregion, in that, the environmental protection and management shall consider the characteristics of the natural resources, ecosystems, geographical conditions, the culture of the local community, and the local wisdom.

Keywords: Control of Spatial Utilization; Sustainable Development, Public Justice and Welfare

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1. Introduction

The control of spatial utilization is an effort to prevent environmental destruction so that the implementation of the development is in accordance with the spatial plan by always respecting the individual rights of the communities for the sake of justice. This is in line with the basic principles of sustainable development which are the agenda and objectives of the United Nations as outlined in a declaration entitled, "Transforming our world: the 2030 Agenda for Sustainable Development," "We are determined to foster peaceful, just and inclusive societies which are free from fear and violence, there can be no sustainable development without peace and no peace without sustainable development".³

The basic principles of environmental protection and management are set forth in Article 2 of Act Number 32 of 2009 concerning Environmental Protection & Management (*UUPPLH*) which is based on the principle of sustainability and preservation, bringing benefits and justice. Furthermore, the concept of sustainable development is regulated in Article 1 number 3 which describes, that sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into the development strategies to ensure the integrity of the environment as well as the safety, capability, welfare and quality of life of present and future generations. Reaffirmed again in Article 12, that the utilization of natural resources is realized by always paying attention to the safety of quality of life and welfare of the community.

In essence the prosperity and welfare of the people are derived from the values of justice. In accordance with Aristotle's theory of justice, the justice benefits every person in the form of something belonging to him/her (*unicuique suum tribuere*) and does not harm others (*unicuique suum tribuere*).⁴ For the people of Indonesia, the

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³ United Nations, Transforming our world; *The 2030 agenda for sustainable development.un.org*, p.3

⁴ Bernard Limbong, 2012, *Hukum Agraria Nasional*, Margaretha Pustaka, Jakarta, p.21

value of justice is very fundamental that it is set forth in the *Pancasila*, which is the ideology and basis of the Republic of Indonesia. The value of justice is imposed in the fifth principle of the *Pancasila* which reads: "The social justice for all Indonesian people." In the Indonesian legal system, the *Pancasila* is placed as a *staats fundamental norm*, so the material contained in the legislation of the Republic of Indonesia shall not conflict with the values contained in it.¹

In the context of regulating the natural resources, the value of justice as outlined in the *Pancasila* was later derived from the Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which determines that "the earth, water and the natural resources contained therein are controlled by the State and profusely used for the greatest prosperity of the people". The meaning contained in the provision is that the earth, water, and natural resources contained in it shall be managed in such a way that is able to transform the nation's society economically, socio-culturally and ecologically. In this context, the state has an obligation to regulate the natural resources, including in it, through controlling the use of land so that it can bring as much prosperity and welfare to the entire Indonesian people.

The right of control of the State toward the natural resources as stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia was then revealed through Law Number 5 of 1960 concerning Basic Agrarian Law (BAL) Article 2 paragraph (2) of the Law authorizes the State to regulate and administer the designation, use, supply and maintenance of the earth, water and space. In accordance with the provisions of paragraph (3) of the article, the authority derived from the right of control of the State shall be used to achieve the people's welfare. Furthermore, in Article 14 of the Law, it is affirmed that in order to achieve the ideals of the nation, the Government makes a general plan regarding the supply, allocation and use of earth, water and space for various purposes of the lives of the people and the state. The mandate of the Article 14 is then set forth in the level of implementation regulations through Government Regulation Number 16 of 2004 concerning Land Stewardship.

In addition, in the context of spatial planning, the Government has also issued the Law Number 26 of 2007 concerning the Spatial Planning (*UUPR*). In the provisions of Article 2 of the Act, it is stated that the spatial planning is realised based on the principles of sustainability, legal certainty and justice. Thus it can be understood, that controlling the use of the space for natural resources, the land in particular, which is regulated through laws and regulations, will always uphold the values of justice for the welfare of the community.

The problem then arises from the provisions of Article 35 of the Spatial Planning Act, which specifies that the control of spatial utilization is carried out through the enactment of regulations on zoning, licensing, providing incentives and disincentives, as well as imposing the sanctions. The provision of incentives as referred to in Article 35 in question is regulated in the Article 38 paragraph (2) of the said Act, which prescribes that the provision on the incentives is a tool or effort to provide compensation for the implementation of activities in line with spatial plans. The provision toward the incentives can be in the form of: a. tax relief, compensation, cross subsidies, compensation, rent space, and shares; b. construction and procurement of infrastructure; c. ease of licensing procedures; d. awarding the community, the private sector and/or local government, in which, in the implementation, the Government and the regional government can execute it.

In the implementation level, the establishment of zoning regulations in Bali gives rise to a number of problems. In the spatial planning sector, the Regional Government of Bali Province has issued a Regional Regulation of Bali Province Number 16 of 2009 concerning Bali Province Regional Regulation on Spatial Planning for 2009-2029 (or abbreviated as *RTRW* Bali). In Article 42 of the Regional Regulation it is determined that there is a protected area that covers the local protection area. The definition of protected area is mentioned in Article 1 number 26 which defines the protected area as "... an area defined by the main function of protecting environmental preservation which includes natural resources and artificial resources". The coverage of these local protected areas, including: sacred areas, borders (beaches, rivers, lakes, ravines) and urban green open spaces (Article 44).

According to Article 1 point 41 of the Regional Regulation, the area of the sanctuary includes "... the area around the temple whose sanctity needs to be maintained within a certain radius according to the status of the temple as stipulated in *Bhisama Kesucian Pura Parisadha Hindu Dharma Indonesia Pusat (PHDIP)* in 1994". The sanctity radius of this temple varies. In the *Bhisama PHDIP* Number 11/Kep/I/PHDI/1994 dated January 25, 1994, the details of the radius of the holy places are mentioned as follows:

- (1) For Sad Kahyangan Temple, the size of *Apeneleng Agung* is applied, which is at least 5 km from the main Temple.
- (2) For *Pura Dang Kahyangan*, the size of *Apeneleng Alit* is applied, which is at least 2 km from the main temple).
- (3) For the *Kahyangan Tiga* Temple and others, the size of the *Apenimpug* or *Apenyengker* is applied.

¹Teguh Prasetyo, 2016, *Sistem Hukum Pancasila (Sistem Hukum dan Pembentukan Peraturan Perundang-undangan di Indonesia)*, Penerbit Nusa Media, Bandung, p.44; Compare: Kaelan, 2007, *Revitalisasi dan Reaktualisasi Pancasila sebagai Dasar Filsafat dan Ideologi Bangsa dan Negara Indonesia*, Badan penerbit Filsafat UGM, Yogyakarta, p. 6 - 7

The Regional Regulation on Spatial Planning of Bali Province also prescribes the width of borders whose preservation needs to be maintained. The width of the river border as determined is between 3 to 150 meters, depending on the location and condition of the river, whether the river is located in a rural or urban area, whether the river has the danger of flood or not. For the coast, the beach border width is determined, which covers a land area of 100 meters from the highest sea tide point to the land. Regarding the border of the lake, its width is determined to cover land 50 to 100 meters wide from the highest lake water tide. For ravine boundaries, it is determined to have at least twice the depth of the ravine and not less than 11 meters from the edge of the ravine towards the flat plane (Article 50).

Some of these protected areas (the local protection) cover the areas in the form of plots of land with ownership status. With the stipulation of the land as a protected area, landowners may not freely use their land according to their own interests, while the concerned party does not receive compensation at all from the Government. Determination of zoning of protected areas for property rights contradicts the essence of property rights on the land itself. Based on Article 20 of Basic Agrarian Law, the property rights are land rights that are hereditary, strongest and most fulfilled which can be owned by everyone on land. As such, property rights holders can use their land for any purpose, including establishing a building on it.

Article 38 paragraph (2) of the Spatial Planning Act does determine that in order for space use to be in accordance with regional spatial planning, the government is allowed to provide incentives to the owners in the form of tax curiosity, compensation, cross subsidies, immigration, roar rental, share losses, and so on. In reality the community does not benefit from the incentives, unless the land is used for public facilities, such as the construction of roads, buildings, and so on. This is where the problem lies, namely the issue of justice for the people. The people felt that they did not obtain justice so they resisted by violating the provisions of the protected area.

Violations of the spatial planning regulations in Bali have become empirical facts that have become public knowledge. Moreover in the tourism areas to which the need for land for tourism facilities and infrastructure continues to increase. The economic value of the land also increased sharply, tempting the landowners to use their land around the protected areas to be used as the location for the construction of tourism facilities, such as villas or other commercial buildings. Not a few also the land owners sell or rent their land in protected areas to investors. For example, violations that occurred in the Ubud area, one of the tourist areas in Gianyar Regency, can be revealed. In this area, many villas built violating the river border rules along the Ayung River in the Kedewatan area of Ubud. In addition to villas, there are also many commercial buildings in the area in the form of semi-permanent huts and permanent buildings, although there are signs of prohibition on building¹. The implementation of temple sanctity radius in Bali also remains problems. The impacts of the restrictions on the use of land affected by the radius of the sacred area are felt by the community. The inhabitants feel injustice since they are forbidden to build on their own land, solely because their land is located within the Pura sanctity radius. Not a few of them finally resisted by ignoring these restrictions.

The phenomenon of offences on the spatial planning caused by weak access to justice for the people in utilizing their own lands in the protected areas indicates that there is no fulfillment of justice in controlling the spatial use. Instead of being able to control the use of space, on the other hand, the spatial planning regulations actually have a negative impact on the preservation of the environment itself. Thus, a solution is required in the regulation of spatial utilization so that it can maintain a balance between environmental preservation and its benefits for the welfare of the community.

Based on the background of the above thoughts, a study is urgent to be conducted to find and reveal the appropriate model of space utilization control so that the objectives of spatial planning can be achieved. This paper tries to find and formulate a model of control for equitable use of space in the tourism area for the welfare of the community.

2. Research Method

In discussing the problems raised in this paper, normative legal research method was used, with a statute approach and a conceptual approach. These two approaches were used to determine the consistency between legislations and the application of legal concepts in the control of equitable use of space for the welfare of society. The research materials used were primary legal material (legislation) and secondary legal material (legal literature) collected through note-taking technique. Analysis was carried out using reasoning and legal argumentation techniques, namely in the form of legal interpretations or constructions. The overall results of the discussion are presented descriptively.

3. Discussion

The relationship between humans and the environment cannot be separated from aspects of cultural behavior.

¹Bali Post, tanggal 4 September 2009, *Maraknya Pelanggaran Tata Ruang – Terdesak Kepentingan Komersial Dan Kekuasaan*, kol. V, p. 8

According to Donald L. Hardisty,¹ the physical environment plays a dominant role as a forming of personality, morals, culture, politics and religion. This view appears inseparably from the assumption that in the human body there are three basic components, namely earth, water, and land which are important elements of the environment. Such an expression is in line with Hindu philosophy relating to efforts to maintain the balance of the universe and its contents, namely *Tri Hita Karana*. According to this philosophy, the welfare, peace and happiness of human life in this world can only be achieved if there is a balance of relations between the elements of the *Tri Hita Karana*, namely the *Jagat Karana* (God the Creator), *Manusa* (human), and *Bhuana* (nature)². The philosophy of *Tri Hita Karana* is very relevant to be used as a philosophy of life in building and maintaining the balance of relationship between humans and the space in which the humans live. That is why, in the Regional Regulation of Bali Province Number 16 of 2009 concerning the Spatial Planning of Bali Province for 2009-2029, the philosophy of *Tri Hita Karana* is one of the important principles in the Bali Province Spatial Plan, in addition to other principles, which are *Sad Kertih*; cohesiveness; harmony, integration and balance; sustainability; usefulness and success; openness; equality and partnership; protection of public interest; legal certainty and justice; and accountability³.

Hindu people in Bali believe that sacred areas such as mountains, hills, lakes, springs, seas, and beaches are symbols of the sources of life. Sustainability and balance of all these places must be maintained to remain immortal. Broadly speaking, there are six sources of life and welfare that must be preserved to achieve inner and outer happiness, that is known as *Sad Kertih*,⁴ which consists of *atma kertih*, *wana kertih*, *danu kertih*, *segara kertih*, *jana kertih* and *jagat kertih*.

The essence of the teachings of *Tri Hita Karana* emphasizes three patterns of relationships, namely the relationship between humans and God, the relationship between humans and the fellow humans and the relationship between humans and the natural environment, not only found in Hinduism, but also in the teachings of other religions. All religions must have such teachings because the teachings focus on humans as the actors. The development philosophy in developed countries has established the concept of balance and the concept of sustainable development and implicitly the concept of development is in line with the essence or nature of the teachings of *Tri Hita Karana*.⁵

In 1983, the World Commission on Environmental and Development (WCED), as an institution formed by the United Nations, published the document *Our Common Future*, which contained analysis and suggestions for the process of sustainable development. With the presence of the paradigm concept, the wisdom of the world environment is undergoing a fairly fundamental change, namely from the concept of environmentally friendly development (eco developmentalism) which emphasizes "intra-generation equity" in various development activities, becomes a concept that concerns, both "intra-generation equity" and "extra generation equity" in environmental development.⁶

Branes⁷ describes three key components in an environmental management. The first is policy, which shows the objectives of environmental management in the community based on information sources and consideration of scientific values regarding political and economic interests. Second, the law and legislations, as the main means to formulate and implement the policies that have been set. Third, the government (administration), which establishes a framework for developing and realizing the objectives of environmental policy into concrete actions.

Thus, it can be understood that the policies made in controlling the use of space as stated in the background

¹Donald L. Hardisty dalam Rachmad K. Dwi Susilo, 2008, *Sosiologi Lingkungan*, Raja Grafindo Persada, Jakarta. p.29

²I Ketut Sudantra & Wayan P. Windia, 2012, *Sesana Prajuru Desa, Tatalaksana Pimpinan Desa Adat di Bali*, Udayana University-Bali Shanti, Denpasar, p. 19.

³Article 2 Regional Regulation of Bali Province Number 16 of 2009.

⁴In the general explanation of Bali Province Regional Regulation No. 16 of 2009, *Sad Kertih* consists of: 1). *Atma Kertih* is a soul and spirit that must be preserved by organizing the order of religious life in Bali through the maintenance of holy places, *parahyangan* or temples which are mostly used as religious rites, and are also developed as centers of religious education equipped with facilities and infrastructure. 2). *Wana Kertih* is a plant and all its contents are manifested in the form of forests, which must be preserved by building a temple of haunted pedestal in each forest area, to protect the forest in a spiritual way. 3). *Danu Kertih* is the sanctity of water sources, which must be preserved by prohibiting polluting water sources such as spitting, urinating, removing waste, removing garbage, and disposing of toxic substances. 4). *Segara Kertih* is a sea or ocean as a natural source where all turbidity melts, which must be conserved by not polluting and damaging the coastal and marine environment and maintaining the values of purity and beauty. 5). *Jana Kertih* is a human resource both individually and in groups, which must be built by improving the quality of the Balinese people who are reliable and highly competitive to maintain the sustainability and sustainability of Bali's development. 6). *Jagat Kertih* is a Balinese social culture that is integrated in the Pakraman Village environment that must be preserved by maintaining a harmonious dynamic social and cultural life. In this village system a harmony between human relations and *Ida Hyang Widhi* with *sradha* and *bhakti* is established, the relationship between humans and others is based on mutual service "*paras-paros sarpanaya salum-lum sebayantaka*", the relationship between humans and their environment based on love. This relationship is a reciprocal relationship called the *Yad Chakra*. In *Bhagawagitha* said the relationship will create a social atmosphere that guarantees everyone can carry out their respective *swadharma*.

⁵I Nengah Dasi Astawa dan Gede Sedana, 2017, *Kearifan Lokal Bali dan Pembangunan Ekonomi*, Edisi Revisi. Pustaka Larasan, Denpasar, p. 59

⁶Suparta Wijaya, A'an Efendi, 2017, *Hukum Lingkungan Nasional*, Penerbit Sinar Grafika, Jakarta, p. 31

⁷Branes dalam A'an Efendi, 2018, *Hukum Pengelolaan Lingkungan*, Penerbit Indeks, Jakarta, p. 25-26

above are the authority of the government as outlined in a state law. The aim is so that legal certainty can be obtained by always paying attention to environmental preservation and the value of community economic justice. This is in accordance with the basic norms in the management of natural resources regulated in the constitution of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which prescribes that the earth, water and natural resources contained therein are controlled by the state and are used for the greatest prosperity of the people. Reaffirmed in paragraph (4) that the national economy is organized based on the economic democracy with the principle of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining the balance of progress and unity of the national economy.

In the context of environmental protection and management, the principles above have actually been derived from the Environmental Management Law. Article 2 of the Law states that the principles of environmental protection and management include: the principle of sustainability and preservation; the principle of harmony and balance, the principle of benefits and principles of justice. In the context of spatial planning, these principles are also set forth in Article 2 of the Spatial Planning Law which states that spatial planning is carried out based on principles, which include: the principle of cohesiveness, integration, harmony, and balance; sustainable principles, as well as principles of usefulness and success (benefit principle).

To better understand the sustainable principle, regarding sustainable society is also important to understand. In essence, sustainable society is nothing but a society that lives a pattern or habit of life in which economic and ecological unity are inseparable. In such a society, developing and fulfilling all life needs is the same as maintaining and caring for the local ecosystem. Or conversely, maintaining and caring for the local ecosystem is carried out in relation to supporting its economic life. Meeting economic needs is the same as maintaining and caring for the place of life itself by maintaining and caring for the local ecosystem, which at the same time means that life depends on cultivating the local environment for the continuation of all life in it, including human economic life. Likewise, re-inhabiting the original place is the same as working on the ecosystem by maintaining and caring for it in such a way that the local ecosystem gives life to its inhabitants along with the entire end of life in it.¹

In this context there is no separation between ecology and economics because both are running continuously. Ecology is a wisdom to maintain and care for the surrounding environment while the economy includes the skills of how to meet the needs of local human life. Both ecology and economy are actually just different ways of viewing, understanding and treating the same place, the natural environment. There is no strict separation between the two, because in the end both of them ensure a healthy life, which is full in all its dimensions and gives happiness because it blends with the same place which is the surrounding environment. The combination or the integration of concepts between ecology and economy is very much in line with the mandate of Article 1 point 3 of Law Number 32 of 2009 concerning Environmental Protection and Management which describes that sustainable development is a conscious and planned effort that combines social and economic environmental aspects into the development strategies to ensure the integrity of the environment as well as the safety, capability, welfare and quality of life of present and future generations.

Economically, bioregionalism carries the idea of self-reliance, self-sufficiency and economic sovereignty to fulfill the entire life of the local community in existing potential and natural resources by adjusting the local natural rhythms.² Ecology requires humans to utilize local natural resources efficiently by maintaining, caring for, cultivating and ultimately using them in a subtle way. This is what is meant by living in harmony with nature, developing an economy that is in harmony with the laws and conditions of nature. Nature is not conquered but respected and served because with that the nature contributes numerous resources needed by human, such as: food, water, air, energy, sunlight, and climate which all become capital for the human economy. The concept of development based on the natural/local environment in supporting tourism activities does not damage the existing environment but it will synergize with nature. Thus the utilization of the community's natural resources in the no-build zone can be maximally carried out to support the tourism development so that it can improve the standard of living of the local community. The concept of environmentally friendly development that synergizes with nature is a solution, such as in Bali the concept of *hulu-teben* used in determining the direction, place, layout in building a house combined with the concept of "*Tri Mandala*", is one of the local wisdoms that serves as the pattern of division of regions, regions, and/or yards divided into three levels, consisting of the *utama mandala*, *madya mandala* and *nista mandala*.³ These philosophical values can be adopted in the use of land in the no-build zone because the concept promoted does not damage the surrounding environment. Such houses can be found in the Penglipuran area of Bangli which has a special attraction for tourists. This is in line with Article 2 letter h of the Environmental Protection and Management Act, which stipulates that the environmental protection and management is carried out based on the principle of ecoregion, namely the protection and management of the environment must consider the characteristics of natural resources, ecosystems, geographical

¹*Ibid*

²*Ibid*

³I.Made Suastawa Dharmayudha dan I Wayan Koti Santika, 1991, *Filsafat Adat Bali*, Upada Sastra, Denpasar. p.15

conditions, culture of local community, and local wisdom.

Sustainable development places the environment as an integral part of the dynamics of national development which increasingly crystallizes in the reality of state life. The sustainable development must be ecologically, socially, and economically sustainable¹. Emil Salim² Emil states that sustainable development requires us to manage as many natural resources as possible. This means that the natural resources can be processed, provided they are done rationally and wisely. For this reason, a development approach with an environment is needed, the so-called eco-development. Furthermore Siti Sundari Rangkuti³ stated that the environmental legislation in which the preparation is prepared in order to support the Environmental Law as a place to express the environmental policy is expected to be one way out for the environmental problems. For this purpose the law as a means of development and social engineering with its role as an agent of change is the foundation of hope for the realization of the sustainable development.⁴ Thus, sustainable environmental development can be formulated or interpreted as a development paradigm directed at meeting the needs. The environment as a natural resource must be managed with the principle of preserving harmonious, conformable and balanced environmental functions to support the sustainable development for improving the welfare and quality of life of future generations.⁵

The basic principle of sustainable community development leads to the economic justice of the local community, in line with the principle of distributive justice which was sparked by Aristotle stating that "*Justice consists in treating equals equally and unequals unequally, in proportion to their inequality*". This is the distribution of justice to natural resources owned by the community to maintain a balance between what is obtained by someone (he gets) and what he deserves⁶. It includes the use of natural resources in synergy with the local environment to support tourism activities. The control of spatial use cannot be separated from the values of justice that exist in society. "*Justice as fairness*" in the view of John Rawls⁷ This focuses on justice which is the main virtue in social institutions, the need for balance, equality and harmony between individual interests and the interests of the community, including the state. Respect for community rights is very basic in fulfilling the welfare in the economic field, especially in tourism areas as mandated by tourism laws that tourism is carried out on the principle of providing benefits for people's welfare, justice, equality and proportionality. This is also in line with the mandate of Article 2 of the Law on Spatial Utilization in 2007, that spatial planning is carried out based on the principles of sustainability, legal certainty and justice that have economic value for the welfare of society.

The growth of the tourism industry sector has become one of the indicators of the success of Bali's economic development and at the same time has become a challenge in the environmental management. In some regions, it is very clear that changes in the physical environment can be seen, especially in urban areas and tourism industry development centers. In plain view it can also be seen that the conversion of agricultural land, from rice fields or fields to settlements or other buildings, occurs evenly throughout Bali. It can be assumed that the conversion of agricultural land that has taken place is quite large, covering not less than 1,000 Ha per year. On the other hand, due to the conversion of the land, the Balinese society and culture cannot avoid changes⁸. Thus, it cannot be denied that factually there has been a change in society and the environment in Bali. The orientation of people's lives has undergone a shift, from the traditional agrarian sector to a modern sector.

On the other hand, since entering the millennium, many parties feel marginalized because they are unable to take part in the changes and compete with competitors from outside Bali. The inability of the Balinese people to take a role in exploiting the changes, especially the opportunities for the advancement of the tourism industry in a certain period of time, bringing bad social implications. However, it cannot be denied that the existence of the tourism industry has been able to provide and improve the welfare and prosperity of the Balinese people⁹, but it is also undeniable that the progress of the tourism industry cannot be fully accelerated by the Balinese people. In various limited dialogues it is often revealed that no less than 75% of investments in the tourism industry sector are owned by people outside Bali¹⁰. Such conditions can lead to social pressure and economic squeeze for local communities which lead to social and economic inequality, thus giving rise to disharmony in people's lives. The disharmony of life that is increasingly felt in the end can become a trigger for conflicts in society. If that

¹Helmi, 2013, *Hukum Perizinan Lingkungan Hidup*, Sinar Grafika Offset, Jakarta, p.58

²Emil Salim, 1993, *Pembangunan Berwawasan Lingkungan*, LP3ES, Jakarta, p.184

³Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijaksanaan Lingkungan Nasional*, Airlangga University Press, Surabaya, 2005, p. 12-13.

⁴Mochtar Kusumaatmadja, sebagaimana telah diuraikan sebelumnya dalam karyanya *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*, 1975, p. 11.

⁵Helmi, *Op,cit*, p.59

⁶Dardji Darmodihardjo, Shidarta, 1996, *Pokok-Pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*, PT. Gramedia Pustaka Utama, Cetakan Kedua, Jakarta, p.154

⁷John Rawls,1971, *A Theory of justice*, The Belknap Press Harvard University Cambridge, Massachusetts. p. 302.

⁸I Nengah Dasi Astawa dan Gede Sedana, *Op,cit*. p. 59

⁹*Ibid*

¹⁰*Ibid*

condition happens, of course the tourism development is not in accordance with the principles of the tourism management as outlined in the Law Number 10 of 2009 concerning Tourism. In Article 5 of the law it is stated that: "Tourism is organized by principles... bringing benefits for the welfare of the people, justice, equality and proportionality" and "...to empower local people". The principles adopted by the above provisions are also in accordance with the mandate of the *Pancasila*, the ideology and the foundation of the state, namely the oldest in the fifth principle: "Social justice for all the people of Indonesia".

The description above provides a strong argument that the access of community participation in the management and utilization of space (land) that it has becomes relevant and very important. To formulate the principle of usability/utility in the use of space for the welfare of the local community, it seems that the flow of utilitarianism can be referred to. In accordance with Bentham's teachings, the principles of law must in fact be able to provide the maximum guarantee of happiness for the people, "*the greatest happiness of the greatest number*"¹. Utilitarianism assumes that basically the purpose of the law is solely to get the benefit or happiness of the citizens.

The role of the community in utilizing this space, in addition to being able to support tourism activities, can also improve the economic welfare of the community, without damaging the environment. According to Fritjof Capra,² the philosophy of bioregionalism views the universe as a system of life. The philosophy of bioregionalism carries the concept of inviting everyone to live in a place where we are born by realizing the existence of special ecological relationships that are interwoven with the surrounding environment.

4. Conclusion

The concept of controlling equitable use of space in a tourism area that is oriented to the welfare of the community is an integral part of the dynamics of national development through the principle of sustainable development that has an insight into the environment, namely eco development. The basic principle of the sustainable development is the mandate of Article 1 number 3 of Act Number 32 of 2009 concerning Environmental Protection and Management, that sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into development strategies to ensure the environment integrity and the safety, ability, welfare and quality of life of present and future generations. The concept is in line with the provisions of Article 2 of the 2007 Spatial Planning Act, that spatial planning is carried out based on the principle of sustainability, legal certainty and justice, which is emphasized in the provisions of Article 5 of Law Number 10 of 2009 concerning Tourism, that tourism is carried out with the principle of providing benefits for people's welfare, justice, equality and proportionality.

The concept of bioregionalism is a model in managing and building the life of a human society in a sustainable manner, namely people who live in a pattern or habit of life in which the economy and ecology are united without being separated. The bioregionalism model is the development and fulfillment of living needs through adjusting the ecosystem of the local community by maintaining and caring for the ecosystem to support its economic life. This is in line with Article 2 letter h of the Environmental Protection and Management Act, that the environmental protection and management is carried out based on the principle of ecoregion namely, protection and management of the environment must take into account the characteristics of natural resources, ecosystems, geographical conditions, culture of the local community, and local wisdom.

Economics and ecology are two realities and practices that coalesce into a culture of the local community. Harmonization in controlling the use of space in the tourism area based on the environment by optimizing the local wisdom of the local community is very helpful in developing a sustainable tourism. Utilization of land natural resources in the no-build zone can be maximized in supporting the development of environmental ecology-based tourism in realizing justice and welfare of the local community as mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that, earth, water and natural resources therein are controlled by the State and profusely used for the greatest prosperity of the people.

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