



## The Law Accountability of Tourists Who Violate “Tri Hita Karana” Principle in Balinese Cultural Tourism Maintenance

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### ABSTRACT

The disharmony between Laws and the Regulations of Balinese cultural tourism’s regulation and policy is still exist, specifically in terms of tourism management’s purpose and authority. The clarity of the purpose and the scope in the setting of Balinese cultural tourism Laws and Regulations need to be conducted comprehensively and structured, so the substantial dynamic that included and stated in the law will not be partial. According to the analysis of regulation content of laws and regulation for the application of *Tri Hita Karana* (THK) in Balinese culture tourism’s operation, there are numerous disharmonisation that happened between Undang-undang Nomor 10 Tahun 2009 about tourism, as the Laws and Regulations that organizes the tourism, and sectoral Laws and Regulations that organizes limited tourism (whether forest, marine, and culture tourism). Although the disharmonisation already harmonized through *Undang-undang Cipta Kerja* (Laws of Work Creation), the comprehensive and structured clarity of purpose is still achieved yet, so the substantial dynamic that included and stated in the law will not be partial.

## INTRODUCTION

Tourism is an integral part of national development that conducted systematically, planned, integrated, continual, and responsible by still insisting protection to the religion values, local cultures, sustainability and quality of environment, and national importance. Hence, tourism development is required to enhance the equalization of opportunity to try, obtain significance, and be able to face the changes of local, national, and global life. The tourism development still emphasizes on tourist business that serves things or service to tourist and tourism maintenance. The increase of foreigner tourists in Indonesia has become significant phenomenon in these past years. Indonesia consistently attracts tourists' interest through its numerous natural wealth, various cultures, and hospitable locals (Somantri, 2011).

The active tourism promotion by Indonesian government has improved world's recognition on Indonesia tourism potential. The promotion campaign that combines natural beauty, diverse cultures, and locals' hospitality already succeeded pull foreigner tourists' attention. One of the tourist destinations in Indonesia that offered to tourists is Bali. Bali is one of the world destinations that famous for its unique and interesting cultures. The art values that generated by the culture of Balinese are extremely high. On the other hand, there are influences of tourism and globalization that affect culture production. The culture then experiences transformation that decreasing the sacred values into propane art. Balinese society's perspectives will indirectly be influenced by the globalization upon their cultures.

By the enactment of *Undang-Undang Republik Indonesia Nomor 15 Tahun 2023* about Bali Province, currently Bali has a law umbrella in organizing government Bali's development to implement the vision "*Nangun Sat Kerthi Loka Bali*". Bali Province becomes more solid in strengthening work and traditional enhancement, tradition, art, *subak*, local wisdom. Balinese cultures, as the part of the Indonesia culture, is the main foundation of Balinese tourism development, which can drive tourism potential in local, national, and global life dynamic. Balinese tourism development is aimed to encourage the equalization of opportunity to try and gain maximal significance for locals' prosperity, so that the goal of tourism for Bali will be achieved.

The rise of tourist visiting rate gives effect on tour service demand that provided by locals around the destination (A.J, 2012). In 2023, there are plenty tourists' behaviors from various countries that disobeying the rules and sacred values of temples in Bali. Some tourists think that tourist destination or attraction is a public place that can be freely enjoyed by everyone. The lack of tourists understanding in interpreting the democracy leads them to behave ruthlessly (Arief, 2010).

In order to overcome tourists' behavior that disobeying the rules, the Indonesian government also takes a step to enhance the development of tourism infrastructure. The adequate infrastructure is expected to intensify the quality of tourism and attract more responsible tourists. However, government still need to be improved because there are several tourists that do not obey the rules. Therefore, tourists' realization upon the importance of obeying the rules and

maintain the environment is necessary to be improved through more intensified socialization and education.

The Law of Bali Provincial Government to embody Balinese tourism that based on culture, quality, dignity, is manifested through: Bali Governor Letter Number 04 of 2023 about New Orders for International Tourists while in Bali or *Surat Edaran Gubernur Bali Nomor 04 Tahun 2023 about Tatanan baru bagi Wisatawan Mancanegara Selama Berada di Bali* (SE 04/2023), where contains rules and prohibitions for tourists while they are in Bali. SE 04/2023 was published as a respon of many violations that caused by tourists in recent times. SE 04/2023 includes obligations and prohibitions for foreigner tourists that stay temporarily in Bali. In this Governor Letter, foreigner tourists in Bali are required to respect Balinese manners, exchange foreign currency at the organizer of foreign exchange business activities or *Kegiatan Usaha Penukaran Valuta Asing* (KUPVA), dan drive transportation according to applied Laws and Regulations. On the contrary, the prohibitions are foreigner tourists are prohibited for entering temples without urgency, swearing or cursing, doing impolite behaviors, making fusses, and acting that detrimental for state, locals, and fellow tourists. If there is foreigner tourist who againsts SE 04/2023 law, will be dealt firmly with penalty or legally processed using applied Laws and Regulations.

## **THEORETICAL REVIEW**

### ***Theory of Law Accountability***

According to Hans Kelsen, law accountability theory states: "A person is legally responsible or obliged for a particular act. The subject is that he or she who is responsible for penalty if conflicting actions occurred." (Kelsen, sebagaimana diterjemahkan oleh Somardi, General Theory of Law and State, Teori Umum Hukum dan Negara, Dasar-dasar Ilmu Hukum Normatif sebagai Ilmu Hukum Deskriptif Empirik, 2007). Hans Kelsen then give further explanation:

“The failure to do the circumspection that required by law is called as negligence), and the mistake usually done with consideration of harmful consequence, whether it is dangerous or not, it will not as serious as mistake that intentionally done.”

Responsibility frequently called as liability, in law dictionary, the term liability refers to law responsibility, namely responsibility for errors committed by a legal entity, besides, responsibility refers to political responsibility (Ridwan, 2006). Because responsibility theory emphasizes about the definition of the responsibility, so that responsibility theory is interpreted from responsibility side (Azheri, 2011), and as a concept that refers to law obligation from them who responsible legally. For certain actions that can be subject to penalty in individual cases, if their actions violate the law.

In nation and government operation, responsible is interrelated with a particular position which is connected to authority as well. From public law perspective, this authority leads to the accountability, according to general principles. *“geenbegdedheid zonder tanggung jawab lijkheid.* There is no authority

without responsibility. *la sulthota bila mas-uliyat*" (There is no authority without responsibility).

The role of theory in writing this research is give explanation about observed symptoms. Therefore, the current study is focused of applied positive law, which is about responsibility that comes from the provisions of Laws and Regulations with the law obligations of a person that responsible legally for his law-contradictive actions.

### ***Theory of Law Certainty***

According to Gustav Radburch, one of the law purposes is "justice," beside "expediency" and "law certainty." The law must be clear, firm, does not raise overlapping interpretation, does not cause contradictive, and can be conducted conveniently, so that can guarantee society's law certainty. Moreover, the law cannot be the source of skepticism. Undang-undang Nomor 10 Tahun 2009 or Laws and Regulations Number 10 of 2003 about tourism also needs to be explicit, firm, give deterrent effects on the violator, does not cause contradictive, and can give guarantee about society's law certainty.

### **METHODOLOGY**

The word research is rooted from the word "*re*" (back) dan to "*search*" (look for), which will become reserach if combined. Consequently, reserach method is an activity that contains specific procedure, the form of steps that arranged in order and systematically with direction (Ibrahim, 2006).

The law reserach is differeciatiated into 2 (two) types, namely empirical/sosiological law reserach or *Non Doktrinal*, which is a quantitative research (in the form of number) and normative law research or *Doctrinal*, which is a qualitative research (not in the form of number) (J, 2003). The method of empirical/sociological research or *non doktrinal* is a scientific research procedure to discover material's truth based on the field observation upon constitution or society problems (Johny, 2006).

In this current research, the researchcer applied empirical/sosiological law reserach or *Non Doktrinal* method, as a quantitaive research, which is an approach upon a problem by examining the problem that happens in reality and then will be connected with the Laws and Regulations and existed law theories. Sociological/empirical law reserach is a research method that conducted to gather primer data and discover the truth by implementing inductive thinking method and correspondent truth criteria, and fact that used to establish induction process and truth examination correspondently is a sophisticated fact.

The working of juridical-sociological method in this study, namely from the results of data collection and data discover and information through library about assumptions used in answering the problem of this research. Then, inductive-verificative examination is conducted on the sophisticated fact that

exist in the society. Hence, the validity of a research kebenaran can be declared reliable without going through rationalization process.

This research comes from the gap between *Das Solen* and *Das Sein*, specifically the gap between Laws and Regulations and the reality or law fact that occurred in field and the situation of ignorance that examined to fulfill academic satisfaction (Soekanto, 2008).

In this research, researcher uses empirical/sociological law reserach or *Non Doktrinal* method, which is a quantitative research. In law research with empirical aspect, law is concepted as an empirical phenomenon that can be observed in real life. This research analyses the effectivity of *Tri Hita Karana* (THK) concept in Balinese cultural tourism's operation.

This research utilizes sociological/empirical law research or *non doctrinal* method. It designs as a quantitative research, which is an approach on a problem by analyzing the problem that occurred in real life and then linked with the Laws and Regulations and law theories. Sociological/empirical law research is a research method to collect primer data and discover the truth by applying inductive thinking method and correspondent truth criteria, and fact that utilized to form induction process and truth examination correspondently is a sophisticated fact. The ways this juridical-sociological method work is based on the results of discovered and collected data and the information that obtained from library upon the assumption that used to answer research problem. Next, inductive-verification examination toward the sophisticated fact in society. Therefore, the validity of a research can be stated as reliable without going through rationalization process. (Soekanto, *Penelitian Hukum Normatif suatu Tinjauan Singkat*, 2003).

This study rises from the gap between *das solen* and *das sein*, particularly the gap between Laws and Regulations with the reality or with law fact. The gap then specified in the implementation of Undang-Undang Republik Indonesia Nomor 10 Tahun 2009 or Laws and Regulations Number 10 of 2003 about tourism, which already refined through Undang-Undang Nomor 6 Tahun 2023 or Laws and Regulations Number 6 of 2023 about the establishment of *Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022* about *Cipta Kerja* or work creation into Laws and Regulations with the fact that happened real life.

This study occupies Statute Approach, Case Approach, Legal Historical Approach, Comparative Approach, Conceptual Approach, and Sociological Approach (Marzuki, 2009). Besides, the data are analyzed using descriptive, interpretation, and argumentation method. The recent study is focused on the absence of law norms in *Undang-Undang Nomor 6 Tahun 2023* of Laws and Regulations Number 6 of 2023 about the establishment of *Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022* about *Cipta Kerja* or work creation

into Laws and Regulations related to criminal law accountability for tourists who violate the *Tri Hita Karana* principles in organizing Balinese cultural tourism.

## RESULTS

*Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* or Laws and Regulations Number 10 of 2009 about tourism does not regulate the law accountability for tourists firmly, but the obligation, prohibition, and penalty already stated explicitly in:

1. *Pasal 25 Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* or Article 25 in Laws and Regulations Number 10 of 2009 about tourism, declare:  
Every tourist is required to:
  - a. Maintain and respect religious norms, customs, cultures, and values that live in locals.
  - b. Maintain and preserve the environment
  - c. Participate in maintaining the environmental discipline and security.
  - d. Participate in preventing immoral and disobeying law behaviors.
2. *Pasal 62 Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* or Article 62 in Laws and Regulations Number 10 of 2009 about tourism, declare:
  - (1) Every tourist who does not comply the rules as mentioned in Article 25 will be given penalty in the form of verbal warning accompanied by an announcement about things that must be fulfilled.
  - (2) If a tourist has been given a warning as mentioned in paragraph (1) and ignored, the concerned tourist might be expelled from the location where the act was conducted.
3. *Pasal 64 Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* or Article 64 in Laws and Regulations Number 10 of 2009 about tourism, declare:
  - (1) Every person who intentionally and unlawfully damages tourism attractions as mentioned in Article 27 will be punished with a maximum imprisonment of 7 (seven) years a maximum fine of Rp10.000.000.000,00 (ten billion rupiah).
  - (2) Every person who through negligence and unlawfully, damages physically, or decrease the attractive values of tourist attraction as referred in Article 27 will be punished with a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp5.000.000.000,00 (five billion rupiah).

The provision of criminal penalty in Article 64 in Laws and Regulations Number 10 of 2009 about tourism was later removed with the enactment of *Undang-undang Republik Indonesia Nomor 6 Tahun 2023* about the establishment of *Peraturan Pemerintah Pengganti Undang-undang Republik Indonesia Nomor 2 Tahun 2022* about *Cipta Kerja* or work creation into Law or *Undang-undang*. By removing the provisions in the Article of Laws and Regulations Number 10 of 2009 or *Pasal 64 Undang-undang Nomor 10 Tahun 2009* about tourism, so that the less law certainty for the tourists that do violation. The decision of erasing this article is quite unfortunate because the protection on tourist attraction getting weaker, especially numerous nature wealth, culture, and man-made creation. The absence of coercive power with the firmer penalty results in tourist that

disobeying the Tourism Laws and Regulations or *UU Kepariwisataaan*. The penalty for the violator only given an administrative penalty.

## DISCUSSION

### *The Accountability of Tourism Law upon The Violation of Tri Hita Karana Principles*

According to *Kamus Besar Bahasa Indonesia* (KBBI), accountability is an obligation to bear everything and can be sued, blamed, or litigated if something happens. On the other hand, in law dictionary, accountability is defined as a necessity of someone to do something that already obligated on him/her (Hamzah, 2005). In law dictionary, there are two terms that describe accountability, namely Liability and Responsibility. Liability is a wide law term that designates almost any character of risk or liability, which certain is contingent and probable, including all characters of actual or potential rights and obligations, such as lost, threat, crime, cost or condition that create a task to implement Laws or *undang-undang*. On the contrary, responsibility means thing that can be accountable upon an obligation, and including judgment, skill, ability, and proficiency as well as an obligation of responsible on the applied Laws. In definition and practical utilization, the term liability refers to law accountability, specifically due to mistake that done by a legal subject, then the term responsibility refers to political accountability (H.R, 2006).

According to law, accountability is the consequence or effect of someone's freedom of behaviour, that related to ethics or norms in doing something (Notoatmojo, 2010). According to Civil Law, the base of accountability is divided into two (2) types, namely mistake and risk. Therefore, it is known as liability without based on fault and liability without fault or known as strict liability (Febrian, 2010).

Hans Kelsen, in his theory about law accountability, asserts that: "a person is legally responsible for a particular act; that he or she is responsible upon a penalty for contradictive actions (Kelsen, 2007).

The law accountability is categorized into 3 (three) fields of accountability, namely (Komariah, 2001):

1. Civil Law Accountability

Civil law accountability exists because the law subject does not perform achievement and/or do law-contradictive actions, and can be asked for responsibility (*Pasal 1346 KUHPerdara*). The law accountability in civil law is a someone's responsibility for his or her law-contradictive actions. Law-contradictive actions have wider scope than criminal actions. Law-contradictive actions do not only include acts that are contradictive to criminal law, but of the act is contrary to other laws, even unwritten law provision. Laws and regulations' provision of law-contradictive actions is purposed to protect and compensate the injured party.

2. Criminal Law Accountability

Criminal Law accountability is intended to determine whether the suspect is responsible for criminal acts that occur or not. The responsibility form

that imposed on the perpetrator of criminal act is criminal penalty (*Pasal 10 KUHP* or Article 10 Criminal Code).

3. Administrative Accountability

The form of responsibility that imposed to the subject that done administrative mistake.

The theory of accountability emphasizes more in the meaning of the responsibility that born from the provision of *Peraturan Perundang-Undangan* or Laws and Regulations, so that the theory of accountability is usually defined in liability meaning (Azheri, Corporate Social Responsibility dari Voluntary menjadi Mandotary, 2011), as a concept that interrelated with someone's law obligations that is responsible legally upon a particular act that he or she can be given a penalty for the law-contradictive actions that conducted.

According to Abdulkadir Muhammad's tort liability theory, it is divided into several theories, namely (Muhammad, 2010):

- a. Intertional tort liability, the defendant must have acted in such a way that harm the plaintiff or discover that the defendant's action will lead to harm.
- b. Negligence tort liability, based on the concept of fault that related to moral and laws that already intermingled.
- c. Strict liability), based on the occurred action that done intentionally and unintentionally.

According to Chairul Huda, the basis of criminal act is legality principle, whereas the culpability of the defendant is on the basis of mistake, it means that someone will have criminal accountability when he or she did law-contradictive actions. Essentially, criminal accountability is a created mechanism to react upon violation on dealt things (Huda, 2006).

If you traced from various news in the mass media, cases of violations committed by foreign tourists (wisman) or foreign society (WNA), indeed often occurred in Bali. In 2023, there were several cases of foreigners in Bali that were widely highlighted by the public. Recently, there was a case of five tourists from Russia climbed Mount Agung on March 18<sup>th</sup>, 2023. At the top of Mount Agung, one of those five people opened his pants and posted the indecent photo on social media. Moreover, in March 2023 as well, there was a case of a foreigner who drove motorcycled involved in an argument with *pecalang*. It happened on March 19<sup>th</sup>, 2023 Balinese Hindus performed the *Melasti* ritual at Labuan Sait, South Kuta. (hht).

In the same period in May, tourist from Denmark with the initial CAP (50) shamelessly showed off his genitals on his motorcycle in Seminyak, Kuta District, Badung Regency, Bali. After being investigated by the authorities, the defendant was claimed to have depression. The most recent news is Polda Bali is still investigating citizens' complaints about the criminal hypnotism that done by tourist in Bali. In July 2023, Polda Bali noted that at least, there are four hypnotism incidents that happened in several places in that island of Gods. However, the data showed above do not represented all of the criminal cases that done by foreigner tourists in Bali in this year. There could be still number of unexposed cases, or even not reported by the locals.

Besides, the violations done by foreign tourists also violate the ethics and cultures in Bali. For example, there are many foreign tourists that impolite when entering the temple area, even though there a factor of ignorance, but the violations are majority considered as intentional actions. The proof is the foreign tourists posted their committed violations on their social media by their own desires.

One of the worried things by using the holy place (temple) as tourism attractions is desacralization and profanation of the holy place. Desacralization means the decrease of holy place's sacred values because the physical condition of tourists that entered the temple or holy place cannot be confirmed, whether they are in clean or dirty condition (menstruate). For menstruate tourists, they are prohibited to enter the hole place. It is because there is no prohibition for tourists entering the sacred place so far. Tourists only required to use clothes, that have been provided by the caretaker of the place, when they buy entering ticket or donation, without any prohibition. Furthermore, profanation is defined as a something that sacred become profane (secular). The determination of making temple as a tourist attraction have led the temple becomes tourist destination, beside place for praying. It causes the temple not only used as a place for praying, but also has public (profane) function. It is said so because tourists are allowed to enter holy place area which should be prohibited, it supposed to be in purpose of praying to see its uniqueness. Temple (holy place) that recently already modified as tourist attractions are Tirta Empul Temple, Uluwatu Temple, Taman Ayun Temple, and other temples that definitely have uniqueness.

Beside the degradation of holy place or temple's sacred values, the improvement of Balinese tourism can affect the rapid development in Bali. For example, in the accommodation sector, star hotels and villas are built then result in the conversion of rice fields. Recently, there are numerous villas that built at the expense of productive land owned by rice filed tenants or the rice field owners themselves. It affects to the decrease of job opportunity for rice field cultivators. For tappers, they will lose their job. Even though tourism can give a lot of job opportunities, those who are used to work as farmers will feel lost the job they have worked for many years.

Balinese tourism that based on culture and values of Sad Kerthi, has contributed to improve regional development and introduce Bali's Tourism Attractions. The Provincial Government has the authority to coordinate the implementation of tourism in its territory, so the arrangements are needed to give direction, foundation and law certainty in Bali Tourism Operation. Balinese tourism has become a source of livelihood for the Balinese people and become a foundation for the society's economy. Because of this condition, tourism management must be oriented to give the benefit for nation's elements' welfare (Parwata, 2012).

Bali Province Government (next referred as Pemprov Bali) at the regional level already made Regional Regulation Number 2 of 2012 about Balinese Culture Tourism or *Peraturan Daerah Nomor 2 tahun 2012*, which already changed into Bali Province Regional Regulation Number 5 of 2020 about Standards for The Balinese Culture Tourism Operation or *Peraturan Daerah Provinsi Bali Nomor 5 Tahun 2020 T* (next referred as *PERDA Kepariwisataaan Budaya Bali*), which becomes the juridical

basis for Bali's tourism development. The amendment of this regulation is based on the reason that the implementation of Balinese cultural tourism needs to be comprehensively organized in accordance with the vision of regional development, *Nangun Sat Kerthi Loka Bali*, through the Universal Development Planning Pattern towards Bali New Era, therefore it is necessary for the Bali Provincial Government to establish a Regional Standards for The Balinese Culture Tourism Operation.

The arrangement of Standards for The Balinese Culture Tourism Operation is aimed to preserve environment and Balinese cultures that spirited by *Tri Hita Karana* philosophy and based on *Sad Kerthi* local wisdom values, and improve the quality of Balinese tourism operation. Regarding to the principles and objectives of Balinese tourism operation in Article 2 dan 3 *PERDA Kepariwisataaan Budaya Bali*, which also leads to the preservation of Balinese culture, improving the welfare of the society, preserving nature, the environment and resources, is in accordance with the policies of the Tourism Law or *Undang-undang Kepariwisataaan* (Trisnadiasa, 2016).

In relation with the increasing number of foreign tourists who worried the society, on May 31<sup>st</sup>, 2023, the Governor of Bali, Wayan Koster, issued Bali Governor Circular Letter Number 4 of 2023 or *Surat Edaran (SE) Gubernur Bali* about the New Order for Foreign Tourists. This letter becomes the umbrella policy of the Bali Province Government in ordering local and foreign tourists. Foreign tourists are strongly urged to obey the applied laws in Indonesia and respect Balinese cultural customs. If foreign tourists violate the provisions in SE, they will be given penalty or go through a law process that associated with Laws and Regulations in Indonesia.

Based on the result of research analysis, it can be seen that there is a gap between *das solen* and *das sein*, namely the gap between theory and reality, the gap between theoretical conditions and law facts, namely the gap between the implementation of the *Tri Hita Karana* (THK) principle in Balinese cultural tourism operation.

According to the researcher's analysis, associated with the Theory of Law Certainty by Gustav Radbruch, it is asserted that one of the objectives of law "justice," beside "benefit" and "law certainty". The law must be clear, firm, do not cause overlapping interpretations, do not cause contradictions, and easy to be implemented, so it can ensure law certainty for the society. The law must not rise doubt upon the society. Laws and Regulations Number 10 of 2009 or *Undang-undang Nomor 10 Tahun 2009* about tourism must be clear, firm, and able to provide a deterrent effect for violators, do not cause contradictions, and can be implemented, to guarantee society's law certainty.

The implementation arrangements and penalty in upholding the principles of *Tri Hita Karana* in the implementation of Balinese cultural tourism must be able to provide protection, justice, expediency and law certainty for the society. Laws and Regulations Number 10 of 2009 or *Undang-undang Nomor 10 Tahun 2009* about tourism, which regulates violations and criminal actions in tourism sector, must be clear, firm, do not cause different interpretations, and easy to implement, so it can represent the law's ideals, namely justice, expediency, and law certainty.

Generally, various regulations and policies about Balinese cultural tourism still have disharmony between laws and regulations, both purposes and authority in tourism management. The clarity of purpose and scope in regulating the Balinese cultural tourism, needs to be conducted comprehensively and structured so that substance dynamics that contained in the Law will not be partial. Based on the analysis of the laws and regulations content about the implementation of the *Tri Hita Karana* (THK) Principle in the Balinese cultural tourism operation, there are still many disharmonies between Laws and Regulations Number 10 of 2009 or *Undang-undang Nomor 10 Tahun 2009* about tourism, as the law who arrange tourism, with Sectoral Laws that also regulate limited tourism (including forest, marine, and cultural tourism)

Even though the disharmonies have been harmonized through *Undang-undang Republik Indonesia Nomor 6 Tahun 2023* about the establishment of *Peraturan Pemerintah Pengganti Undang-undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Cipta Kerja* become Law, but it still does not have aims certainty that are comprehensive and structured, so that substance dynamics contained still partial. It is worsen by the deletion of several articles in laws and Regulations Number 10 of 2009 or *Undang-undang Nomor 10 Tahun 2009* about tourism, especially articles that regulate about criminal penalty in Article 64 in Laws and Regulations Number 10 of 2009 or *Pasal 64 Undang-undang Nomor 10 Tahun 2009* about tourism, it then makes the law certainty lower. However, the deletion of this article is quite unfortunate because the protection towards tourist attractions, such as diverse nature wealth, cultures and man-made creation become weaker.

*Tri Hita Karana* principles that consist of *Parahyangan* (harmonious relationship between human and God), *Pawongan* (harmonious relationship between fellow human), *Palemahan* (harmonious relationship between human and environment) are already certainly contained in Bali Province Regional Regulations or *Peraturan Daerah (Perda) Provinsi Bali Nomor 5 Tahun 2020* about Standards for The Balinese Culture Tourism Operation, which can be seen in several articles in *Peraturan Daerah (Perda) Provinsi Bali Nomor 5 Tahun 2020* about Standards for The Balinese Culture Tourism Operation. The implementation of tourism as arranged in Article 24 in Bali Province Regional Regulations or *Peraturan Daerah (Perda) Provinsi Bali Nomor 5 Tahun 2020* about Standards for The Balinese Culture Tourism Operation also emphasizes on the thought of *Tri Hita Karana*, which consist *palemahan* principles, such as protect the environment and Balinese culture continuously. However, the implementation still has not conducted effectively.

According to researcher's analysis, if it is related linked to law effectivity theory by Soerjono Soekanto, the implementation of *Tri Hita Karana* (THK) principles in the implementation of Balinese culture tourism can be measured through 5 (five) factors, namely:

1. The law factor, which is Laws and Regulations Number 10 of 2009 or *Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* about tourism.

According to researcher, numerous violations of *Tri Hita Karana* (THK) principles in the implementation of Balinese Culture Tourism Operation that done by foreign tourists are caused by several factors, such as from the substantial factor

of Laws and Regulations Number 10 of 2009 or *Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* about tourism that weak and less firm in coordinating the penalty. Violations in Laws and Regulations Number 10 of 2009 or *Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* about tourism are not regulated firmly. The penalty for the tourists who violate the rules only in the form of administrative penalty.

The substance of Laws and Regulations Number 10 of 2009 or *Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* about tourism that are weak and/or less firm in accommodating the penalty for the violators of *Tri Hita Karana (THK)* principles in Balinese culture tourism operation influence the effectivity Tourism Laws. The absence of coercive power that arrange firmer penalty makes this law disobeyed. It is because violators only get administrative penalty.

The formulation of administrative penalty substance for tourists who violate Article 25 in Laws and Regulations Number 10 of 2009 about tourism or *Pasal 25 Undang-undang Nomor 10 Tahun 2009 Tentang Kepariwisataaan*, already proved that weak, disassertive substances are caused by the injustice and uncertainty of law by not classifying the kind of violations that will get administrative penalty. Additionally, in the explanation only written "quite clear", and does not explain specifically which violations that can be penalized. It leads to the confusion for tourists and law enforcer.

The deletion of the provision of criminal penalty in Article 64 of Law and Regulations Number 10 Year 2009 about tourism or *Pasal 64 Undang-undang Nomor 10 Tahun 2009*, results in the lack of legal certainty. The deletion of this article is quite unfortunate because the protection of tourist attractions such as the diversity of natural wealth, cultures, and man-made creation become poorer.

2. Law Enforcer Factor, which is Denpasar City Government (*Badan Pelayanan Perijinan Terpadu, Dinas Pariwisata Provinsi Bali*, and other related instances).

The implementation of *Tri Hita Karana (THK)* principles in Balinese culture tourism operation in Laws and Regulations Number 10 of 2009 or *Undang-undang Nomor 10 Tahun 2009* about tourism can run effectively if there is consistency from penalty enforcement toward the violators as mentioned in Laws and Regulations Number 10 of 2009 or *Undang-undang Nomor 10 Tahun 2009* about tourism. The lack of control and cooperation by the government, related instances, and society cause the violations develop more. It also cannot be separated from the content of *Laws and Regulations Number 10 of 2009* or *Undang-undang Nomor 10 Tahun 2009* about tourism that does not arrange assertive penalty because the penalty in it only administrative penalty.

3. Facilities that Support Law Enforcer Factor

The ineffective implementation of *Tri Hita Karana (THK)* principles in balinese culture tourism operation in Laws and Regulations Number 10 of 2009 or *Undang-undang Nomor 10 Tahun 2009* about tourism is caused by access efficiency, facilities and infrastructures, and other supporter in giving information to tourism entrepreneurs, tourists and society that less adequate.

4. Society Factor, which is tourism entrepreneurs, tourists, and society:

The enforcement of violations of Article 5 in Laws and Regulations Number 10 of 2009 or *Pasal 5 Undang-undang Republik Indonesia Nomor 10 Tahun 2009* about tourism, namely:

- a. Upholding religious norms and culture values as an embodiment of Hindu concept in balancing relationship between human and God, between fellow human, and between human and the environment.
- b. Upholding human right, cultural diversity, and local wisdom.
- c. Providing significance for society's welfare, justice equality, and proportionality.
- d. Preserving nature and environment.
- e. Empowering locals.
- f. Ensuring the integration between sectors, between regions, and between the regions and the center which are a systemic unity within the framework of regional autonomy, and the integration between stakeholders.
- g. Obeying the tourism code of ethics and international agreements in tourism field.
- h. Strengthening the unity of Negara Kesatuan Republik Indonesia.

The enforcement will be implemented if there is obedience in every individual in Denpasar City (tourism entrepreneurs, tourists, and society), including obedience and compliance in accepting rules, including the rules about obligation to obey and respect law and uphold the cultures of local in the tourism area.

#### 5. Cultural Factor

The implementation of *Tri Hita Karana (THK)* principles in Balinese culture tourism operation as stated in Article 5 in Laws and Regulations Number 10 of 2009 about tourism or *Pasal 5 Undang-undang Republik Indonesia Nomor 10 Tahun 2009*, can be conducted effectively if the prestige, thought, point of view, and culture that develop in society are in line with the purpose of Laws and Regulations Number 10 of 2009 about tourism or *Undang-undang Republik Indonesia Nomor 10 Tahun 2009*.

### CONCLUSIONS AND RECOMMENDATION

Laws and Regulations Number 10 of 2009 or *Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* about tourism does not arrange firmly about the law accountability for tourists but explicitly already arrange about the obligation, prohibition, and penalty in Article 25. Article 62 and Article 64 (the criminal provision in Article 64 already removed by Laws and Regulations Number 6 of 2003 or *Undang-undang Republik Indonesia Nomor 6 Tahun 2003* about the establishment of *Peraturan Pemerintah Pengganti Undang-undang Republik Indonesia Nomor 2 Tahun 2022* about *Cipta Kerja* or work creation into Laws ).

In order to anticipate the absence in the regulation of criminal responsibility for tourists in Laws and Regulations Number 10 of 2009 or *Undang-Undang Republik Indonesia Nomor 10 Tahun 2009* about tourism, Bali Governor, Wayan Koster, issued circular letter or *Surat Edaran (SE) Gubernur Bali Nomor 4 Tahun 2023* about new order for foreign tourists. This letter becomes an umbrella for Bali province Government in ordering locals and foreign tourists. Foreign

tourists are firmly urged to obey applied laws in Indonesia and respect balinese culture. If foreign tourists break the rules that stated in that letter, they will get penalty or will go through law process according to Laws and Regulations in Indonesia. Foreign tourists that behave inappropriately, behave not in accordance with their visa permits while in Bali, and violate other rules, will be strictly dealt according to Laws and Regulations. They will be deported, get administrative penalty and criminal penalty. Bussiness that facilitated violations will also be given strict penalty, including business closure.

### **FURTHER STUDY**

Society's role is needed to help monitoring and preventing holy place's harassment that used as tourist attraction, so the similar cases will not happen in the future. In addition, regional governor is necessary to create regulation about sacred commercial in Bali, including criminal provisions for violators.

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