

## Legal Protection of Halal Tourism Stakeholders in The Globalization Era

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### Abstrak

*Legal protection is the most important thing in the business world on globalisation era, including in the tourism sector. It is even very urgent if the business field is something that is considered less in accordance with the religious provisions adopted by the surrounding community, in this case the Madurese community. An island that has many natural resources to be used as a tourist attraction. The purpose of this study was to determine the concept or model of legal protection for tourism stakeholders in Madura. This research is a field research with a descriptive-qualitative approach located on the island of Madura which consists of 4 districts, Bangkalan, Sampang, Pamekasan and Sumenep. Data collection was done by means of snowball sampling. After the data is collected then it is processed and analyzed by qualitative analysis with inductive logic. The results of this study indicate that the legal protection of stakeholders in Madura refers to village regulations and cooperation agreements between parties in the tourism business, for example between village-owned enterprises and tourism awareness groups (pokdarwis) as tourism object managers, and between tourism object managers and third party.*

**Keywords:** *Legal protection; halal tourism; globalisation*

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### A. Introduction

Indonesia is a country consisting of thousands of islands with a government structure ranging from the center to the regions, and the smallest government area is the village. According to KBBI, a village is a "unitary area inhabited by a number of families who have their own government system (headed by a village head". Meanwhile, according to the law, villages are "legal community units that have territorial boundaries that are authorized to regulate and manage government affairs, local community interests based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia".

In Indonesia there are several villages that are able to optimize the potential that exists in the village area. One of them is Ponggok village located in Polanharjo sub-district, Klaten regency, Central Java Province. Ponggok Village can be an independent village because it has a lot of income from Umbul Ponggok tourism objects. Village income which was previously tens of millions of rupiah became tens of billions of rupiah after being managed professionally, one of which was the Umbul Ponggok tourist attraction. (Zainal, 2019) Even BUMDes Ponggok was once named the best BUMDes nationally because it was able to generate 16 billion rupiah.(Anonim, 2019)

In East Java province there is also a famous or viral village called a billionaire village, namely Sekapuk village, Ujung Pangkah district, Gresik Regency. The income of Sekapuk

village can reach billions of rupiah, and the flagship is Setigi tourism (Selo Trto Giri).(Wijoto, 2020) Setigi Tourism is a former limestone mine that was managed and later used as a tourist attraction.(Ismanto, 2020)

The two villages above are examples of two villages that have successfully managed the potential in their respective villages. The potential in question is in the form of a tourist attraction. Seeing the progress and independence of the two villages above the villages on the island of Madura, it is expected to become the next billionaire village. This is very possible because villages in Madura have promising tourism potential. In addition, the government also issued a program in the form of Dewi Cemara (Smart, Independent and Prosperous Tourism Village), which aims to increase investment and regional economic growth that has an impact on regional and national economies. So to accelerate this goal, the Dewi Cemara program was formed, one of which is Madura. Based on data obtained from the Tourism Village Association (Asidewi) there are 4 tourism villages that are included in the potential category and 2 tourism villages that are included in the advanced category spread across 3 districts, namely Bangkalan, Sampang and Sumenep.(Amalia, 2018) In addition to data from the Tourism Village Association (Asidewi), researchers will also look for data on villages that have managed tourism at the Tourism and Culture office in Madura.

By developing the concept of a tourism village managed by the village, it is hoped that villages in Madura can realize independence and prosperity of the village community. The *multiplier effect* aspect of the existence of a tourist attraction which is then welcomed by the village community by contributing to serving tourists is one of the paths of independence in question. The development of the concept of halal tourism village is expected to make Madurese people excited and motivated, because of the very strong religious culture. The choice to develop the concept of a halal tourism village in addition to Madurese culture that adheres to religious teachings is also because Indonesia is the number one country in the world that is most visited by Muslim tourists from all over the world.

In addition to the development of halal tourism villages, this research will also examine the strengthening of existing institutional laws in the village to support halal tourism villages. Based on previous research from researchers on the urgency of village regulations in developing tourism villages, it was found that the existing village management is still not based on village regulations. It is feared that if there is a conflict related to the object of village management, the village government has no legal force, so that the objectives of professional village management and for the purpose of prospering the village community will be disrupted and difficult to achieve. Based on the explanation above, the author is interested in researching the development of the concept of halal tourism villages and strengthening institutional laws whose estuaries are expected to prosper rural communities, so that the government program of Dewi Cemara (Smart, Independent and Prosperous Tourism Village) can be achieved.

## B. Research Methods

The type of research used is qualitative descriptive. This research includes empirical legal research or also called socio-legal research which focuses on the work of law in society.(Sunggono, 1998) The source of data in this study was obtained from primary data

and secondary data. Primary data is data obtained directly from research subjects, in this case are parties related to halal tourism villages, namely: Village Apparatus, BUMDes Management, Tourism and Culture Office. Secondary data are data obtained in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection is done by *snowball sampling*. After the data is collected, it is then processed and analyzed by qualitative analysis with inductive logic.

## C. Results and Discussion

### 1. Legal Protection

The foundation in formulating the principle of legal protection in Indonesia is Pancasila as the ideology and philosophy of the State. The principle of legal protection rests and derives from the concept of recognition and protection of human rights. Based on its history in the western world, the concepts that were born about the recognition and protection of human rights were directed towards the restriction and placement of obligations of society and government. (Hadjon, 2007) So legal protection is the protection of dignity and recognition of human rights possessed by legal subjects in a country based on legal protection from arbitrariness.

There are 2 (two) kinds of legal protection for the people, namely: .(Hadjon, 2007) (1) preventive legal protection and repressive legal protection. M Hadjon's opinion facilitates the analysis of legal protection. In the concept of legal protection for the people, there are at least two parties, where legal protection is focused on one party, with its actions, vis-à-vis the people who are subject to the actions of the government. All means, including legislation, which facilitate the submission of objections by the people before a government decision has received a definitive form, constitute preventive protection.

The handling of legal protection for the people by the courts is a repressive legal protection. (Hadjon, 2007) Thus, the concept of legal protection is related to government and government acts as its central point. (Hadjon, 2002) In general, the concept of legal protection is inseparable from power. There are two powers that have always been a concern, namely government power and economic power. In relation to government power, the issue of legal protection for the people who are governed against the government (who governs). In relation to economic power, the problem of legal protection is the protection of the weak (economic) against the economic strong, for example the protection of workers against employers. (Hadjon, 1994) Another opinion regarding legal protection expressed by Sjachran Basa (Basah, 1986) which relies on the attitude of state administrative actions according to state administrative law can be in the form of trifunction, the form of trifunction is:

1. Forming laws in a material sense on the one hand and on the other hand making provisions (*beschikking*).
2. Running the government in state life in order to achieve its goals.
3. Performs judicial functions.

According to Harjono, legal protection is defined as protection by using legal means or protection provided by law. Protection is the protection of community rights

which are the result of the transformation of their interests, so that they can be respected, protected and fulfilled. Protection of the community can be fulfilled effectively if judicial remedies *and non-judicial remedies* are provided. This research includes preventive and repressive legal protections. The concept of legal protection for the people is very relevant to be used in reviewing legal protection for tourism *stakeholders*. Regarding legal protection for tourism *stakeholders*, Suliati Rahmat also stated that the Republic of Indonesia is obliged to protect the entire Indonesian nation. (Rahmat, 1989) This phrase of the Indonesian nation also includes *tourism stakeholders*.

## 2. Globalization

Globalization, according to Anthony Giddens, is a process that runs at a rapid pace that no one can control. Giddens analogized globalization like a big truck (*Juggernaut*) that goes without control and nothing can stop the pace of this big truck called globalization. (Giddens, 1999) According to Alvin Tofler, the era of globalization has the following characteristics: First, this era is an era that prioritizes science as a human weapon to overcome the problems of life.

This era will give birth to a *learning society* or *knowledge society*. The superiority of man or a nation will be associated with the superiority of that nation in the field of science. *Second*, in this era, a *borderless world* will emerge. Geographical boundaries became virtual as a result of the advancement of communication and information technology. Whatever happens in one part of the world at about the same time will be known in another part of the world, so there is an easy exchange of information. *Third*, this era will give rise to global competition, there will be an era of competition. To welcome this era of competition, having a superior ability is a must. (Haidar, 2009) One form of globalization can be observed with free trade in various social lines, including in the tourism industry. (Arif, 2016)

## 3. Halal tourism village concept

There are two discussions in this sub-chapter, namely about tourism villages and the concept of halal in tourism villages or tourist villages with sharia or halal principles. First, tourism village, consists of two words that have their own meanings. The village according to KBBI is a "unitary area inhabited by a number of families who have their own government system (headed by a village head)". Meanwhile, according to the village law, they are:

"a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of local communities based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia".

Tourism according to KBBI is "traveling together (to expand knowledge, have fun, and so on); sightseeing". According to the law, tourism is "a travel activity carried out by a person or group of people by visiting a particular place for the purpose of recreation, personal development, or studying the uniqueness of the tourist attraction visited for a temporary period of time." While there are also those who directly define tourism village as "a form of integration between attractions, accommodation, and supporting facilities

presented in a structure of community life that blends with applicable procedures and traditions."

Second, the concept of halal tourism, provisions regarding this matter have been put forward by MUI as an institution that accommodates all ulama' or experts in the field of Islamic religious science in its fatwa, as follows: First, tourism destinations must be directed at efforts to realize benefits and goodness both for private individuals and in general. The positive impact obtained personally is the emergence of enlightenment, refreshment and calming of the soul and mind. In general, it is to maintain the trust which is reflected by maintaining cleanliness, nature preservation, sanitation and the environment; safety and comfort; and the realization of an attitude of respect for moral values and local wisdom. Second, related to infrastructure, in the area of a tourist attraction must have a place of worship that is easily accessible and suitable for use and in accordance with Islamic provisions. Third, related to destination restrictions must be avoided from: polytheism and khurafat behavior; immorality, pornography, adultery, drugs and gambling, liquor, art and cultural performances and attractions that are not in accordance with the provisions of the Islamic religion.

Thus, a halal tourism village is an area that is used as a place by someone to visit as a place of recreation or learn the uniqueness of the place in accordance with the principles allowed by Islam. The implementation of the concept of halal tourism villages that combine socio-cultural and socio-economic based on sharia principles, in (Adinugraha, 2018) Indonesia is the most popular in West Nusa Tenggara Province, precisely in the village of Stanggor. The village can apply sharia principles in its management until finally it can become a *halal* tourism village branding basically because the people of Setanggor village local wisdom are based on Islamic religious values. That is what drives and motivates the village community to use the concept of halal tourism villages, because it has become a culture. (Feriadin, 2021) The same thing is actually found in Madura whose local wisdom is also based on Islamic values. Therefore, researchers feel the need to conduct this study because of this.

#### 4. Strengthening Village Institutional Law

A law can work effectively if there is a good system in place. There is a theory that states that the legal system can work well if the three components in the law are also good. The three components are *legal substance*, *legal structure* and *legal culture*. (Friedman, 2001) Legal substance includes legal material contained in laws and regulations. The legal structure relates to the institution and authority of the law executor. Legal culture is related to the culture or behavior of society. These three elements or components are key or influence the success or failure of law enforcement, or in other words give birth to legal certainty and realize justice.

Related to the study in this study, the discussion is at the stage of *legal substance*, namely a village regulation. Whether the village regulation in question already exists in the tourism village that is used as the object of research or is still in the formation stage. Because without *legal substance*, the other two components will not exist, although culturally every community has its own peculiarities, including Madurese which has its own local wisdom.

According to Law No. 6 of 2014 on Villages, villages are given the freedom to manage their villages. Tourism is one that is exempt from management by law to be managed by the village in order to contribute to the village itself and also the local area, both in terms of economy and other welfare.

The development of the local economy of the village according to article 18 of Law Number 6 of 2014 includes, first, the construction and management of public places in the village, this means also the land that will be used as a tourist attraction. Second, the development of village-based micro-enterprises, one way is by utilizing the village market, utilizing village-based microfinance by forming village cooperatives, determining the leading commodities of village agriculture and fisheries by utilizing the geographical conditions of villages and village agricultural land, and the establishment of BUMDesa management and utilization of natural resources and the village environment.

When viewed from the hierarchy of laws and regulations in Indonesia, the current one is Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. However, please also note that previously there were also several provisions that had been in force related to the formation of laws and regulations, at least four times changed, namely;

**a. Hierarchical arrangement in Ketetapan MPRS Nomor XX/MPRS/1966**

Hierarchical arrangement in Ketetapan MPRS Nomor XX/MPRS/1966 tentang Momorandum DPR-GR mengenai Sumber Tertib Hukum Republik Indonesia dan Tata Urutan Peraturan Perundang-Undangan Republik Indonesia;

- 1) Undang-Undang Dasar 1945;
- 2) Ketetapan Majelis Pemusyawaratan Rakyat.
- 3) Undang-Undang Peraturan Pemerintah Pengganti Undang-Undang
- 4) Peraturan Pemerintah
- 5) Keputusan Presiden dan
- 6) Peraturan-Peraturan Pelaksana Lainnya seperti;
  - a) Peraturan Metri
  - b) Intruksi Menteri

**b. Arrangement of hierarchies in Ketetapan MPR RI Nomor III/MPR/2000**

Arrangement of hierarchies in Ketetapan MPR RI Nomor III/MPR/2000 tentang Sumber Hukum dan Tata Urutan Peraturan Perundang-undangan

- 1) Undang-Undang Dasar 1945
- 2) Ketetapan Majelis Pemusyawaratan Rakyat Republik Indonesia
- 3) Undang-Undang
- 4) Peraturan Pemerintah Pengganti Undang-Undang
- 5) Peraturan Pemerintah
- 6) Keputusan Presiden
- 7) Peraturan Daerah

**c. Hierarchical Arrangement in Undang-Undang Nomor 10 Tahun 2004**

Hierarchical Arrangement in Undang-Undang Nomor 10 Tahun 2004 tentang Pembentukan Peraturan Perundang-Undangan.

- 1) Undang-Undang Dasar 1945

- 2) Undang-Undang/ Peraturan Pemerintah Pengganti Undang-Undang
- 3) Peraturan Pemerintah
- 4) Peraturan Presiden
- 5) Peraturan daerah
  - a) Peraturan daerah Provinsi dibuat oleh DPRD bersama Gubernur
  - b) Peraturan daerah kabupaten/Kota dibuat oleh DPRD Kabupaten/Kota bersama dengan Bupati/Walikota
  - c) Peraturan Desa/Peraturan yang setingkat, dibuat oleh badan perwakilan desa atau nama lainnya bersama dengan kepala desa atau nama lainnya

**d. Hierarchical arrangement in Undang-Undang Nomor 12 Tahun 2011**

Hierarchical arrangement in Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan

- 1) Undang-Undang Dasar 1945
- 2) Ketetapan Majelis Pemusyawaratan Rakyat
- 3) Undang-undang/ Peraturan Pemerintah pengganti Undang-Undang
- 4) Peraturan Pemerintah
- 5) Peraturan Presiden
- 6) Peraturan daerah Provinsi  
Peraturan Daerah kabupaten/Kota.

From the explanation of the hierarchical structure in the law on the formation of laws and regulations above, it can be seen that the existence of village regulations is clearly only stated in Undang-undang Nomor 10 Tahun 2004. But even so, it does not mean that the current regulations do not exist. In Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan It is stated that the Village Regulation is referred to in Article 97.

## D. Conclusion

The following are conclusions based on research that has been done:

1. A halal tourism village is an area that is used as a place by someone to visit as a place of recreation or learn the uniqueness of the place in accordance with the principles allowed by Islam. The implementation of the concept of halal tourism village that combines socio-cultural and socio-economic based on sharia principles is basically because of local wisdom based on Islamic religious values. The same thing is actually found in Madura whose local wisdom is also based on Islamic values.
2. Village regulations on BUMDes and tourism have been made by each village that manages tourism. This is one form of legal protection of tourism stakeholders, in this case it is who manages tourist attractions. In addition, based on the results of the study, there is cooperation in the form of an MoU between village-owned enterprises and tourism managers. The MoU is not only between BUMDes and tourism object managers but also between tourism managers and third parties, for example between Lon Malang beach tourism managers and the Madura Tourism Association (ASPRIM).
3. The role of BUMDes in tourism management is very large. For example, the development of Lon Malang Beach in Sampang, Kedatim Mangrove Tourism in Sumenep, Salt Tourism Edu in Pamekasan and Telaga Biru Beach in Bangkalan shows that the management of BUMDes is quite good. The efforts made by BUMDes in

addition to receiving direction and guidance from DPMD also conducted comparative studies to developed tourist attractions, one of which was to the Malang area.



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