

Cooperation Contract for Tourism Destination Managers with Equitable Micro, Small, and Medium Enterprises

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Abstract. Tourism is one of the sources of income that, until now, has become a prima donna. Tourism as a form of the industry has given good advice to the central government, local governments, village governments, the private sector, and the community. In its development, tourist destinations are divided into two forms natural and artificial. Both forms of tourist destinations are located in tourist villages. Tourism development is currently directed at realising tourist villages. Tourist destinations are also equipped with a tourism industry that in it strives to provide all forms of needs needed by tourists, both services and goods. The tourism industry players consist of tourist destination managers and MSME players who sell goods or services. The relationship between tourist destination managers and MSME actors is framed in an agreement made orally based on the principles of trust and needs. This situation tends to cause injustice to MSME actors, who are generally small people. Therefore, solving the problem through a legal breakthrough in regulating business contracts for managing tourist destinations is necessary. The agreement between tourist destination managers and MSME actors is the rule of the game between both parties, which governs rights and obligations. The manufacturing process needs protection from the local government by making regulation yang a reference in managing tourist destinations. Thus, MSME players who are small people are allowed to participate in finding income from the tourism industry in their area by not burdening them.

Keywords: Contract, Tourism, MSMEs, "Justice

1 Introduction

Indonesia is known as an archipelagic state and a maritime state. [1] Indonesia, as an archipelagic country, has much potential for the natural beauty that can be utilised as a tourism industry. As an industry, tourism has become an idol where it contributes income to the central government, local government, village government, and the community. This was confirmed by Haryadi Sukmandani, Chairman of the Indonesian Hotel and Restaurant Association, who stated, "Indonesia's tourism sector is up-and-coming. This sector is Indonesia's core business. Tourism is the largest, and easy and fast contributor to GDP, foreign exchange and employment". Data on the tourism sector's contribution to the GRDP in East Java in 2020 is 129,743 trillion rupiahs or contributes 5.64% of the total GRDP of East Java of 2,299 trillion rupiahs".[2] This shows that the shortcut to poverty alleviation in the regions is through the development of the tourism sector, such as creating new tourist destinations at the district/city and village levels. Examples of tourist destinations currently shortcut to handling community poverty are rejo beach and Bangsring Underwater Banyuwangi, managed by fishing groups and, until now, can prosper the surrounding community. [3]

Many tourist destinations have been initiated by establishing tourist villages in various regions in East Java, especially on the island of Madura. Tourism villages, initiatives of the village government, are always accompanied by creating a new tourist attraction. The tourist village that has become a tourist destination is a magnet for tourists to take a vacation. Tourist destinations are also equipped with a tourism industry that in it strives to provide all forms of needs needed by tourists, both services and goods. Stakeholders who are part of a tourist destination are referred to as tourist destination managers, including MSME actors and tourism object managers. Generally, the management of tourist destinations in Madura is still carried out conventionally, where agreements/contracts are made orally based on the principles of trust and needs. This is expected to be transformed into a business contract that can benefit many parties: tourism object managers, MSME actors in tourism objects, workers in tourism objects, village governments, and local governmentsMethod.

Local Government in the field of tourism is based on Article 12 paragraph (3) letter b of Law No. 23 of 2014 concerning Regional Government. Specifically, the authority of the Regency Government is regulated in Article 30 of Law No. 10 of 2009 concerning Tourism, which from now on is referred to as the Tourism Law.

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Local Governments, with their authority, can regulate, direct, control, and simultaneously protect the community and natural and artificial resources. Tourism development is sought to be developed with an approach to growth and economic equality for the people's welfare. Action-oriented towards regional development relies on the community and empowers the community, which includes various aspects, including cooperation in management efforts. Local governments must position tourism within the framework of tourism development by being balanced with good tourism planning and management and efforts to increase the competence of quality human resources.

The mandate of Article 30 of the Tourism Law encourages local governments to play an active role in promoting the community to participate in managing tourist destinations to prosper the community. Therefore, local governments must also protect people who want to seek fortune in tourist destinations from the business contract system that harms the community. This is in line with Indonesia's character as a welfare state. The consequence is that the Indonesian government is obligated to make its people prosperous. [4].

Therefore, it is essential to review business contracts in managing tourist destinations. It is hoped that these tourist destinations can become sustainable tourism that can harmonise the environment, economy, society, and welfare of natural and cultural resources.

Based on the background of the problems above, the issues in this study are as follows:

1. What regulations are the legal basis for cooperation contracts for tourist destination managers with micro, small, and medium enterprises in the tourism industry?
2. What is the benchmark for fairness in the cooperation contract between tourist destination managers and micro, small, and medium enterprises in the tourism industry?
3. What is the role of local governments in protecting micro, small, and medium enterprises in cooperation agreements in the tourism industry?

2 Research Method

To answer the problems in this article, normative juridical research methods will be used that will examine the cooperation contracts of tourist destination managers with micro, small, and medium enterprises in the tourism industry that provide benefits and a sense of justice for both parties. The study in this article uses a statutory approach by answering regulatory problems that are the legal basis for making cooperation contracts for tourist destination managers with micro, small, and medium enterprises in the tourism industry. In addition, a conceptual approach is used to answer the problem of justice criteria in cooperation contracts for tourist destination managers with micro, small, and medium enterprises in the tourism industry.

3 Result and Discussion

1. Regulations That Are the Legal Basis for Making Cooperation Contracts for Tourist Destination Managers with Micro, Small, And Medium Enterprises in The Tourism Industry

The regulations that are the basis for making cooperation contracts for tourist destination managers with micro, small, and medium enterprises in the tourism industry are as follows:

- A. Burgerlijk Wetboek/Civil Code;
- B. Law Number 10 of 2009 concerning Tourism.

The two regulations are the parent in making cooperation contracts between tourist destination managers and business actors, micro, small, and medium enterprises, which are the general public seeking fortune from the tourism industry. People who provide goods and services that tourists need are indeed located not far from the tourist attraction.

In the Civil Code, the principle of freedom of contract, commonly known as the principle of *pacta sunt servanda*, applies as stated in Article 1338 of the Civil Code. The principle of *pacta sunt servanda* provides the foundation that everyone can make covenants. Such freedom includes the form and content of the agreement. Each of these persons is also limited by Article 1320 of the Civil Code, which requires that the subject of law who can perform the deal is a legal subject who is categorised as capable. This proficiency is seen from the age when the legal issue is an individual (*naturlijke persoon*) or the authority when the legal subject is a legal entity (*rechtspersoon*).

The freedom for everyone to make agreements with others in the context of tourism is also regulated in Article 19 of law number 10 of 2009 concerning Tourism, where it is affirmed and guarantees the right for everyone to obtain a quarter of the needs of the community, to do tourism business, become a tourism worker/labourer, or play a role in the tourism development process. Article 19 paragraph (2) of the Tourism Law confirms that "everyone and the community in and around tourism destinations get priority to become a worker, consignment of goods, and management". Article 19 of the Tourism Law shows that regulations in the context of cooperation between tourist destination managers and micro, small and medium enterprises prioritise parties residing in locations around tourist destinations and guarantee the right of everyone to participate in the tourism industry as workers or business actors.

In addition, the models of cooperation agreements that often occur in the tourism industry between tourist destination managers and business actors, micro, small, and medium, such as lease agreements, can be profit-sharing agreements. In general, arrangements regarding rights and obligations have been clearly and in detail in the seventh chapter of Book III of the Civil Code. Article 1548 of the Civil Code defines a lease agreement as "an agreement by which one party binds himself to give something to the other party for use within a certain time and with the payment of a price that has been agreed

upon". This rental can be for all movable and immovable goods, with a time limit or indefinitely. [5]

Lease agreements in the tourism industry are usually carried out in the context of micro, small, and medium enterprises renting land to the manager of a tourist destination. This location will be used to sell goods or offer services to tourists. Lease agreements in the tourism industry also provide for the rules of the game in the lease process as well as the rights and obligations of the parties. The general laws regarding the rights and obligations of the parties to a lease agreement in the tourism industry are in Articles 1550 – 1566 of the Civil Code, where the commitment to rent is the tenant's right and vice versa.

In addition to the lease agreement, there is also a profit-sharing agreement in the tourism industry where tourist destination managers agree with business actors and micro, small, and medium enterprises to share the profits from the sales process or service to tourists. The proportion of the profit sharing is handed over to each party by their respective agreements. This freedom is likely to cause injustice for micro, small, and medium enterprises because of their compulsion to accept offers from tourist destination managers due to the urgent need to make a living so that there is no other way. The Civil Code and the Tourism Law do not regulate the proportionality of equitable profit sharing in cooperation agreements between tourist destination managers and micro, small, and medium enterprises.

Arrangements regarding cooperation in the development and management of tourist attractions are in Sukabumi, where the promulgation of Sukabumi Regent Regulation Number 11 of 2021 concerning Cooperation in the Development and Management of Tourist Attractions, from now on referred to as Perbup Sukabumi 11/2021. Perbup Sukabumi 11/2021 regulates cooperation in the development and management of local government-owned goods, village-owned assets, and development and management with third parties (*vide* Article 5 of the Sukabumi Perbup 11/2021). In the provisions of the Sukabumi 11/2021 slavery, it is also regulated regarding the formula for calculating the number of fixed contributions and profit sharing when utilising regional/village-owned assets for tourism industry activities.

Perbup Sukabumi 11/2021 shows that the local or village government regulates the share of profits/proceeds received when private parties or other local governments use assets owned by the earth. When the tourist destination is privately owned, the regulation cannot intervene in the proportion and regulation of the rights and obligations of the parties. Thus, if the cooperation agreement between tourist destination managers and micro, small, and medium enterprises do not use purely privately owned assets, then the government cannot intervene in disbursing results/profits and maintaining the balance of rights and obligations of the parties. On the contrary, if you use assets owned by the region, the government, through regulation, is obliged to regulate the rules of the game in the use of assets owned by the area, which include procedures for cooperation and the number of fixed contributions, or profit sharing.

2. Criteria For Fairness in Cooperation Contracts Between Tourist Destination Managers and Micro, Small, And Medium Enterprises in The Tourism Industry

In essence, in doing agreements is inseparable from the problem of justice. Cicero once said, "Ubi societas ibis us" where there is a society, there must be a law. The law serves as the protection of human interests; it is through the enforcement of this law that it becomes a reality. In this case, justice is one of the goals of the law. The purpose of the law is not only the element of justice but also legal certainty and expediency. [6] Justice or Fairness reflects the relationship between people's rights and obligations in society and plays a vital role in economic stability, equality, and constructing a just and harmonious society. [7]

According to Antony T. Kronman, justice in the treaty correlates with the principle of freedom of contract, where the parties can determine the rights and obligations of both parties and the determination of the agreement's content. [8] This is affirmed in his opinion as follows:

"The freedom individuals enjoy in this regard includes the power to make contracts, legally binding agreements that provide for the exchange of property on terms fixed by the parties. Among contract scholars, there is nearly universal agreement that the law of contracts tangled the mass of legal functions: first, to specify which agreements are legally binding and which are not, and second, to define the rights and duties created by the contract."

Agus Yudha Hernoko argues that "justice does not necessarily mean that everyone should always get something in the same amount without regard to the differences that are objectively present in every person's review".[9] Agus Yudha Hernoko determined that several criteria show that a contract meets aspects of fairness and proportionality, which include:

- a. The contract provides recognition of the right for both parties to determine equal rights, opportunities, and opportunities to assess the concessions of the rules of the game, the rights and obligations of the parties;
- b. The existence of freedom of contract of the parties in determining the substance of the just and unjust;
- c. The contract guarantees the proportional exercise of rights and obligations;
- d. Dispute resolution arising from the contract is carried out somewhat in terms of proof and strives to find the best solution (win-win solution).[9]

Determining fairness in the contract is difficult compared to identifying injustices in the agreement. It can be called injustice in the contract when one of the parties feels aggrieved and is not given the freedom to formulate ideal rights and obligations. Thus, the cooperation contract between the manager of the tourist destination with micro, small, and medium enterprises is fair when providing happiness for both parties and gives the parties the freedom to determine the substance of the contract by their will. Injustice is apparent when

one of the parties feels aggrieved and depressed in carrying out the agreement.

3. The Role of Local Governments In The Protection Of Micro, Small, And Medium Enterprises In Cooperation Agreements In The Tourism Industry

Local governments that carry out decentralised authority in tourism have been regulated in the tourism law. In the Tourism Law, it is held in Article 3 that the function of tourism is to "meet the physical, spiritual, intellectual needs of every tourist with recreation and travel and increase state income to realise the welfare of the people". The Tourism Law also regulates the rights and obligations of everyone, tourists, and tourism business actors.

Based on Article 23 of the Tourism Law shows the role of local governments in the tourism industry in the form of government and local government obligations, which include:

- a. Obligated to provide tourism information, legal protection and security, and safety of tourists;
- b. Creating a climate conducive to the development of tourism businesses which includes opening up equal opportunities in trying to facilitate and provide legal certainty;
- c. Maintain, develop, and preserve national assets that are tourist attractions and potential investments that have not been explored, and;
- d. Supervise and control tourism activities to prevent and overcome negative impacts on the broader community.

Of the four obligations of the government and local governments in the field of tourism, it shows that there is a role for the government and local governments to provide legal protection for all citizens without exception to seek income from the tourism industry sector. This guarantees equality in law to have equal opportunities in the tourism industry. In addition, the government and local governments must maintain a conducive situation in the running of the tourism industry by ensuring that the parties involved equitably get their rights.

Thus, the mandate of Article 23 of the Tourism Law shows the participation of the government and local governments to ensure the sustainability of the tourism industry equitably by providing guarantees of equal opportunities for everyone to be part of the tourism industry and guaranteeing the rights of the parties to deliver justice.

4 Conclusion

The agreement of cooperation between tourist destination managers and micro, small and medium enterprises does not use purely privately owned assets, so the government cannot intervene in disbursing proceeds/profits and maintaining the balance of rights and obligations of the parties. On the contrary, if you use assets owned by the region, the government, through regulation, is obliged to regulate the rules of the game in the use of assets owned by the area, which include procedures for cooperation and the number of fixed

contributions, or profit sharing. The cooperation contract between the manager of the tourist destination with micro, small, and medium enterprises is fair when providing happiness for both parties. It gives the parties the freedom to determine the substance of the contract by their will. Injustice is apparent when one of the parties feels aggrieved and depressed in carrying out the agreement.

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