



Arrangements of Space Utilization Control in Tourism Areas Based on Justice and Local Wisdom in Realizing Community Welfare

I Gusti Ngurah Muliarta*, I Nyoman Putu Budiarta, I Gusti Bagus Suryawan

Doctor of Law Study Program, Postgraduate Program Warmadewa University, Denpasar, Indonesia

Email: muliarta.gading@gmail.com

Abstract – This study delves into the regulation of space utilization control in tourism areas, exploring its nature, legal aspects, and models based on Law No. 6/2023. The main legal queries addressed are the nature of these regulations, their alignment with Ratio Legis, and proposing a model for justice-based control in tourism space. Employing a normative legal research methodology, this study adopts statutory, conceptual, legal historical, philosophical, and comparative legal approaches. Primary, secondary, and non-legal materials are used for analysis. The research concludes that controlling space utilization in tourism areas involves fairness and local wisdom, emphasizing alignment with societal values while addressing governmental, business, and community needs. Ratio Legis under Law No. 6/2023 simplifies licensing to foster employment opportunities and community economic growth, overriding zoning regulations. The proposed control model emphasizes; regulating activities based on space suitability, providing incentives and disincentives, aligning with local wisdom values, and imposing sanctions for compliance. This research contributes insights for just and locally rooted control mechanisms, ensuring community welfare while harnessing the potential of tourism spaces in harmony with societal values and legal regulations.

Keyword: Space Utilization Control, Law No. 6/2023, Tourism Regulation.

I. INTRODUCTION

The acknowledgment of local wisdom, a cherished value within the Indonesian nation, constitutes an integral aspect of the nation's governance, as recognized by Article 18 B paragraph (2) of the 1945 Constitution. This article asserts, "The state acknowledges and respects the customary law community units and their traditional rights as long as they endure," aligning with the principles of the Unitary State of the Republic of Indonesia and societal progression, as outlined in the law. This recognition is further underscored by the provisions of Article 28 I paragraph (3) of the 1945 Constitution, which affirms that "Cultural identity and the rights of traditional communities are honored in tandem with evolving societal norms and civilization."

This constitutional recognition distinctly underscores the role of customary law communities in overseeing and utilizing natural resources. Additionally, the acknowledgment and reverence for local wisdom values find explicit mention in various legislations and statutes, including the Law on Environmental Protection and Management (referred to as *UUPPLH*). Notably, Article 2, encompassing letters H and I of the *UUPPLH*, elucidate that environmental protection and management operate on the principles of "ecoregion" and "local wisdom."

The term "ecoregion" denotes that environmental safeguarding and management must consider the inherent attributes of natural resources, ecosystems, geographical conditions, and the cultural fabric of local communities (Ristian, 2019). Conversely, "local wisdom" emphasizes the imperative of preserving and managing the environment while adhering to the noble values ingrained within the community's societal framework (Sidauruk dkk., 2015).

In the tourism sector, recognition and respect for local wisdom can be seen in the provisions of Article 5 of Law Number 10 of 2009 concerning Tourism which states;

- a. Uphold religious norms and cultural values as the embodiment of the concept of life in a balanced relationship between humans and God Almighty, the relationship between humans and fellow humans, and the relationship between humans and the environment.
- b. Uphold human rights, cultural diversity, and local wisdom.
- c. Provide benefits for people's welfare, justice, equality and proportionality.
- d. Maintain nature and environmental sustainability.
- e. Local communities empowering.
- f. Guarantee integration between sectors, between regions, between the center and regions which form one systemic unit within the framework of regional autonomy, as well as integration between stakeholders.
- g. Comply with the World Tourism Code of Ethics and international agreements in the tourism sector, and
- h. Strengthen the unity of the Unitary State of the Republic of Indonesia.

Article 5 of Law Number 10 of 2009 delineates that tourism is to be conducted guided by principles that uphold human rights, cultural diversity, and local wisdom, aiming to foster benefits for people's welfare, justice, equality, and proportionality.

Therefore, when contemplating the regulation of space utilization, it is imperative to conscientiously consider and not overlook the esteemed values embedded in the life of the local community. Similarly, within the tourism sector, the fundamental principles of tourism in Indonesia are implemented by consistently honoring the rights of individual communities and the cultural diversity rooted in local wisdom. This endeavor aims to ensure that local communities partake in and benefit from the economic advancements facilitated by tourism.

The rapid surge in tourism development within Indonesia presents a quandary for humanity, necessitating a delicate balance between the utilization of natural resources and conservation efforts for the broader public interest. The trajectory of economic development has altered natural resources, modifying their structure and consumption patterns, particularly within the tourism sector. Undeniably, the functionality of the tourism industry heavily relies on the availability of natural resources (Pitana & Diarta, 2020).

Wilkinson explicates the intricate relationship between natural resources and tourism resources as multifaceted and comprehensive. Tourism comprises not merely a singular good or service but rather a collection of goods and services encompassing natural and human elements, social and cultural aspects, economic and spiritual dimensions, actuality and imagination, systemic and contextual intricacies (Bima, 2019). Consequently, it can be construed that the development of tourism is intricately interlinked with natural resources and human resources, substantiated by the cultural milieu of the local community.

The swift advancement of tourism has fostered job creation and investment, concurrently prompting substantial population migration to tourism-centric regions. While tourism development has led to multifarious enhancements across various facets of life, it has also given rise to a spectrum of developmental issues (Elistia, 2020). These challenges directly implicate the carrying capacity of spaces, manifesting in amplified land demand for settlements and tourism activities, rapid conversion of agricultural land, diminished regional vegetation cover, heightened traffic congestion causing jams, augmented critical land areas, diminished service quality of regional amenities and infrastructure, social predicaments concerning population and employment opportunities, and the erosion of cultural values serving as identifiers of community identity.

The development of agriculture in Bali, particularly food crop cultivation, is intricately linked to the existence of Subak, which has long served as a socio-agrarian religious customary law community embodying local wisdom (Andrini et al., 2023). While the enactment of Law Number 6 of 2023 aims to simplify requirements and expand investment opportunities, the regulation's oversight of space utilization activities pales in comparison to the Law on Spatial Planning (referred to as *UUPR*). The oversight offered merely provides an initial

indication of an activity's alignment with spatial designations, lacking substantial field inspections. Consequently, this oversight mechanism bears the potential to instigate social conflicts within communities. The central government's limited understanding of local community characteristics may compel investment continuation, potentially leading to conflicts. Moreover, insufficient supervision augments the risk of environmental damage a vulnerability exposed after the passing of Government Regulation in Lieu of Law (referred to as *Perpu*) Number 2 of 2022 concerning Job Creation.

The centralization of policymaking within Law Number 6 of 2023, particularly in Spatial Planning and Utilization, diminishes the involvement of regional governments and communities in shaping policies for their respective regions. This diminished involvement has sparked negative assumptions among society regarding the regulation of spatial planning and utilization within Law Number 6 of 2023. Consequently, there's a decline in public trust in the central government as a policymaker, undermining the effectiveness of this newly implemented law.

Examining *UUPR* and Law Number 6 of 2023 from a management perspective, *UUPR* is inherently decentralized, while Law Number 6 of 2023 is centralized. From a policy perspective, *UUPR* prioritizes communal interests, emphasizing the need to preserve and protect land, sea, and subterranean environments while maintaining their functional quality. Conversely, Law Number 6 of 2023 prioritizes convenience for business entities. In terms of orientation, *UUPR* prioritizes environmental sustainability, while Law Number 6 of 2023 favors and prioritizes entrepreneurs.

Therefore, a harmonized approach is essential in implementing spatial planning, especially concerning regulations governing space utilization, to ensure orderly spatial planning that balances environmental preservation with societal welfare. Ontologically, spatial planning law, at a philosophical level, revolves around managing space from planning through utilization and control. Etymologically, the concept of sustainable development underpins the preservation of environmental functions and space. Axiologically, achieving sustainable development necessitates legal certainty within spatial planning frameworks.

Drawing from the aforementioned contextual backdrop, the study will address three pivotal inquiries;

1. What constitutes the core essence of overseeing space utilization control within tourism zones founded on principles of justice and local wisdom?
2. What legal framework underpins the regulation of space utilization control in tourism areas according to Law Number 6 of 2023, which incorporates Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation?
3. What model can be formulated to effectively manage space utilization within tourism zones, aligning with principles of justice and local wisdom to foster community welfare realization?

II. METHOD

The present study adopts a normative legal research methodology, a scientific investigative approach aimed at ascertaining truths within legal science through its normative perspective (Ibrahim, 2005). Law, in this context, is perceived as a positive norm that pertains to a specific era and is crafted as a manifestation of distinct political authority endowed with legitimacy.

Multiple approaches are employed in this legal inquiry, encompassing the statutory, conceptual, legal historical, philosophical, and comparative legal approaches. These methodologies serve as lenses through which legal aspects are comprehensively analyzed and interpreted. The compilation of legal materials for normative research includes primary legal materials, secondary legal materials, and non-legal materials. Once relevant legal materials are gathered, an exhaustive inventory, identification, and classification process ensues, aiming to isolate laws pertinent to the focal research inquiry (Arifin, 2012).

Subsequently, a meticulous analysis is conducted employing analytical descriptive techniques, employing a qualitative approach to decipher and abstract existing laws and

regulations. This analytical process aims to extract and delineate legal norms embedded within each law and regulation pertinent to the subject matter under scrutiny. The objective is to discern and elucidate the legal principles and regulations germane to the researched problem.

III. RESULT AND DISCUSSION

The framework for controlling space utilization will be subjected to analysis through Gustav Radbruch's Legal Purpose Theory, which posits that laws instituted by the state ideally encompass three fundamental principles; justice (*gerechtigheit*), utility (*zweckmaessigkeit*), and certainty (*sicherheit*). Gustav Radbruch, asserting law as the custodian of justice, underscores its pivotal role in gauging the fairness or unfairness inherent within a legal system. The value of justice serves as both the foundation and measure of law itself. Thus, justice embodies normative and constitutive attributes within the realm of law. It forms the fundamental basis underpinning any dignified positive legal framework (Mangesti & Tanya, 2014). Gustav Radbruch's stance emphasizes law as the embodiment of justice, highlighting justice's normative and constitutive essence within legal constructs.

1. The Nature of Arrangements of Space Utilization Control in Tourism Areas Based on Justice and Local Wisdom

The implementation of spatial planning must essentially be in line with the objectives of spatial planning. In the provisions of Article 3 of the *UUPR*, it is determined that the implementation of spatial planning aims to create a national territory that is safe, comfortable, productive, and sustainable based on Archipelago Insight and National Resilience by;

- a. The realization of harmony between the natural environment and the artificial environment.
- b. Realizing integration in the use of natural resources and artificial resources by paying attention to human resources.
- c. Realizing the protection of space functions, and preventing negative impacts on the environment due to space use.

The authority vested in the provincial government, as outlined in *UUPR* Article 10 paragraph (1) letter A, encompasses regulating, guiding, and supervising the implementation of provincial and district/city spatial planning, along with the execution of provincial and district/city strategic area spatial planning.

Similarly, the authority of district/city regional governments, as stipulated in *UUPR* Article 11 paragraph (1) letter A, includes the regulation, guidance, and supervision of spatial planning within district/city areas and strategic zones. Additionally, Article 11 paragraph (2) specifies that district/city regional governments possess the jurisdiction to conduct district spatial planning, comprising district spatial planning, spatial use within districts, and control over district spatial utilization. The procedural framework for preparing district spatial planning encompasses several aspects; the process itself, involvement of district-level community roles in planning, and stakeholder discussions regarding the draft district spatial plan.

The overarching objective of spatial planning is to attain optimal utilization of space (Jazuli, 2017). This entails three interconnected activities; spatial planning, space utilization, and space utilization control, spanning National Regional Spatial Planning, Provincial Spatial Planning, Regency Regional Spatial Planning, and City Regional Spatial Planning.

Article 35 of the *UUPR* dictates that space utilization control is executed through the establishment of zoning regulations, permits, provision of incentives and disincentives, as well as the imposition of sanctions. This indicates that controlling space utilization aims to actualize structured spatial planning in alignment with the predetermined spatial functions. The primary goal is to mitigate discrepancies in space utilization, ensuring adherence to spatial functions specified within the spatial planning scheme. The principal objective of regulating space utilization control is to foster harmony between space utilization and spatial planning, manifesting in zoning determinations, permit issuance, provision of incentives and disincentives, and the enforcement of sanctions.

Consequently, it can be inferred that the essence of overseeing space utilization within tourism areas revolves around fairness and adhering to local wisdom. This approach encapsulates the opportunities and necessities of governmental bodies, business entities, and the community in utilizing space, while considering evolving societal values..

2. Legis Ratio Arrangemnts of Space Utilization Control in Tourism Areas Based on Law Number 6 Of 2023

In spatial planning, four integral components are identifiable; regulation, guidance, implementation, and supervision. The execution of spatial planning primarily centers on space utilization and overseeing space utilization control, while concurrently addressing planning facets.

According to Article 7 paragraph (2) of the *UUPR*, the state delegates the authority to manage spatial planning to both the central government and regional governments. However, subsequent to the enactment of Law No. 6 of 2023, a significant shift in the legal landscape of spatial planning implementation has emerged. This shift is evident in the alteration of the authority to orchestrate spatial planning, conferring sole responsibility to the central government in accordance with Article 9 paragraph (1), which stipulates that spatial planning implementation is vested in the central government.

The shift in legal politics can also be seen from the form of controlling space utilization, which initially had 4 (four) in accordance with Article 35 of the *UUPR*, namely; zoning regulations, providing incentives and disincentives, and the imposition of sanctions, then after the enactment of Law no. 6 years 2023 has changed into 3 (three) forms, namely; control of space utilization is carried out through;

- a. Provisions for suitability of space utilization activities.
- b. Providing incentives and disincentives, and
- c. Imposition of sanctions.

The enactment of Law Number 6 of 2023 heralded a significant shift in legal policy, wherein zoning and licensing regulations were set aside, no longer constituting part of the mechanism governing space utilization. To decipher the legislative rationale behind the Job Creation Law, now passed as Law Number 6 of 2023, insight can be gleaned from its preamble. The legal rationale, construed as the "rational reason" for enacting statutory regulations, can be elucidated through explicit and implicit facets within the law. Law Number 6 of 2023's legislative rationale is obliged to encompass three fundamental aspects; sociological, philosophical, and juridical, as underscored by Maria Farida Indrati S. The fulfillment of these aspects within a law is intrinsically linked to its validity and enforceability, suggesting that a law lacking in these aspects may be deemed illegitimate (Butt & Lindsey, 2018).

The sociological, philosophical, and juridical dimensions typically find expression within the "considering" clauses, elucidating Law Number 6 of 2023's legal rationale and nature. Furthermore, delving into the implied aspects within the legal rationale of Law Number 6 of 2023 necessitates an examination of the socio-political upheavals and phenomena that accompanied its enactment. As per Satjipto Rahardjo, legal products, notably legislation, evolve in response to societal realities rather than materializing in a vacuum (Rahardjo, 2009).

Understanding Law Number 6 of 2023's legal rationale involves scrutinizing its sociological, philosophical, and juridical aspects within the "considering" clauses alongside the socio-political context surrounding its creation. The "considering" clauses in Law Number 6 of 2023 reveal its philosophical underpinning, aimed at establishing a just and prosperous society, fostering general welfare, and creating a conducive economic environment to enhance employment opportunities and uplift the economy. From a sociological perspective, Law Number 6 of 2023 responds to various phenomena, including escalating energy and food prices, climate change, and global crises leading to economic instability.

Additionally, the overlapping regulatory landscape governing business licensing poses potential hindrances to economic and business climate improvement. Juridically, the presence

of Law Number 6 of 2023 is underscored in the "considering" clauses as a response to Constitutional Court decisions. Evaluating the philosophical, sociological, and juridical grounds for Law Number 6 of 2023 reveals similarities in the rationale underlying the Job Creation Law, negating the notion of a "compelling urgency" as the primary impetus for its enactment.

Article 1 number 1 of the Job Creation Law highlights its objective as an endeavor to generate employment by facilitating, safeguarding, and empowering cooperatives, micro, small, and medium enterprises, augmenting the investment ecosystem and business infrastructure, accelerating national strategic projects, and fostering a conducive business environment.

Post the enactment of Law Number 6 of 2023, space utilization adheres to the established Spatial Planning Plan (*RTR*). The Government Regulation Number 21 of 2021 outlines the implementation of Spatial Planning and its derivatives, emphasizing the control of space utilization to encourage compliance with *RTR*, utilization in accordance with *RTR*, and adherence to the stipulated requirements in Space Utilization Activities Suitability (*KKPR*).

Article 147 of Government Regulation Number 21 of 2021 states;

- (1) Control of space utilization is carried out to encourage the realization of Spatial Planning in accordance with the *RTR*.
- (2) Space Utilization Control as intended in paragraph (1) is implemented to encourage everyone to;
 - a. Comply with the established *RTR*.
 - b. Utilize space in accordance with the *RTR*, and
 - c. Comply with the provisions stipulated in the requirements for the Suitability of Space Utilization Activities.

The regulations stipulated in Article 148 of Government Regulation No. 21 of 2021 regarding the Implementation of Spatial Planning delineate the process of controlling space utilization, encompassing various aspects. These include the evaluation of space utilization activity suitability, scrutiny of the implementation of Regional Spatial Planning (*RTR*), the establishment of incentives and disincentives, along with the imposition of sanctions, and the resolution of disputes pertaining to spatial planning.

Then, regarding the Assessment of the Implementation of Suitability of Space Utilization Activities, it is regulated in Article 149 PP No. 21 of 2021;

- (1) Assessment of the implementation of the Suitability of Space Utilization Activities is carried out to ensure; a. compliance with the implementation of provisions on Suitability of Space Utilization Activities; and b. fulfillment of procedures for obtaining Conformity for Space Utilization Activities.
- (2) Evaluation of independent statements made by MSE actors is carried out to ensure the truth of the independent statements made by MSE actors.

The evaluation outcomes regarding the enforcement of regulations outlined in the Suitability of Space Utilization Activities document, conducted both during the construction phase and subsequent to development, are presented in both textual and spatial formats.

As described in Article 149 of Government Regulation Number 21 of 2021, the assessment of space utilization activities' appropriateness serves to ensure adherence to *KKPR* provisions and the prescribed procedures for obtaining *KKPR*. Micro and Small Enterprises (MSEs) are mandated to provide an independent statement confirming the accuracy of their declaration. In cases where discrepancies arise, MSEs will receive guidance. The assessment process involves two distinct phases; first, during construction, aimed at verifying compliance with *KKPR* provisions within a maximum of two years post-*KKPR* publication. Any identified discrepancies necessitate adjustments to space utilization. The second phase, post-development, is undertaken to ascertain compliance of developmental outcomes with *KKPR* specifications; sanctions are imposed for identified deviations.

Consequently, it can be deduced that the ratio legis governing space utilization control, as mandated by Law Number 6 of 2023, supersedes zoning and licensing regulations in

tourism areas. Its essence lies in simplifying licensing procedures to foster job creation and bolster community economic growth.

3. Arrangements Model of Controlling Space Utilization in Tourism Areas Based on Justice and Local Wisdom in Realizing Community Welfare

The most fitting approach for regulating space utilization within tourism areas, based on principles of justice and local wisdom, involves community empowerment. Empowering communities in space utilization aligns with a developmental paradigm that prioritizes holistic human and environmental aspects (Sidiq & Resnawaty, 2017). Upholding community land rights is foundational in fostering prosperity within the economic sector.

In this context, the utilization of community-owned land within tourism areas is guided by principles aimed at enhancing people's welfare, justice, equality, and proportionality. It's crucial for the regulation of space utilization within tourism development to earnestly analyze space functionality, its attributes, carrying capacity, as well as its adaptability and tolerance towards environmental impacts. Utilizing space in tourism must also respect traditional spatial concepts inherent to the region, accounting for religious, cultural, social, and communal aspects alongside human rights considerations. Prioritizing environmental preservation acknowledges the values held by civil society. Policy strategies concerning the environment can be both preventive and punitive, involving all stakeholders in the tourism industry. Preventative measures include establishing environmental standards that emphasize environmental protection or conservation. On the other hand, punitive measures might entail administrative actions such as warnings, coercion, or permit revocations by the government. For severe legal violations, criminal sanctions serve as a deterrent.

Hence, a model for controlling space utilization within tourism areas, based on principles of justice and local wisdom to ensure community welfare, can be proposed. This model entails; regulations on the suitability of space utilization activities, offering incentives and disincentives, adhering to local wisdom values, and enforcing sanctions..

IV. CONCLUSION

Drawing upon the preceding description, several conclusive remarks arise in response to the earlier highlighted issues; the regulation concerning the control of space utilization within tourism areas embodies fairness and aligns with local wisdom principles. It facilitates opportunities and caters to the requirements of governmental bodies, business entities, and communities. This approach accounts for the evolving societal values in space utilization. The Ratio legis regulation governing space utilization control supersedes zoning and licensing regulations within tourism areas as defined in Law Number 6 of 2023. It simplifies licensing procedures, aiming to stimulate job creation and enhance economic growth within communities. A proposed model for controlling space utilization within tourism areas, grounded in justice and local wisdom to foster community welfare, involves implementing space utilization control through provisions emphasizing suitability of space utilization activities, implementing incentives and disincentives, adherence to local wisdom values, and the imposition of sanctions.

Reflecting on the aforementioned conclusions, several recommendations can be proposed; in the formulation of laws, both the President and the House of Representatives of Indonesia should consider revising Article 9 paragraph (1) of Law No. 6 of 2023. This revision entails conferring authority to regional governments in spatial planning alongside the central government, thus ensuring joint spatial planning responsibilities. In the process of formulating laws, the President and the Indonesian House of Representatives should adopt a comprehensive approach, not limited to economic or investment aspects. Consideration should extend to social, cultural, and ecological facets to encompass a more holistic legislative approach. Moreover, it is advisable that the President and the Indonesian House of Representatives consider revising Article 35 of Law No. 6 of 2023. This revision aims to incorporate a space utilization control model based on local wisdom values. The amended

article would encompass provisions addressing suitability of space utilization activities, incentives and disincentives, adherence to local wisdom values, and the imposition of sanctions in its entirety.

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