Investment Model for Traditional Villages in Bali as Tourism Village Managers

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ABSTRACT

A traditional village is a traditional institution that has the authority to regulate all activities of indigenous peoples and non-indigenous peoples who are active and live in their territory. This study aims to analyze the form of business entity for traditional villages in Bali to managing a tourism village as well as models and forms of investment between traditional villages in Bali and investors for the development of tourism villages in their area. The type of research used is normative juridical legal research with statutory and conceptual approaches. The results of the study show that the form of business entity that can be formed by traditional villages in Bali in managing tourist villages in order to facilitate investment from investors is BUPDA in accordance with Bali Regional Regulation No. 4 of 2019. Then, the investment model between traditional villages in Bali and investors in the development of tourism villages is joint operation cooperation agreements and partnership cooperation agreements as well as agreements in the capital aspect with the condition that investors are not allowed to take all or part of BUPDA ownership as village managers tourism in accordance with Bali Regional Regulation No. 4 Year 2022.

1. INTRODUCTION

Bali is one of the islands that are part of the territory of the Republic of Indonesia. As one of the islands in Indonesia, Bali has enormous tourism potential. This tourism potential does not only focus on its natural beauty, but the habits of the people are also an attraction for tourists, both domestic and foreign (Choi et al., 2020; Sukaatmadja et al., 2015). One form of community habits that attracts tourists cannot be separated from aspects of tradition, culture, and customary norms of the Balinese people (Parwata & Wijaya, 2018). The existence of customary norms in the life of indigenous peoples in Bali is closely related to the existence of traditional villages.

A traditional village is a traditional institution that has the authority to regulate all activities of indigenous peoples and non-indigenous people who are active and live in their territory (Suciat, 2021; Wibawa, 2020). Based on Article 1 number 8 of the Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages in Bali (hereinafter referred to as Bali Regional Regulation No. 4 of 2019), Traditional Village is a unit of customary law community in Bali that has territory, position, original composition, rights traditional rights, own assets, traditions, manners of social life of the community from generation to generation in the bonds of holy places (kahyangan tiga or kahyangan desa), duties and authorities as well as rights to regulate and manage their own household. Besides that, the traditional village has a function to maintain social stability and religious harmony (Gunawijaya, 2019). In addition to maintaining social stability and religious harmony, traditional villages also play a role in aspects of promoting Bali tourism, especially in the area of these traditional villages.

The large role of traditional villages in advancing tourism in their own territory is due to the fact that traditional villages are the main supporting pillars of Balinese culture (Kartika, 2019; Suciat, 2021). In addition, to advance tourism in their area, traditional villages can play a role by developing tourist villages with a position as managers which are part of the rights of traditional villages in Bali. As for the regulation of the rights of traditional villages in Bali as managers of tourist villages, it is regulated in Article 8 paragraph (1) of the Regional Regulation of the Province of Bali Number 5 of 2020 concerning Standards for Implementing Balinese Cultural Tourism (hereinafter referred to as Bali Regional Regulation No. 5 of 2020),

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Traditional Villages/traditional institutions / community groups have the right to develop rural tourism in accordance with local potential and in accordance with the provisions of the Legislation.

The rights of traditional villages in developing tourism potential in their area as managers of tourist villages are strengthened by the position of traditional villages as independent communities. Independent community is the authority of traditional villages to manage their villages independently including the social, political and economic fields for the benefit of the community (Putri et al., 2018; Wibawa, 2020). This right will certainly have an impact on the existence of autonomy for traditional villages in developing tourist villages in their territory.

Autonomy for traditional villages in Bali in developing the potential of tourist villages in their area will certainly have an impact on differences in the management standards of tourist villages in Bali. This is because, with the autonomy of traditional villages in managing tourism villages, it has made it easier for traditional villages to find investors and choose relevant forms of investment for traditional villages for the development of tourist villages in their area. Basically, investment arrangements for traditional villages managing tourist villages have been regulated in Article 8 paragraph (3) of Bali Regional Regulation No. 5 of 2020 which states that Tourism Village Managers are obliged to prioritize investment and local resources. Explicitly, the formulation of the article obliges traditional villages to prioritize investment related to the development of tourism villages in their area.

Although arrangements for investment related to the development of tourist villages for traditional villages have been regulated in Bali Regional Regulation No. 5 of 2020, however, the formulation of Article 8 paragraph (1) specifically explains the forms and investment models that can be implemented by traditional villages in developing tourism villages. The form and model of the investment are related to the ownership of the tourist village after the investment and the legal form of managing the tourism village if there is an investment. In addition, the regulation on the amount of investment from third parties is still unclear. The unclear formulation of Article 8 paragraph (1) Bali Regional Regulation No. 5 of 2020 regarding investment in legal terms is called a blurred norm. Fuzzy norms are norms that have no clear meaning (Susanti & Efendi, 2019). The unclear formulation of Article 8 paragraph (1) Bali Regional Regulation No. 5 of 2020 can lead to multiple interpretations in society which has an impact on hampering the implementation and objectives of Bali Regional Regulation No. 5 of 2020. Therefore, this study intends to analyze the form of business entity for traditional villages in Bali as Tourism Village Managers and analyze the forms and models of investment between traditional villages in Bali and investors for the development of tourist villages in their area.

2. METHODS

The type of research used in this research is normative juridical research using secondary data. Research on normative juridical law is basically an activity that will examine aspects to resolve problems that exist internally from positive law (Benuf et al., 2020). The approach used in this writing is a statutory approach by paying attention to the structure of norms in the form of rules or hierarchies of laws and regulations, as well as paying attention to the norms contained in specific or general laws and regulations, or in statutory regulations. old or new (Diantha, 2019). In addition to using the statutory approach, the approach used in this study is a conceptual approach. The conceptual approach departs from views and doctrines that have developed in legal science (Marzuki, 2017).

3. RESULTS AND DISCUSSIONS

Arrangements for Traditional Village Business Forms in Bali as Tourism Village Managers

The existence of traditional villages has received constitutional recognition referring to Article 18B paragraph (2) which stipulates that the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which regulated in law. Philosophically, a traditional village, in this case a traditional village in Bali, is an institution that is not for profit or non-profit. As a non-profit institution, traditional villages in Bali that are given the right to develop tourist villages as managers are certainly not as easy as other profit institutions, moreover the development of these tourist villages will be related to investments made by third parties or investors.

Given space for traditional villages in Bali as managers of tourist villages will certainly facilitate the development of these tourist villages. It is different if the traditional village is only the owner of tourism assets, namely as a maker, policy designer and supervisor, while the tourism manager is in charge of implementing the tourism policy (Libhi & Mahagangga, 2016; Witari & Sariasih, 2020). This situation can make it easier for traditional villages in Bali to develop their tourism villages because they are not only asset
owners, but also managers, which results in traditional villages in Bali having full authority in managing tourist villages, including determining third parties as investors.

Business investment activities between the parties will be easier, if the parties have the same goals and interests. From the point of view of traditional villages in Bali, investment activities in tourist villages certainly do not only focus on profit, but also pay attention to Balinese philosophical approaches in developing a tourist village, one of which is Tri Hita Karana. Tri Hita Karana is a source of prosperity, peace and happiness for human life which is a philosophy of life for the Balinese people with three elements for balance and harmony in the relationship between humans and God, humans and humans, and humans and their environment (Putrawan et al., 2021; Sudiarta, 2021). Then, the approach used by investors generally expects and prioritizes maximum profits in investing. This is in line with the opinion who stated that private investments made by private parties have the main goal of making a profit (Hidayanti, 2017; Rahmah, 2020). To make it easier for both parties in developing a tourism village between traditional villages in Bali and investors, it should start from the most basic stages of business activity, namely knowing the form of legality which can take the form of a business entity for traditional villages in Bali in managing tourism villages. As is well known, the legal form of business entities in Indonesia consists of various types which are divided into legal entities (such as limited liability companies and cooperatives) and non-legal entities (such as individual businesses, civil partnerships, firm partnerships, limited partnerships) (Sidabalok, 2014).

Based on the types of business entities mentioned above, no single type of business entity can be established by traditional villages in Bali. This is due to the fact that the establishment of a business entity refers to the acting skills of the founder based on the Civil Code (hereinafter referred to as the Civil Code), namely people and legal entities or better known as legal subjects. Based on the Civil Code, traditional villages in Bali are not part of the legal subject, but the ratification of Bali Regional Regulation No. 4 of 2019 confirms that traditional villages in Bali have the status of legal subjects as stated in Article 5 which states that traditional villages have the status of legal subjects in the government system of the Province of Bali. From this formulation it can be concluded that the legal subject status of customary villages is only in the Balinese regional government system. Of course, the formulation of the article provides clarity on the status and position of traditional villages in Bali. Besides that, the formulation of Article 5 of Bali Regional Regulation No. 4 of 2019 is strengthened by the concept that, Balinese customary law is an unwritten form of law, so that traditional villages are directly a legal subject because in it there are humans as perpetrators from generation to generation (Pratham, 2022).

Then, Bali Regional Regulation No. 4 of 2019 provides space for traditional villages to carry out economic activities, especially business or in customary village terms it is called Utsaha. Referring to Article 60 of Bali Regional Regulation No. 4 of 2019, Traditional Villages have Utsaha Desa Adat consisting of: LPD and BUPDA. Based on Article 1 number 35 Bali Regional Regulation No. 4 of 2019 stipulates that, Baga Utsaha Padruwen Desa Adat, hereinafter abbreviated as BUPDA, is a business unit owned by a Traditional Village that carries out business activities in the real economy, services and/or public services, except for businesses in the financial sector, which are organized based on customary law and managed with modern governance to improve the welfare and independence of Krama Desa Adat. When referring to the definition of BUPDA as a form of business entity owned by a traditional village that can carry out business activities, then a tourism village managed by a traditional village in Bali can be in the form of a BUPDA business. The formation of BUPDA can encourage and accommodate traditional village padruwen management activities to improve the standard of living of traditional village communities (Senimayura & Agustana, 2020). In addition, BUPDA. Thus, the presence of BUPDA can invite the presence of investors to invest because of the clear form and structure of the management of the tourism village managed by the traditional village.

Then, to establish a BUPDA in accordance with Article 8 paragraph (1) of Bali Provincial Regulation Number 4 of 2022 concerning Guidelines, Mechanisms, and Establishment of Baga Utsaha Padruwen Desa Adat (hereinafter referred to as Bali Regional Regulation No. 4 of 2022) states that, BUPDA for the first Kali was established with the approval of Paruman Desa Adat. After obtaining the Paruman Desa Adat approval which was then stated in the Paruman Desa Adat Decree, then it was registered, verified by the Traditional Village Assembly and ratified by Regional Apparatuses (Article 9 Bali Regional Regulation No. 4 of 2022). With the BUPDA, it is hoped that it will be able to invite investment from investors to develop the potential of existing tourist villages in traditional village areas in Bali while still being professionally managed based on customary law.

**Investment Model between Traditional Villages in Bali and Investors in Tourism Villages Development**

BUPDA as an agency that can serve as a tourist village manager is expected to be able to stimulate the traditional village economy and is required to prioritize investment in developing tourist villages. To
prioritize investment, BUPDA must exist as a business entity that is managed professionally and reliably while still paying attention to the norms in customary law.

In order to increase investor confidence in investing in BUPDA which is located as the manager of a tourist village, it is necessary to have clarity on the investment cooperation model which is clearly regulated by laws and regulations. Referring to Bali Regional Regulation No. 4 of 2019 in Chapter XII, Part Two concerning Traditional Village Cooperation stipulates that traditional villages in Bali can collaborate with other traditional villages, sub-districts, and other parties. The provisions of Chapter XII, Part Two concerning Traditional Village Cooperation provide general arrangements for cooperation, of course cooperation in investment is also included in cooperation in these provisions.

Theoretically, referring to corporate law concepts, forms of cooperation in business activities consist of mergers, consolidations, joint ventures and franchising (Pontoh, 2018). Judging from the forms of cooperation, there is no form of cooperation that has relevance to BUPDA and its legal basis. However, referring to the Provisions of Chapter XII, Part Two concerning Traditional Village Cooperation and taking into account that customary villages are legal subjects, the form of cooperation, in this case investment cooperation between traditional villages in Bali as BUPDA owners who manage tourism villages with investors, can be carried out in several ways, such as make an ordinary cooperation agreement or make a partnership cooperation agreement.

The cooperation agreement in question is an ordinary cooperation agreement that is used by more than two parties or business entities to jointly work on a project or what is known as a joint operation (Sari, 2019). Joint operation activities between BUPDA and investors in the context of developing traditional villages can be intended to jointly build physical facilities in tourist villages. In addition to joint operation cooperation agreements, partnership cooperation agreements can also fill investment space for BUPDA managing tourist villages. Partnership means a relationship (collaboration and so on) as partners. Specifically, partnership relations can be implemented with various activities such as suppliers, agents and resellers, of course all of these activities have investment space and can develop the potential of a tourism village in the future.

The investment model between BUPDA as belonging to a traditional village that manages a tourism village and investors can be realized by making joint operation cooperation agreements and partnership cooperation agreements. The embodiment of the two models of cooperation agreements with no agreement related to the capital aspect because the capital aspect is closely related to ownership, while BUPDA ownership as the manager of a tourist village may only be owned by traditional villages in Bali in accordance with the formulation of Article 11 paragraph (1) Bali Regional Regulation No. 4 of 2022 BUPDA is only owned by Traditional Villages. Then in the elucidation section of Article 11 paragraph (1) it explains that what is meant by "only owned by the Traditional Village" is that BUPDA ownership cannot be transferred to anyone. Referring to the formulation of the article, if the investment is in the capital aspect by an investor by joining or buying all of it or as ownership of a BUPDA, then this is contrary to Article 11 paragraph (1). However, if the agreement related to the capital aspect does not transfer all or part of the ownership of the BUPDA as the manager of the tourism village, then it is possible that the investment model will be carried out between the BUPDA as the manager of the tourism village and the investor.

All forms of investment that arise between BUPDA as the manager of a tourist village and investors starting from an agreement should be in accordance with the formulation of Article 1320 of the Civil Code. Article 1320 of the Civil Code regulates the legal requirements for an agreement with 4 elements, namely the agreement of those who bind themselves, the ability to make an agreement, a certain subject matter, a cause that is not prohibited. Their binding agreement is defined as the existence of equality of will between the parties. The ability to make an agreement is the ability to carry out legal actions. A particular subject matter is performance which is the subject of the contract in question to ascertain the nature and extent of the statements which are the obligations of the parties. Then, a cause that is not prohibited is the cause of the agreement contrary to law, decency and public order (Hernoko, 2013). Seeing the legal terms of the agreement which should be implemented in the cooperation agreement between the BUPDA as the manager of the tourism village and the investor that the BUPDA must be preceded by the existence of an equal will to reach an agreement. Then the skills of each party, namely the first BUPDA has met the requirements as a legal subject who is considered capable of carrying out legal actions, while the investor must be a person of legal age or legal entity. The cooperation agreement between the BUPDA and the investor must have an object of concern and not conflict with public order, decency, and laws and regulations.

In addition to entering into a cooperation agreement between BUPDA as the manager of the tourism village and investors, there needs to be a role for the regional government, in this case the Regional Government of Bali Province, as a facilitator to open investment space. This is because the BUPDA as a business entity owned by a traditional village is still classified as a new type of business entity, so of course, investors have not paid much attention to it.
4. CONCLUSION

The form of business entity that can be formed by traditional villages in Bali in managing tourist villages in order to facilitate investment from investors is BUPDA in accordance with Bali Regional Regulation No. 4 of 2019. Besides that, the investment model between traditional villages in Bali and investors in the development of tourist villages is by making joint operation cooperation agreements and partnership cooperation agreements as well as agreements in the aspect of capital with the condition that investors are not allowed to take all or part of BUPDA ownership as managers tourism village in accordance with Bali Regional Regulation No. 4 Year 2022. It is hoped that the government will immediately carry out the preparation of derivative regulations from Bali Regional Regulation No. 5 of 2020 in the form of a Bali Governor’s Regulation which regulates BUPDA activities in prioritizing investment to manage tourist villages, both in terms of the form and investment model as well as from the construction of standard agreements between BUPDA and investors.

5. REFERENCES


