



Application of Legal Protection for Tourists Who Have Losses Due to Force Majeure

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Abstract

Tourism activities are growing rapidly with technological advances. Tourists who come not only from domestic but also from overseas. The success of a tourist attraction is influenced by the tourism executor that is the provider of tourist services and tourists. This is inseparable from the service factor provided by the tourism service providers. Arrangements set forth in the form of laws governing the regulation of tourism is needed to have both from tourist and tourist service providers. In the tour, certainly will not be separated from the factors that disadvantage the tourism executor. The aims of reserach is to know form of protection for tourists who have losses due to force majeure and accountability of tourist service providers to tourists in the event of force majeure. The method of this research is normative research by examining library materials such as legislation, books or literature, as well as dictionaries or encyclopedias. The approach taken in this study is the legislative approach and the conceptual approach. The legal material analysis techniques used are description, systematization, interpretation, and argumentation. The force majeure in his theory frees the solicitor to be free from responsibility to tourists. At this writing, the author tries to discuss about the application of legal protection for tourists who experiencing losses due to force majeure.

Keywords: Force majeure; loss; protection; tourists

INTRODUCTION

Tourism in Indonesia is regulated in Law No. 10 of 2009 concerning Tourism (hereinafter referred to as the Tourism Law). The definition of tourism in the provisions of Article 1 point 3 of the Tourism Law states that tourism is a variety of tourism activities and is supported by various facilities and services provided by the community, businessmen, the Government, and the Regional Government. Understanding tourists according to the provisions of Article 1 point 2 UUK (Indonesian Law on Tourism) tourism is people who do tours. Someone or a group of people who make a tourism trip is called tourist, if the length of stay is at least 24 hours in the area or country visited (Suwantoro, 2004).

Tourism activities encourage the advancement of the economy in an area, people living in tourist areas take advantage of these opportunities to improve their economic standard of living by building various types of places or facilities for rent to tourists. Like setting up restaurants, shops that sell souvenirs, clothes and needs for tourists as well as building hotels, condotels, guess houses or villas as residential facilities for vacationers. One of the most economic activities in the tourism sector is the leasing of dwellings by the owner to tourists who are on vacation because the dwelling place is the most important thing as the needs of tourists in addition to the basic needs of food and beverages.

The development of the tourism business is related to the provision of very fast occupancy because the women need comfortable and adequate residential facilities and in

the development the owners will offer a variety of facilities and advantages of the housing owned to attract tourists in the competition between other owners. As one example of providing good service or service, it also offers views or sights that can be seen through their homes. This is one form of activity that each party is given an advantage, namely for the owner to get an investment value from the results of renting occupancy to tourists and the tourists get housing according to their needs during the holidays.

In the world of tourism, protection of tourists, both foreign and domestic tourists, is still very low and sometimes applicable laws still do not fully have the power to protect tourists. Until now, tourists who have come only become objects by irresponsible tourism businesses. In fact, legal certainty in order to guarantee the protection of tourists is very important. There is no protection of tourists from their place of stay when a natural disaster (force majeure) for example such as the tourist area has a mountain whose status becomes active and alert so that the departure by air is closed. This causes tourists who have expired their stay and economic conditions are no longer enough to extend (extend the stay) in their accommodation and residential owners allow tourists without providing compliment or additional wages according to the owner's policy. The tourist finally lost the plane and his chance to return to his home country because of the situation. Of course this is detrimental to tourists because of the actions of owners or other services that abandon tourists.

In Indonesia, the protection of consumers is specifically regulated in the law with the enactment of Law No. 8 of 1999 concerning Consumer Protection ([Sudaryatmo, 2011](#)). Law No. 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) is formulated referring to the national development philosophy of Pancasila and the state foundation, the 1945 Constitution, where national development, including legal development, attaches efforts aimed at providing protection for the people of Indonesia (Badan Perlindungan Konsumen Nasional (BPKN), 2006). The purpose of establishing UUPK is to balance the bargaining power of consumers with producers and educate producers to be fair, honest and responsible for the products they sell.

To balance the bargaining power of consumers towards producers because of the weak position of consumers compared to producers, a number of rights held by consumers and the responsibility of business actors are regulated as a form of protection for consumers. The current understanding of consumers is no longer synonymous with the understanding of the people who use production from industrial and commercial products, but also the people who use services. It is also emphasized in UUPK, where consumers are defined as every person who uses goods and/or services available in the community, both for the sake of themselves, family, other people and other living beings, and not for trading.

Referring to previous research, [Napitupulu \(2012\)](#) found a form of legal protection for consumers of recreational areas through regulating some consumer rights in various laws and regulations, namely in law number 10 of 2009 concerning tourism. Her research was conducted at Recreation Site Y, taking samples of collapsing vehicle X with findings of violations of the right to comfort and safety in consuming goods (article 4 point a UUPK and article 20 point c, law no 10 of 2009) and violations of the right to insurance protection for high-risk tourism activities stipulated in article 20 point f of Law No. 10 of 2009 ([Napitupulu, 2012](#)). [Widnyana et al. \(2018\)](#) Examined the Legal Protection of Consumers Using Recreation Services in Tanjung Benoa's Perfect Ciwa Bali. The results of his research are legal relationships that occur between Perfect Soul companies and consumers that will lead to rights and obligations to protect the rights of consumers who feel disadvantaged from accidents that occur. The element of error in an accident can be punished based on the provisions of the Criminal Code, the responsibility given by the company Ciwa Sempurna is only insurance benefits, and does not provide compensation to consumers because it should be in accordance with Article 19 paragraph (1) Law Number 8 of 1999 Consumer Protection business actors must provide compensation to consumers who feel disadvantaged due to the services traded ([Widnyana, Sarjana, & Priyanto, 2018](#)).

Based on background, this research is discuss the forms of protection for tourists who have losses due to force majeure and the liability of tourist service providers over the

tourists in the event of the force majeure, especially from the actions of business actors (in this case the recreational service providers) that harm the interests of consumers or consider the consumers only as business objects to reap maximum profits.

METHOD

This research is one form of normative legal research by examining library materials such as legislation, books or literature, as well as dictionaries or encyclopedias (Soekanto & Mamudji, 2001). The approaches applied in this study are statue approach and conceptual approach. In this study legal materials are used, which are divided into three namely primary legal material, secondary legal material, and tertiary legal material. The source of primary legal material is legal material that is binding in nature such as legislation. The primary legal material in this study include: Civil Code; Law Number 10 of 2009 concerning Tourism; Law No. 8 of 1999 concerning Consumer Protection; Republic of Indonesia Minister of Regulation No. 18 of 2016 concerning Tourism Business Registration; and Permen Parekraf No. 9 of 2014 concerning Business Standards for Pondok Wisata. Sources of secondary legal materials include providing supporting explanations of primary legal materials such as books, scientific works, internet articles and expert opinions that are associated with legal protection for tourists who suffer losses due to force majeure. The tertiary legal material materials include materials that can provide instructions and/or explanations regarding primary legal materials and also secondary legal materials, such as legal dictionaries and encyclopedias. The legal materials collection is done by systematically recording materials that support legal protection for tourists who suffer losses due to force majeure. The legal material analysis techniques used are description, systematization, interpretation, and argumentation.

DISCUSSION

Form of Protection for Tourists Who Have Losses Due to Force Majeure

Regarding tourism, in 2009 Law No. 10 of 2009 concerning Tourism (hereinafter abbreviated as the Tourism Law). Tourism in this law is defined as travel activities carried out by a person or group of people by visiting certain places for recreational purposes, personal development, or studying the uniqueness of tourist attractions visited in the interim period {Article 1 paragraph (1) for tourism}, while tourism is a variety of tourism activities and is supported by various facilities and services provided by the community, businessmen, government, and regional government {Article 1 paragraph (3) of the Tourism Law}.

People who do tourism are then referred to as tourists, while people or groups of people who carry out tourism business activities are referred to as tourism entrepreneurs. The Tourism Law regulates the rights and obligations of tourists and tourism managers / entrepreneurs. Travelers have the rights to obtain: accurate information about tourist attractions; tourism services in accordance with standards; legal and security protection; health services; personal protection; and insurance protection for tourism activities that are at high risk (Article 20 of the Tourism Law), in addition, tourists who have physical limitations, children and the elderly are entitled to special facilities according to their needs (Article 21 of the Tourism). Obligations of the tourists include: maintaining and respecting religious norms, customs, culture and values that live in the local community; maintaining and preserving the environment; participating in maintaining the environmental order and security; and participating in preventing all forms of acts that violate decency and illegal activities (Article 25 of the Tourism).

Tourism Entrepreneurs themselves have the rights to get equal opportunities in business in the tourism sector; form and become a member of a tourism association; get legal protection in business; and obtaining facilities in accordance with the provisions of legislation (Article 22 of the Tourism Law). Meanwhile, their obligations include maintaining and respecting religious norms, customs, culture and values that live in the local community; providing accurate and responsible information; providing non-discriminatory services; providing comfort, friendliness, security protection, and tourist safety; providing

insurance protection for tourism businesses with high-risk activities; developing partnerships with micro, small and local cooperatives that need, strengthening and benefitting each other; prioritizing the use of local community products, domestic products, and providing opportunities to local workers; improve labor competency through training and education; playing an active role in efforts to develop infrastructure and community empowerment programs; participating in preventing all forms of acts that violate decency and illegal activities in the place of business; maintaining a healthy, clean and beautiful environment; maintaining the preservation of the natural and cultural environment; maintaining the image of the country and nation of Indonesia through responsible tourism business activities; and implementing business standards and competency standards in accordance with the provisions of laws and regulations (Article 26 of the Tourism).

Basically, the legal protection provided by the Tourism Law only emphasizes the protection of tourism objects themselves. This can be seen in the seriousness of sanctions in Article 64 which stipulates that anyone who intentionally and unlawfully damages the physical attraction of a tourist is punished with a maximum imprisonment of 7 years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah). Meanwhile, violations of tourist rights are only subject to administrative sanctions, starting from written warnings, restrictions on business activities and temporary suspension of business activities.

Protection of the tourists both foreign and domestic tourists, thus, normatively can be said to be still relatively low and the applicable law does not have the power to protect the tourists. Until now, the tourists tend to be only objects by irresponsible tourism businesses. This is an important concern, in that, it is very necessary for a regulation that not only addresses the tourism, but also protects the tourists from all things including the aspects of travel, lodging, objects or the tourist destinations and regulating the rights and obligations of tourists.

The term tourist can be analogous to consumers, that is, every person who uses goods and / or services available in society, both for the sake of self, family, other people, and other living beings and is not traded (Article 1 paragraph (2) of Law No. 8 of 1999), while tourism service providers are analogous to their business actors, namely every individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, both privately or jointly through agreements to conduct business activities in various economic fields (Article 1 paragraph (3) Law No. 8 of 1999).

Consumer protection should obtain attention because it is closely related to tourism, which is also a part of economic development. Consumer protection can be done by incorporating the elements of open access and the information in a consumer protection system; protecting the interests of consumers and business actors in particular, improving the quality of goods and services, being able to provide protection to consumers from deceptive and misleading business practices, and harmonizing the implementation, development and regulation of consumer protection with other fields (Sarsiti & Taufiq, 2012). Consumers, when connected with market forces, basically have power in the market. One of the company's biggest challenges is to create consumer credibility. Some of the steps taken include: community involvement, good sale advertisements, and familiarity in human relations and politeness in all matters, even business people provide compensation and education for consumers.

Basically consumer rights in the provisions of Article 4 of Law No. 8 of 1999, can be concluded to be into three types of rights, which are the basic principles. First, protection rights from losses, both personal losses and property losses; second, the right to obtain goods or services at a reasonable price; and third, the right to obtain a solution to the problem at hand. The obligations of consumers are regulated in Article 5 of Law No. 8 of 1999, which determine the following matters: Consumer obligations, is to:

- 1) read or follow information instructions and procedures for using or utilizing goods and / or services for security and safety;
- 2) have good faith in carrying out purchase transactions and / or services;
- 3) pay according to the agreed exchange rate;

4) follow the efforts to properly settle the law on consumer protection disputes.

When connected with Article 26 letter d Law No. 10 of 2009, which stipulates that every tourism entrepreneur is obliged to provide comfort, friendliness, security protection, and tourist safety, it can be interpreted that security protection, whether physical, mental or luggage are the responsibilities of tourism entrepreneurs. If tourists are harmed due to force majeure, then tourism service providers can provide compensation services in accordance with their policies because basically the tourism service providers are obliged to provide comfort and safety to tourists when traveling. Thus, by providing assurance of a place to live and security when a force majeure occurs, it can be said that it is a protection for tourists even though the statutory provisions are not clearly regulated.

Accountability of Tourist Service Providers to Tourists in the event of Force Majeure

Responsibility can be interpreted as a condition that makes a person must bear everything (so that if something happens, the person may be prosecuted or blamed, sued, etc.). Liability or responsibility is actually a burden that arises morally, a commitment (what a person ought to do). This is different from the obligation, which is a contractual burden or based on the provisions of a law.

Relating to the rights and obligations of business actors and consumers, they can be explained as follows. Business actors have the right to: first, receive payments in accordance with the agreement on the conditions and exchange rates of traded goods and / or services; second, get legal protection from the actions of consumers who have bad intentions; third, defend themselves properly in the context of resolving disputes with consumers; and fourth, reputation rehabilitation if it is proven legally that consumer losses are not caused by goods and / or services being sold. The rights of business actors other than those stipulated in Law Number 8 of 1999 are also regulated in other laws, such as the Bank Law, Law on Prohibition of Monopolistic Practices and Unfair Business Competition, and Food Law.

Obligations of the business actors include: first, having good intentions in conducting business activities; second, providing correct, clear and honest information about the condition and guarantee of goods and / or services, and providing an explanation of the use, repair, and maintenance of goods and / or services; third, treating or serving consumers correctly and honestly, and not discriminatory; fourth, guaranteeing the quality of goods and / or services produced and / or traded based on the provisions of the applicable quality standards of goods and / or services; fifth, giving the opportunity to consumers to test and / or try goods and / or services and providing guarantees and / or guarantees for goods made and / or traded; and sixth, giving compensation, compensation and / or replacement if the goods and / or services received or utilized by consumers are not in accordance with the agreement.

In UUPK, the responsibilities of business actors are divided into two, namely responsibility in general and in specific. The responsibility of business actors in general is to provide compensation to consumers for damage, pollution, and / or loss due to consuming goods and / or services traded. Meanwhile, the responsibility of the business actor is specifically in terms of providing spare parts or after-sales facilities and guarantees or assurance (Article 25 and Article 26), the responsibility of the business actor in the field of advertising and product importation (Article 20 and Article 21). Therefore, it can be simply stated that the responsibility of business actors is a form of protection for consumers.

Based on Article 19 of the UUPK, the provision of compensation by business actors as a form of business actor's responsibility for losses suffered by consumers can be in the form of:

- 1) money refund; or
- 2) replacement of similar or equivalent value of goods and / or services; or
- 3) health care; and / or
- 4) providing compensation in accordance with the provisions of the applicable legislation.

If we look at the formulation of the article, it can be concluded that the form of compensation provided by business actors is alternative / optional. Therefore, if the business actor has fulfilled / provided only one form of compensation, it can be said that the business actor has carried out his responsibilities based on Article 19 of the UUPK. Meanwhile, in determining the amount of compensation to be paid basically it must hold to the principle that compensation must be paid to the extent possible to make the loss party returned to its original position in the event of no loss or in other words compensation puts as far as possible the person disadvantaged if the agreement should have been carried out properly or there was no violation of the law.

Therefore, the responsibility of tourism service providers to tourists in the event of force majeure is influenced by the policy of the service provider itself (business actor or entrepreneur of tourism services in this case the owner of the occupancy). If we observe the responsibilities in accordance with the laws and regulations that have been described previously, the responsibility is at the policy of the service provider. This reflects the absence of a principle of balance and justice in its implementation. Indeed, the force majeure in theory frees the service providers from making compensation, but seen from the development of tourism business that releasing responsibility for tourists in force majeure this will have a detrimental effect on the service providers themselves. Because it is known that the nature of tourism is sustainable or continues into the future, the services for compensation provided to tourists due to force majeure can be an opportunity to attract more tourists. This can happen because tourists feel safe and comfortable traveling even though there is a possibility of force majeure.

CONCLUSION

The conclusions arisen from the discussion on the issues examined in this study are by knowing the rights and obligations of tourism service providers and the tourists, the form of legal protection for tourists is in the form of guarantees of equal service changes in accordance with the policies of tourism service providers. Although in the provisions of the laws and regulations it does not clearly regulate the protection of tourists due to force majeure, but by looking at the obligations stipulated in the laws and regulations, it can be concluded as a form of protection for tourists and responsibilities of tourist service providers in the event of a force majeure is influenced by the policies of the service provider itself (business actors or tourism service entrepreneurs in this case the owner of the occupancy). The nature of tourism that is sustainable or continues into the future has a negative or positive impact depending on the policies carried out by tourism service providers. Hence, if the service provider is responsible for the situation of tourists due to any force majeure, this will have a positive impact on the form of tourists who continue to use services even though the possibility of force majeure is due to the trust and comfort provided by tourism service providers.

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