



Regulation Of Location Permits For Tourism Investment

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Abstract

The authority of regulating the permits of location for tourism investment is entitled to the government as a public official to control in accordance with the applicable procedures. The aims is to discover the legal norms that are the authority in providing the location permits for tourism investment. The method used was conducted by applying normative juridical law and exploiting related legal theories as an analysis device for the object being studied. The result is conflicts occur between Article 1 number 8 and Article 1 number 7 of the Regulations of the Ministry of Agrarian and Spatial / the Regulations of the Head of the Agency of National Land of Indonesian Republic, in the item 14 of 2018 pertaining to Location Permits, as well as its hierarchically preceding laws, which are Tourism Law dan Investment Law. The licensing is issued by vertical public officials to oversee the investors in the tourism sector who carry out their business activities to realize prosperity for all levels of society, according to the mandate of the preamble of the 1945 Constitution of the Republic of Indonesia. Any decisive action from the provincial, district and / or municipal governments in consonance with the applicable provisions is definitely necessary to draft regional regulations which exclusively governing the Norms, Standards, Procedures, and Provisions concerning supervision, guidance and issuance of permits for tourism investment locations, so that there is a legal umbrella for the law enforcement officers in issuing the Location Permits for Tourism Investment.

Keywords: Regulations on location permits; tourism investment

INTRODUCTION

Land as a gift from God Almighty has a very important function, including as a media for issuing permits for development location to form a just and prosperous Indonesian society. In this regard, in the implementation of national development, national policies in the sector of land are prescribed, that are as contained in the Constitution of 1945 of the Republic of Indonesia, that is in the Article 33, paragraph (3) (abbreviated as Republic of Indonesia Constitution of 1945, which stipulate "The earth, water and natural resources contained in it are controlled by the state and utilized for the greatest prosperity of the people".

In the Republic of Indonesia, the life order of the people, including their economy, still adopts the character of agrarian and is currently being developed to support the development of industrialization, and thus the land holds a principal role and function. Land as a natural resource offers a considerably prominent significance for human life. The needs of land in various sectors of human activities such as agriculture, settlements, public facilities and others has led it to become an increasingly demanded object (Purba, 2006). In addition, land, which is an inseparable entity from human life, reinforces the fact that the demand for it needs continues to expand in line with the increase in population and development activities (Purba, 2006).

Indonesia is a country that is rich in Natural Resources, which are the gift of God Almighty. One of the natural resources of the Indonesian, which is currently urgently needed in quantity by the community in an effort to meet the development requirements, is the in-

dustrial business in the form of investment in tourism on land. The present researcher describes the research background in order to feature the existence of conflicts in the norms in Article 1 point 8 with Article 1 number 7, especially in the sector of location licensing, as well as with its hierarchically preceding Law, that is, the Tourism Law and Investment Law, which was noticed after the present researcher took a look at both the articles of law in question.

(Hajarudin, 2015) in his research at Pontianak found licensing procedures in investment in the tourism sector in Pontianak using Mayor Regulation number 62 of 2005 concerning Procedures and Procedures for Business/Investment Licensing in Pontianak City as a guide for prospective investors/entrepreneurs investing their capital in Pontianak. However, in the mayor's regulation above there are articles that are still unclear. The unclear licensing process has an impact on the failure of large investors who want to enter the city of Pontianak. Therefore, the Pontianak regional government must improve the mayor's regulations on business licensing procedures and procedures for investment in Pontianak by clarifying the implementation of the investment licensing process in the tourism sector. Thus, the Pontianak city government is able to develop a legal system that provides appropriate treatment of tourism business activities, is able to build business traditions in accordance with the prevailing norms in Pontianak and is able to build a conducive environment, ethics and business activities in the Pontianak city environment. In another research, (Rosita, 2016) state that the authority of the Regency Regional 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. The Regional Government with its authority can regulate, direct, control and at the same time protect the community as well as natural and artificial resources. While, (Julianti & Subekti, 2018) found that the legal aspects that protect foreign investment in the tourism services business are carried out by two standards, namely; First, absolute protection consisting of Fair and Equitable Treatment (FET) and Full Protection and Security, Second, relative protection consisting of National Treatment, Most Favored Nation and Dispute Settlement which is the same as the principles of international service trade regulated in the GATS

Based on background and some previous research, This research is analyze the permits of location for tourism investments regulated and the authorities in issuing the location permits for tourism investments and the form of authority to issue the location permits for tourism investment.

METHOD

The type and design that applied in this research is normative legal research. In addition, there are various approaches used to address the aims of the research, namely the statute approach and the conceptual approach. The source of the materials comprises by three types that are; materials of primary, secondary and tertiary law. The data were collected by applying written material collection techniques through content analysis technique utilization. This technique is useful for obtaining a theoretical basis by studying and examining the legal norms related to the object of this research, particularly in revealing the legal norms that are in conflicts.

RESULT AND DISCUSSION

Regulation Of Location Permits For Toursim Investment

The regulation of location permits for tourism investment refers to the function of the law itself. In fact, to make the legal function effective so that it becomes a means of social engineering, the development of the 4 basic principles, which are as follows (Podgorecki & J.Whelan, 1971):

Providing a clear picture of the situation at hand.

Creating an analysis of existing assessments, and placing them in a hierarchical order. The analysis includes predictions about whether the methods that will be used will not have more consequences that worsen the situation.

Verifying hypotheses, for instance, whether a method, which is thought to be implemented in the end, will indeed lead to the desired goal.

Becoming a measurement of the effects of existing rules.

Grounded the above legal functions and based on legal norms explanation, thus the licensing arrangements related to tourism are regulated in Article 15 paragraph (1) of Republic of Indonesia's Law No. 10 of 2009 concerning Tourism, which stipulates that in order to be able to hold a tourism business as referred to in Article 14, tourism entrepreneurs must register business in advance to the government or regional government. Paragraph (2), further provisions concerning the procedure for registration as referred to, shall be regulated through a Ministerial Regulation. Looking at these provisions, non-ministerial institutions are not authorized to issue tourism location permits. The assertion shows that the norm conflict between the Regulation of the Ministry of Agrarian and Planning of Spatial and between the the regulation Indonesian Head of the Agency of National Land, that is in number 14 of 2018 on Location Permits and its hierarchically preceding law, that is, the Law Number 10 of 2009 concerning Tourism, has occurred.

In essence, licensing is basically needed as a supervisor and controller of permit holders. Simon Nahak wrote that "The licensing philosophy is as supervision / control of permit holders, both in written and oral form, and fulfilling the requirements to obtain permits given to every person and / or legal entity by State Administration officials or non-formal people / authorized officials" (Nahak, 2017).

The description confirms that the permit holder is determined in the relevant provisions, which hierarchically creates any conflicts between the preceding regulations and subsequent one or the subsequent regulations and the preceding one, or between the equal regulations, between one laws and others or between the laws and its subsequent regulations. In fact the discussion on the Procedure for Granting a Location Permit for Tourism Investment related to large investment opportunities in Indonesia has made the parties, who decide to invest in our beloved homeland, increase in number. Improving economic growth, abundant natural resources, and good economic stability are some of the reasons that make certain parties decide to invest in Indonesia. To savour how much profit is gained by investing in Indonesia, there are several procedures that must be done by those who want to invest. This procedure is the first step that must be taken by those who want to invest their capital in Indonesia.

The procedure for investing in Indonesia can be done by two types of companies, local companies and foreign companies. After the procedure in building a company is completed, another step that must be done is to do the investment phase. Permits for investments made for 3 hours will be supplemented by investing directly. In the opportunity of Tourism Investment in Indonesia there is a very overt opportunity, so that the investment phase is carried out by making business licenses carried out by the company being built. After that, foreign companies are equipped with making a license from the Office of Representative of Foreign Company (KPPA) and a Foreign Company Trade Representative License (Surat Izin Usaha Perwakilan Perusahaan Perdagangan Asing or SIUP3A). The theory used to address this discussion is Hans Kelsen's theory of Pure Law and the theory of the legal system of Lawrence M Friedman.

The Authority in Issuing the Location Permit for Tourism Investment

An authority (= bevoegdheden) is attached to the Position (het ambt). Without the Position there will be no Authority! Position (het ambt) is a body (= organ) of public law, which is the source of the existence of Authority. In assigning the authority attached to it, the Position (het ambt) is represented by a personal human (natuurlijke persoon), which is called an Official (ambtsdrager) or Government Official. Government Agency is a form of government body (= bestuursorgaan) in institutional format, such as a ministry, institution / agency that functions in its authority, is also represented by Officials (ambtsdrager) (Marzuki, 2017).

The authority in the description above confirms that only the entitled Agency and / or Government Officials (or state administrators), who can issue the Decisions of State Administrative (*Keputusan Tata Usaha Negara* or *KTUN*), and only the authorized Government

Officials can execute (or not execute) a Concrete / Factual Action. Therefore, in each Agency and / or Government Office, the scope of the field or material of its authority, territory or the area of validity of the Authority and the period and grace period of that Authority are determined.

There are three forms of authority, namely: Attribution, which is the granting of authority to the Agency and / or Government Officials by the Constitution of 1945 of the Indonesia Republic or the Law; Delegation (Authority Delegation), which is a delegation of Authority from the Agency and / or higher Government Officials to the lower Agency and / or Government Official with responsibility and liability to the recipient of the delegation. At time the delegation of the authority through the delegation occurred, the granting delegation shall be deprived of that authority. Delegation of Authority is obtained through the mandate. The Mandator acts for and on behalf of the mandator. Responsibility and accountability remain in the hands of the mandator. In carrying out its authority, the mandator must include itself as the executor, on behalf of the mandator.

To provide convenience in the context of accelerating and increasing investment and business in Indonesia, the Government implements Online Single Submission (OSS), namely Business Licensing issued by the OSS for and on behalf of the Minister, agency leaders, Governors or Regents / mayors, to the business actors through electronic systems. In this regard, some adjustments need to be made, encompassing changes in the Indonesian Standard Industrial Classification (Klasifikasi Baku Lapangan Usaha Indonesia or KBLI) from Limited Liability Companies that have been legalized by the Law and Human Rights Ministry and KBLI used by the Coordinating Ministry for Economic Affairs through OSS Institutions. At present, there are differences between the Limited Liability Company data in the Legal Entity Administration System (Administrasi Badan Hukum or SABH) and that in the OSS System of the Coordinating Ministry for Economic Affairs. This is due to the OSS System making use of KBLI of 2017, whereas SABH uses the KBLI before the KBLI of 2017 which results in incompatibility between the data from the Law and Human Rights Ministry and data from the Coordinating Ministry of Economic Affairs. As a consequence, the Business Identification Number (Nomor Induk Berusaha or NIB) on the OSS system cannot be processed. For information, KBLI is a reference classification used to classify the Indonesia's economic activities in several business fields / business sectors that are distinguished based on the types of the economic activities that produce products / output in the form of goods and services issued by the Central Statistics Agency (Badan Pusat Statistik or BPS).

To overcome this problem, the Law and Human Rights Ministry of the Republic of Indonesia, Cq. Director General of General Law Administration and Coordinating Ministry for Economic Affairs, Cq. The OSS Institution will process and issue the NIB for Limited Liability Companies whose purposes and objectives and business activities have not yet applied KBLI of 2017. However, this is executed with the note that the Limited Liability Company within 1 year shall adjust its intent and purpose and business activities in accordance with the KBLI of 2017 through SABH the Director General of Administration of General Laws and in accordance with the mechanism regulated in the provisions of legislation concerning Limited Liability Companies. This is executed through the changes in the articles of the company association as referred to in the regulations in paragraph (2) of Article 21 of Act number 40 of 2007 pertaining to Limited Liability Companies, wherein, changes in intent and purpose constitute changes to the association articles, which shall be approved by the Minister (Law and Human Rights minister) that if within the specified period in the Limited Liability Company does not adjust its basic budget as required in letter (e), then the NIB of the Limited Liability Company shall be defuncted (Kementerian Hukum dan HAM Republik Indonesia, 2018).

This is executed through the changes in the company association articles as referred to in the stipulation in the Article 21 clause (2) of Act number 40 of 2007 concerning the Companies of Limited Liability, wherein, changes within the intent and purpose constitute changes to the association articles which shall be ratified by the Law and Human Rights Minister) that if within the specified period in the Limited Liability Company does not adjust its basic budget as required in letter (e), then the NIB of the Limited Liability Company shall

be defuncted.

The theory used to analyze this discussion is the theory of authority. Authority from the central government and regional governments is certainly unequal, but still refers to the national stability of the nation and for the progress of the Indonesian state. Hopefully this article can be advantageous for readers as well.

Stroink and Steenbeek, as quoted by Ridwan, expressed a disparate view, as follows:

“That there are only two ways to obtain authority, namely attribution and delegation. Attribution is concerned with the surrender of new authority, while the delegation concerns the delegation of existing authority (by an organ that has obtained the attributive authority to other organs; so delegates are logically always preceded by attribution). Regarding the mandate, there was no discussion regarding the transfer of authority or delegation of authority. In terms of the mandate, any change of authority (in the form of a formal juridical) does not occur, only internal relations do” (Ridwan, 2003). According to Philipus M. Hadjon, “Every government action is required to be based on legitimate authority. The authority is obtained through three sources, namely attribution, delegation, and mandate. Authority obtained through attribution is usually outlined through the distribution of state power by the constitution, while the authority obtained through delegation and mandate is the authority that comes from “delegation” (Hadjon, 1994).

Building upon the description with the Authority Theory approach, the institution authorized to issue the location permits for tourism investment is the one that is under the auspices of the non-ministerial Government / Regional government. The nature of the authority obtained through delegation concerns the delegation of existing authority (by an organ that has obtained the attributive authority to other organs; thus, the delegation is logically always preceded by attribution). Thus the authority is granted to the relevant Agency / Institution that manages the permits under the Governor for the Provincial level and under the Regent / Mayor for the Regency / Manucipal level.

CONCLUSION

Regulation of the permit of location for tourism investment is based on a hierarchy of legislation involving the regulation of the substance of legal norms and procedures for licensing locations for Tourism Investment that are regulated according to norms that do not cause conflict between regulation of agrarian ministry and the planning of Spatial / Head of Agency of National Land of the Republic of Indonesia Number 14 of 2018 peraining to Location Permits, with its preceding law, namely the Law Number 10 of 2009 concerning Tourism, which aims to formulate permit regulations for tourism locations that are not contradictory, and so as to create justice and legal certainty for permit holders.

The authority to issue the location permits for tourism investments is entitled to institutions under the auspices of the Regional Government based on the theory of delegation authority concerning the delegation of existing authority (by organs that have obtained the attributive authority to other organs; thus, the delegation logically is always preceded by attribution), therefore, the authority of the delegation is granted to the related Agencies / institutions that manage licensing under the Governor for the Provincial level and under the Regent / Mayor for the Regency / Manucipal level.

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