

Reforming the Tourism Promotion Board for an Effective Tourism Promotion in Indonesia: A Legal Perspective

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Abstract

The Indonesia/Regional Tourism Promotion Board (or I/RTPB) is an agency having duties to assist the development of the tourism sector. Since its establishment, it has not been able to play an optimal role in performing its duties and responsibilities. The purpose of this study is to find out and understand the institutional arrangements for the I/RTPB in the current legislation and to find out and formulate the ideal form of the I/RTPB in accelerating its functions especially for the recovery of the tourism sector in the post-pandemic context. This article uses a doctrinal research method with a statutory approach. The study shows the problem of the provisions on the I/RTPB in the Tourism Law in Chapter X from Article 36 to Article 49. To properly function for the economic recovery after the pandemic, there is a need to restructure the I/RTPB as an independent body with a mandate in the field of tourism promotion.

Keywords: Tourism Law; Board; Tourism Promotion; Recovery; COVID-19

Introduction

To date, the Tourism Promotion Board (hereinafter referred to as TPB), as one of the institutions owning the tasks in the development of the tourism sector, has not been able to play an optimal function in undertaking its duties as mandated by Law No. 10/2009 on Tourism (hereinafter Tourism Law). Amidst the COVID-19 Pandemic, the TPB has not undertaken the necessary measures to address the collapse of the tourism industry in the country. Tourism promotion is very important to restore the tourism sector during the pandemic. Despite the fact that international tourists are unable to travel to Indonesia, domestic tourists may become potential markets to help the tourism sector to recover. In this regard, the role of the TPB is urgently required. Even before the pandemic, the TPB did not play an adequate role in

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advancing the tourism sector, although pursuant to Tourism Law, it is mandated as a supporting agency in the tourism sector to promote tourism and increase national or regional revenues from the tourism sector through innovative tourism promotion programs.

The TPB is specifically regulated in Chapter X of Tourism Law on the Indonesian Tourism Promotion Board in which it should be established at the national level, known as the Indonesian Tourism Promotion Board (hereinafter ITPB) regulated in Articles 36-42, and at the regional level, known as the Regional Tourism Promotion Board (hereinafter RTPB) stipulated in Articles 43-49 of Tourism Law. Despite its firm legal basis, the TPB (both the ITPB and the RTPB) does not necessarily make the TPB a capable agency of having a positive influence to the tourism sector. Moreover, those problems have become more challenging due to the impacts of the Covid-19 Pandemic. As a result of the impact caused by Covid-19 Pandemic, the government has stimulated the tourism sector to bounce back with its various strategic policies. The government also has made various efforts to improve the conditions of the tourism sector to bounce back. Highlighting various efforts to optimize tourism stimulus policies by the government to date, it appears that these policies were issued without the involvement of the TPB in the policy-making process.

When the central and regional governments optimize its role, the TPB will be able to develop and advance the tourism sector. It could also get involved in the making of strategic policies for the development of the regional tourism sector. In fact, the TPB is not given the space to carry out its duties and functions formally as stipulated by law. This is because of the assumption that regional governments could handle tourism matters with the Ministry of Tourism and Creative Economy (thereafter MTCE) only. In fact, the government bodies have not failed to organize the tourism sector both at the central and local levels. Whereas the duties and functions of the MTCE with the ITPB/RTPB in principle a difference as set forth in the respective laws. The differences between them are the MTCE has duties and functions to regulate, control, and make a decision regarding the tourism policies, while the ITPB/RTPB has duties to manage and develop tourism promotion. During the pandemic, for instance, the TPB could have undertaken quick and appropriate measures to help revive the tourism sector if there was support by the governments to carrying out its duties and functions. This has implicated responses of the tourism sector to the pandemic leading to a period of a relatively deep and prolonged recession (Al Faqir, 2020).

This situation reveals how vulnerable the tourism sector is and the government should not let it alone deal with the impacts of the pandemic. This is especially true for tourism-dependent regions like Bali. Hence, now appears to be the right moment for those regions to make changes in their tourism policy implementation strategies becoming more effective and targeted. As mentioned in Tourism Law, tourism concerns economic issues and social, political, cultural, and other (Santosa & Saraswati, 2020). Indeed, tourism is a multi-complex system by linking various interrelated aspects where in recent times, tourism has played an important role as a driving force for community dynamics that affect socio-cultural change (Santosa & Saraswati, 2020). The complexity of tourism as a system should be the cognitive basis for the government to bring various stakeholders in finding solutions and applicable policies facing tourism today.

Governments took various policies in the context of handling a pandemic such as the regional quarantine policy or lockdown, a large-scale social restriction (PSBB) and a local-scale of community activities restriction (PPKM) (Azanella, 2020). However, there has been a concern that such restrictive policies would hit the tourism sector, especially the regions whose regional revenues are highly dependent on the tourism sector. Indeed, tourism-related businesses have been closed down and did not earn enough revenues resulting in terminations of their employees and creating unemployment. Likewise, the slowing down of tourism in those regions has also affected the regional economy in general. In Bali alone, for example, the Covid-19 Pandemic has caused economic losses up to USD 9.7 trillion per month which has a domino effect on other economic sectors in Bali (Rosidin, 2020).

Those regions should take appropriate measures through re-planning and management of tourism. Whereas with the synergy or cooperation formed to manage the tourist attractions of each region, it will be easier to carry out promotions even though it is still in the state of the Covid-19 Pandemic. The interaction as such will be able to involve various stakeholders such as business operators and travel, accommodation and transport for travel as well as observers of the world of tourism and educational institutions as well as a non-profit organization (Fatah & Yuniningsih, 2019).

Therefore, it is important to build partnerships between parties involved in the development of tourism businesses in order to create adequate facilities for marketing tourism destinations in each region by correcting the weaknesses and ambiguities of both the ITPB and the RTPB (Fatah & Yuniningsih, 2019). The weakness and uncertainty could be identified from several respects, namely the position of the ITPB/RTPB in the state administration system, its structure, sources of funding, as well as its duties and authorities. Institutionally, the ITPB/RTPB is not a government agency, but it still has to collaborate with the government to promote the tourism sector (Arifin & Yuningsih, 2019).

The question then is how to be an independent private agency. This is a matter of ongoing debate because not only the fact that the ITPB/RTPB is regulated by the government, especially in relation to its institutional elements, and its funding is also derived from government grants and other legitimate funding contributions. Hence, there have been conflicting provisions governing the ITPB/RTPB which in turn may inform the extent to which it manages to undertake its role and duties stipulated by law. Therefore, it is important to examine these problems in order to be able to resolve these conflicting norms and find solutions that are able to solve the problems of tourism sector development in each area that have occurred so far and are exacerbated by the impact of the Covid-19 Pandemic. Based on the background above, the problem addressed by this article is how the Tourism Promotion Agency should be arranged institutionally for an effective delivery of its objectives.

Literature Review

Tourism is defined differently by different scholars. Asmara (2020), for instance, defines it as a journey from one place to another for recreational purposes. Hunziker and Kraft's 1942 study (as cited in Bedasari, Prayuda, & Saputra, 2020) states that tourism is the whole of activities that arise as a result of the journey of foreigners where they stay temporarily. Burkat provides

another perspective on the definition of tourism, namely the mobility undertaken by people in a short period of time short to a place of interest that is not familiar to where they usually live and work (Haryati & Hidayat, 2019). Legally, tourism has been governed by Tourism Law No. 10/2009 and it defines tourism as "all kinds of activities of travel which are supported by amenities and services and are provided by the public, employers and government both government centers and regions".

Tourism is also able to encourage equitable growth in the development of the region which has the potential of natural and potential history (Putra et al., 2003). Tourism requires promotion that is an activity that aims to inform about a product or service that will be offered to the consumer that in case this is the travelers who made the target market. Promotion is considered as a marketing component (Atiko, Sudrajat, & Nasionalita, 2016; Bahar & Marpaung, 2002). According to Kotler and Armstrong, a promotion will be effective if it meets several elements including: 1) identifying the target market, 2) determining the purpose of communication, 3) designing a message that will be delivered, 4) choosing the media to distribute messages, and 5) measuring promotion results and managing as well as coordinating the communication process (Rachmayanti & Nofharina, 2018).

To date, there have been previous studies on the topic of the tourism promotion board. Fatah & Yuniningsih (2019) for instance, discuss the effectiveness of the Regional Tourism Promotion Board. Bagiastuti (2017) examines the contribution of the Bali Tourism Promotion Board to the development of Bali's tourism industry. Arifin & Yuniningsih (2019) conduct research to examine the effectiveness of the Tourism Promotion Board in Semarang Municipality, Central Java. However, the previous studies mentioned all fall within Tourism Studies. Hence, they tend to ignore the questions of how law, especially the legal substance in Tourism law, has contributed to an ineffective role of the tourism promotion board in achieving its objectives. Hence, this article aims at adding the discussion of the agency in tourism from a legal viewpoint.

Methods

This article is based on a doctrinal legal research method. In this regard, research focuses on analysis-based norms, principles and legal doctrines (Muhammad, 2015). A statutory approach is employed in this article, meaning that legal issues are examined in the light of relevant legal frameworks. In this article, because the legal issues addressed are related to the tourism promotion board, the legal framework used as a reference to examine the board is Tourism Law. Hence, the result of this analysis is presented based on a qualitative model in order to provide a deep understanding of the issues and in turn to provide a recommendation for addressing the issues at stake.

Results and Discussion

The Legal Framework on the Tourism Promotion Board

Efforts to promote the tourism sector will be maximized if relevant stakeholders are involved because the government is not the sole actor in this regard. The existence of synergy between

the government and other stakeholders is a good step to maximize the development program design that will be carried out. Charles Kaiser Jr. and Larry E. Helber's 1978 study (as cited in Aditama & Husni, 2019) emphasize that "the levels of tourism planning start from regional tourism development which includes physical development of tourist objects and attractions." Then an evaluation to the existence of the tourism sector is carried out to see the level of success based on the level of visits and the number of tourists whether they reach the target that has been set priorities. Whereas according to Carlina and Pandoyo that "tourism business is an activity aimed at providing tourism services or providing or commercializing tourist objects and attractions, such as those in Tourism Law on tourism goods businesses and other businesses related to the said sector" (Carlina & Pandoyo, 2020). To maximize these efforts, the government has established several supporting institutions or agencies in the tourism sector. One of them is the TPB (at national and regional levels).

In addition to the ministry dealing with the tourism sector and the local government through its tourism agency, the government is also mandated by Tourism Law to form the TPB. As regulated in Chapter X of Tourism Law, the ITPB should be established at the national level and the RTPB should be established at the provincial and district levels. Through a Presidential Decree No. 22/2011 concerning the Indonesian Tourism Promotion Board (hereinafter Presidential Decree on ITPB), the ITPB has officially been established. The establishment of the ITPB is government's step to spur the advancement of the national tourism industry to compete with other countries.

The RTPB is regulated in the second part of Chapter X of Tourism Law, from Article 36 to Article 49. Accordingly, Article 36 paragraph (1) in relation to Article 43 paragraph (1) states that central and regional governments should facilitate the formation of the TPB to assist the government in implementing strategic development for the tourism sector. Furthermore, Article 36 paragraph (2) in relation to Article 43 paragraph (2) stipulates that the status of the ITPB/RTPB is a private, independent institution. Although the procedures for its formation and structure are regulated by the government, it still has a status as an independent private institution in carrying out its duties and functions. This means that the ITPB/RTPB is not a public agency within government's structure; hence it is expected that it could be managed in accordance with the dynamics in the tourism business and without government intervention.

Consequently, the existence of the ITPB/RTPB could be referred to the doctrine of private legal entities. Rido (2004) notes that there are several criteria for qualifying an entity as a private legal entity, which are: holding separate assets, having a specific purpose and having own initiative and management. Based on such understanding, the ITPB/RTPB as a private institution should have a separated asset and different sources of funding which may include government budgets and other legitimate sources. The ITPB/RTPB has to have specific objectives, namely being an agency capable of maximizing tourism promotion in order to increase government revenues from foreign exchange and to come up with strategic programs for improving the tourism sector in the country. In addition to those objectives, the ITPB/RTPB should focus on their strategic agenda and should not be too influenced by political interests of the government officials, even though the funds may come from the government. In order to become an effective private and independent agency, the ITPB/RTPB should follow the doctrine of private legal entities in its management and operations.

The implementation of the ITPB/RTPB's duties and functions is stipulated by Article 41 paragraph (1) and (2) in relation to Article 48 paragraph (1) and paragraph (2) of Tourism Law. Article 43 governs the relationship between the ITPB and the RTPB in which they shall coordinate with each other to harmonize and unify their perception before undertaking measures to plan and execute their programs. Whereas for the initial establishment, as referred to in Article 43 paragraph (4) of Tourism Law, the RTPB is established or dissolved by a decision of the head of regional governments. This also applies to the TPBI as stipulated in Article 36 paragraph (3) of Tourism Law. If we look at those provisions closely, they appear to be in contradictory to the provisions of Article 36 paragraph (2) and Article 43 paragraph (2) which clearly states that the ITPB/RTPB is a private and independent institution.

If the RTPB is an independent private institution, it should not be established by the government. Still, it should follow the establishment procedure of other private entities such as corporation, which is established and dissolved through an agreement between private actors or through a court ruling. Thus, this normative contradiction has resulted in legal uncertainty of the ITPB/RTPB and then implicated its poor performance. Furthermore, Article 37 in relation to Article 44 of Tourism Law states that the organizational structure of the ITPB/RTPB consists of 2 (two) elements, which are the policy development division to develop adequate strategies for undertaking tourism promotion and the division for the implementation to be responsible to execute the strategies into practice.

The provisions that are no less important regarding the TPBD are in Article 41 paragraph (1) in relation to Article 48 paragraph (1) of Tourism Law regarding the duties. The articles state that the ITPB/RTPB has the following duties: (1) improving the image of Indonesian tourism; (2) increasing foreign tourist visits and foreign exchange earnings; (3) increasing domestic tourist visits and spending; (3) raising funding from sources other than the State Revenue and Expenditure Budget and the Regional Revenue and Expenditure Budget in accordance with the provisions of laws and regulations; and (4) conducting research in the context of developing tourism businesses and businesses. Furthermore, Article 40 paragraph (2) in relation to Article 48 paragraph (2) states that the ITPB/RTPB has functioned as: (a) the coordinator of tourism promotion carried out by the business world at the central and regional levels; and (b) the partner for the national and regional governments

The imposition of the duties and functions of the ITPB/RTPB in Tourism Law can be done optimally when the norms governing the status of the ITPB/RTPB are harmonized with the other provisions on the ITPB/RTPB. This is because there are still discrepancies between Article 36 paragraph (2) *jo.* Article 43 paragraph (2) of Tourism Law, for example with Article 42 paragraph (1) *jo.* Article 49 paragraph (1) of Tourism Law which states that "[t]he source of funding for the Regional Tourism Promotion Board derived from: (a) stakeholders; and (b) other legitimate and non-binding sources in accordance with the provisions of the legislation." In Article 42 paragraph (2) *jo.* Article 49 paragraph (2) of Tourism Law states that "[f]unding assistance originating from the State Revenue and Expenditure Budget and the Regional Revenue and Expenditure Budget is a grant in accordance with the provisions of statutory regulations." The provisions in Article 42 paragraph (1) to (3) *jo.* Article 49 paragraphs (1) through (3) of Tourism Law shows that the ITPB/RTPB still allows government funding through grants for implementing the ITPB/RTPB program. This is because the government forms the

policy development division as a stakeholder in the ITPB/RTPB. Hence, the government has the authority to provide the grant as a funding source for the ITPB/RTPB.

With regard to the status of the ITPB/RTPB, there has been an inconsistency and disharmony between norms in Chapter X of Tourism Law. Despite being designated as a private and independent institution, the government has a strong role in regulating the ITPB/RTPB. This can be seen by the authority of the government to define the term in office for the members of the division of the implementation. The government is also one of sources of funding for the ITPB/RTPB in which the government may play an important influence on the ITPB/RTPB programs and agendas. This has resulted from a vague definition of "private and independent institutions" in the legislation. Therefore, there should be a consistent treatment toward the ITPB/RTPB in which it should be given more autonomy akin to private legal entities to pursue their objectives in developing strategic measures to accelerate the recovery of the tourism sector after the Covid-19 Pandemic.

The Future of the ITPB/RTPB

The status of the ITPB/RTPB whether it should be a public legal entity or a private legal entity is necessary to determine the outcome of its programs. There are several elements of a legal entity, which are "an organization or association of people" that: (a) able to establish legal relations and be able to take legal actions; (b) able to own their assets; (c) having a management structure; (d) having obligations and rights; and (e) capable of filling a lawsuit or to be sued before the court. Furthermore, E. Utrecht describes that the basic division of legal entities between a public legal entity and a private legal entity is based on the division of law between public law and private law (Prasetianingsih, 2014). In line with E. Utrecht's argument, Widjaja argues that "there are several criteria for determining a legal entity as a public legal entity and a private legal entity" (Prasetianingsih, 2014). They include under which law the legal entity is established. If it is established based on the public law, it becomes a public legal entity while if it is established based on private law, it is a private legal entity in which private law applies to it.

In addition, the difference is also defined by the nature of its objectives whether it is established for a public service obligation or for profit-making. A public legal entity is established for undertaking the state obligation to provide public services (Rohendi, 2018). Putra (2018) clarifies that a body is qualified as a public legal entity if it is establishment based on the public law to implement the public policy and is given public powers to regulate and decide the policies. Meanwhile, a private legal entity is established for profit-making. According to the private law doctrine, a private legal entity is an organization or a group of people with certain goals that can carry rights and obligations (Mertokusumo, 2005; Prananingrum, 2014).

Hence, the criteria that form the basis for the qualification are based on whether a legal entity should be put under the domain of public law or private law. Whereas what is meant by a public legal entity is a part of public law that can vertically act unilaterally to carry out public legal functions in its public jurisdiction with all the legal consequences it causes. Private legal entities are included in the field of private law whose personalities are established by individuals or groups of people for the benefit of their parties with all the legal consequences.

Accordingly, the nature of the RTPB should be clarified as soon as possible, whether it is a private institution to carry out public functions in the tourism sector. It can be said that the criteria for determining a private legal entity can be based on the form and purpose of the legal entity itself which usually has certain objectives such as to obtain profit or social purposes. The next criterion is that the legal entity in question is the same as an individual and does not have an authority similar to a public legal entity (Santosa, 2019). The constitutional dynamics and the complexity of peoples' needs have widened the scope of the government in service delivery to its citizens. In order to carry out these functions that are unable to be delivered by traditional public agencies, the government establishes private legal bodies which are given the function of carrying out government civil functions. This basis should be seen as the reason for the establishment of the ITPB/RTPB as a private legal entity but is still supervised by the government directly or indirectly. In order to differentiate its scope within the public or private law regime, a combined opinion is used referring to Article 1653 of the Indonesian Civil Code (Santosa, 2019). In the case of classifying or differentiating the domain between public and private law, a regulation that establishes a legal entity should also clarify the legal status of the entity being established. This is a matter of clarity of purposes as a principle in law-making procedures required by Article 5 letter (a) of Law No. 12/2011 concerning Procedures for the Formation of Laws and Regulations (Putra, 2018). This means that the regulation regarding the position of a legal entity, both public and private, must be clear and firm to ensure legal certainty, not merely as a practical need when it is needed to resolve disputes that question the status of a legal entity.

However, the differentiation of legal entities into public legal entities and private legal entities is not always neatly defined empirically. This is because currently, there have been private legal entities that have the duty to deliver public services. In contrast, to date, there are public legal entities that still carry out their tasks under the domain of private law. Indeed, even the government including its organs (*bestuurorgan*) is also a legal entity (*rechtspersoon*) (Santosa A. D., 2019). In that regard, it is now difficult to divide a legal entity into a public legal entity or a private legal entity conceptually due to the dynamic development of law following the complexity and rapid development of society itself.

The first thing to do for both central and local governments is to conduct a study and then fix the institutional structure of the ITPB/RTPB. Article 37 in relation to Article 44 of Tourism Law has regulated the organizational structure of the ITPB/RTPB consisting of policy development and implementing divisions. It should be noted that the determining elements of the ITPB/RTPB policies are stipulated by a Presidential Decree or a Regional Head Decree as regulated in Article 38 paragraph (2) in relation to Article 45 paragraph (2) of Tourism Law and further provisions related to work procedures and so on are further regulated by ministerial regulations for the ITPB and governor/district head decrees for the RTPB. Meanwhile, the division for the implementation of the ITPB/RTPB is further regulated by the ITPB/RTPB Regulations. This does not show the independent nature of the ITPB/RTPB in determining its organizational structure and programs as a private entity. Hence, it is necessarily to establish a consistent private legal entity for the ITPB/RTPB in order to avoid control and intervention from the government.

Moreover, it is necessary to re-orient the source of funding for the ITPB/RTPB in the previous regulation. This is important in order to ensure sources of funding for the ITPB/RTPB are in line with the status of the ITPB/RTPB as a private entity. The ITPB/RTPB needs to have clear and adequate financing schemes to undertake its duties and functions effectively. However, the sources of financing for the ITPB/RTPB are regulated in Article 42 paragraph (1) and paragraph (2) *jo*. Article 49 paragraph (1) and (2) of Tourism Law. This further creates a tendency in which the ITPB/RTPB heavily relies on the government's funding to undertake its programs.

In reforming the ITPB/RTPB institutionally, the reform can be divided into short-term and long-term agendas. For the short-term agenda, recovering from the Covid-19 Pandemic is essential. The first steps to be fetched for the short-term advice is to hold a Memorandum of Understanding (MoU) between the RTPB regencies/municipalities in each region to hold the Tourism Promotion One Door Regions. Through this One Stop Tourism Promotion activity, it is expected that the tourism promotion policies of each region can be implemented effectively in a joint effort to restore regional tourism after the Covid-19 Pandemic.

Another solution that can be carried out is consistent with the provisions of Article 43 paragraph (3) of Tourism Law. This means that the RTPB at the regional level must coordinate with the ITPB at the national level in order to harmonize and unify perceptions before taking steps to implement the program. This could be a beginning of the formation of a holding entity between the ITPB and RTPB, where the ITPB can become the parent of all RTPB, following a model of holding company in company law. A holding company or group company is an association or composition of legally independent companies, which are so closely related to one another to form a single economic unit but they are subject to the leadership of a holding company as the central leader. This central leadership has the authority to control the subsidiary companies; hence, it is deemed to run the holding company. Based on this explanation, the ITPB maybe rearrange as the central leader for the RTPB in Indonesia.

Meanwhile, for the long-term solution, the RTPB as mandated by Article 43 paragraph (2) of Tourism Law to be an independent private institution must be strengthened in order to perform adequately a private legal entity. Moreover, it is necessary for the RTPB to be given strategic tasks and functions in developing tourism in the region. In doing this, it requires qualified institutional supports. This means that the division for policy development and the division for implementation should be determined internally without government intervention so that they can be occupied by capable and professional personals. Furthermore, there is also a need to provide certainty regarding funding sources and a more concrete funding mechanism from outside of the government. The ITPB/RTPB can improve performance well with adequate funding. Finally, it is important to carry out the institutional reform of the ITPB/RTPB through a revision of Tourism Law by clarifying the status of the ITPB/RTPB as a private organization with a mandate in tourism promotion.

Conclusion

The institutional arrangements for the Indonesian/Regional Tourism Promotion Board is regulated by Tourism Law in Chapter X Article 36 to Article 49. Those articles govern the basis

of the ITPB/RTPB with regard to its position, basic structure, duties and general functions. Those provisions indicate a disharmony of norms, namely in Article 36 paragraph (2) in relation to Article 43 paragraph (2) which states that the ITPB/RTPB is a private and independent institution due to the unclear meaning of "private and independent". It is necessary to provide ideas for solutions related to the formulation of improving the ITPB/RTPB in the framework of the future recovery of the tourism sector in Indonesia. For the short-term solution, such improvement can be done by undertaking a recovery program in various regions affected by the Covid-19 Pandemic. This is done by rearranging provincial and district levels of the ITPB/RTPB in all regions through enacting a Memorandum of Understanding (MoU) to hold a One-Stop Tourism Promotion. For the long-term solution, it is necessary to rearrange the institutional structure of the ITPB/RTPB through an amendment of Tourism Law to clarify the status of the RTPB as a private body with a specific mandate in the field of tourism promotion. In this regard, such a body should consistently follow the rules and doctrines in private law, such as company law.

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