



## Legal Instruments for Control of Sustainable Tourism Investment in Bali from Citizenship Ecological Perspective

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### Abstrak

Penggunaan tata ruang seringkali mengabaikan konsep Asta Kosala-Kosali. Investasi pariwisata di Bali dalam pemanfaatan ruang dan lingkungan ditandai dengan berbagai bentuk pelanggaran pemanfaatan ruang yang banyak terjadi di beberapa daerah, terutama Badung, Gianyar, Singaraja, Tabanan, Klungkung, Karangasem dan Kota Denpasar. Bentuk pelanggaran radius jurang, pantai, sungai dan danau yang berdampak negatif bagi lingkungan. Penelitian ini bertujuan untuk mengungkap problematika fungsi dari lemahnya fungsi peraturan perundang-undangan dalam pengendalian investasi pariwisata. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan hukum berorientasi kebijakan. Jenis penelitian ini adalah yuridis normatif. Informan ditentukan secara purposive. Pengambilan data di Provinsi Bali dengan jumlah informan 18 orang di 8 kabupaten dan 1 kotamadya dengan sampel desa wisata Tanah Lot, Kabupaten Tabanan, Lovina, Kabupaten Buleleng, Amed di Kabupaten Karangasem, dan hutan mangrove di komando kecamatan Denpasar. Hasil analisis bahan hukum disajikan dengan menggunakan teknik analisis deskriptif. Hasil analisis peneliti terhadap sejumlah objek wisata di Provinsi Bali, seperti wisata Tanah Lot, Lovina, Amed, dan mangrove di Denpasar, menunjukkan bahwa pengembangan pariwisata di beberapa daerah di Bali belum mendapat perhatian. analisis mengenai dampak lingkungan (AMDAL) dan mengabaikan konsep Asta sebagai isi instrumen hukum pengendalian investasi sebagai alternatif perwujudan investasi pariwisata yang berkelanjutan.

**Kata Kunci:** Pariwisata, Pengendalian Investasi, Ekologi Kewarganegaraan

### Abstract

*The use of spatial planning often ignores the concept of Asta Kosala-Kosali. Tourism investment in Bali in the use of space and the environment is characterized by various forms of violations of space utilization that occur in several areas, especially Badung, Gianyar, Singaraja, Tabanan, Klungkung, Karangasem, and Denpasar City. Violation of the radius of ravines, beaches, rivers, and lakes that harm the environment. This study aims to reveal the problematic function of the weak function of legislation in controlling tourism investment. This research is normative legal research with a statutory approach and a policy-oriented legal approach. This type of research is normative juridical. Informants were determined purposively. Data collection in Bali Province with 18 informants in 8 regencies and 1 municipality with samples from the tourist village of Tanah Lot, Tabanan Regency, Lovina, Buleleng Regency, Amed in Karangasem Regency, and mangrove forests in Denpasar sub-district command. The results of the analysis of legal materials are presented using descriptive analysis techniques. The results of the researcher's analysis of several tourist attractions in Bali Province, such as Tanah Lot, Lovina, Amed, and mangrove tourism in Denpasar, show that tourism development in several areas in Bali has not received attention. analysis of environmental impacts (AMDAL) and ignores the concept of Asta as the content of investment control legal instruments as an alternative to realizing sustainable tourism investment.*

**Keywords:** Tourism, Investment Control, Citizenship Ecology

## 1. INTRODUCTION

Foreign Based on the release of data from the Bali Province Central Bureau of Statistics in March 2019, an increase of 2.77% compared to the record in February 2019. The factors causing concerns about the impact of tourism on the environmental and socio-cultural system are inseparable from the inclusion of the neoliberalism agenda in Indonesia which

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opens opportunities for capitalists to capitalize various resources (Awaliyah et al., 2020; Makkuraga, 2017; Pribadi, 2017). The problem of  $\pm 35\%$  of the tourism industry players in several areas in Bali province has not considered environmental sustainability. The findings of the problem based on the results of the environmental impact analysis from observations in the field show high mobility in the tourist area, if it is managed without considering managerial elements across sectors such as human resources, culture, environment, and the religious system adopted which has a negative effect on the sustainability of Bali tourism. For example, the Tanah Lot tourist attraction, Lovina, Amed, based on observations there are signs of eroding of the concrete walls supporting abrasion due to continuous overflowing sea water due to water catchment areas built by tourist huts, damage to coral reefs due to anchors due to the high mobility of water tourism for landing marine accommodation, and the sewerage of the tourism waste industry has an impact on environmental pollution in mangrove forest areas in Denpasar. This condition shows the weak cooperation between the government, traditional villages and investors (Cole et al., 2021; Suarka & Cika, 2014).

The use of spatial planning often ignores the concept of Asta Kosala-Kosali. Tri Hita Karana as a concept of the philosophy of life of the Balinese people who live, grow, develop in each customary village is believed and proven to achieve community welfare in peace and happiness by harmonizing the relationship between humans and God, humans and others and humans with the environment or nature. Universe (Anjani, 2017; Widiartini et al., 2018; Widnyana & Sujana, 2017). The philosophy of Tri Hita Karana by the Balinese people is used as a guide in utilizing the function of space and the living environment, in accordance with the principles adopted in the Global Code of Ethics for Tourism and the Tourism Law which makes the concept a guide (Pradnyawathi et al., 2019; Udayana, 2017). Tourism investment in Bali in utilizing space and the environment is marked by various forms of violations of spatial use that have occurred widely in several areas, especially Badung, Gianyar, Singaraja, Tabanan, Klungkung, Karangasem and Denpasar Municipality. Forms of violation of the radius of ravines, coasts, rivers and lakes. On the one hand, the influence of investment increases, on the other hand it tends to have negative consequences for the environment. Investments in hotels along Jalan By Pass Ngurah Rai which are adjacent and growing continue to show that Bali is one of the tourism investment spots that promises high returns for investors. The construction of hotels along the By Pass Ngurah Rai road occurred because investors applied for permits to be granted permits to build hotels, even with room conditions, there were even some hotels whose front office or lobby area was very close to the roadside. Hotels that are built in limited space show that granting permits to build hotels seems to only consider economic aspects, overriding the structural and functional requirements of space, thus threatening sustainability.

Irregular use and environment, and activities that result in overstress of space affect circulation and spatial function, and can further threaten the sustainability of tourism which requires, tranquility, and environmental health (González-Rocha et al., 2021; Shin et al., 2013). The negative impact of unilaterally easing the list of investment policies by the Government shows that there has not been a growing competitive spirit and readiness for tourism investment in Indonesia (Anggunsuri, 2020). Pilot figures that can be accommodated include broad knowledge of the pedogenesis of the environmental cycle, such as soil structure development, water regulation, nutrient cycling, primary production, climate regulation, pollution remediation and cultural services as characteristics of biodiversity responsible for the provision of many ecosystem services; human welfare (Blouin et al., 2013). Previous research references that can be accommodated as alternative solutions to problems are environmental programs carried out with the involvement of residents in Surabaya Green and Clean (SGC) as a form of operationalization of residents' concern for environmental protection (Prasetyo et al., 2019). The form of transnational participation in

environmental preservation in the field of tourism development is marked by the emergence of a gender-filled movement. 65.8% of the success of women's organizations that are members of the Paiketan Krama Wife forum in Bali have made efforts to integrate natural resource issues in social movements campaigning for women's human rights in the environmental sector (Adnyani, 2014). Improvement of environmental quality standards The mediation forum for participation in pro-environmental behavior in China is proven to increase public exposure to environmental damage in urban China (Chen et al., 2013).

The phenomenon of neglecting the function of space shows that the law is not yet functioning as a tool to regulate and control business activities which has the potential to cause adverse impacts on space and the environment. The Organization for Economic Cooperation and Development (OECD) Environmental Performance Review (EPR) Program refers to Amartya Sen's' capability approach, and the concept of social capital as a framework for institutional analysis in environmentally sustainable development. Legal facts, the importance of identifying regulatory problems or legal functions require handling, prevention, immediately terminated and legal solutions sought. The goal is how to realize Bali as an attractive, comfortable, profitable, and sustainable tourism investment place while maintaining the traditional Balinese spatial concept and not destroying the environment, so that it benefits the welfare of the community. Hayward's life-stage dissolution concept contributes to the criminology of green culture with the scope of study of the realm of hazards and environmental problems (Awaliyah et al., 2020; Brisman & South, 2015). Investment, including tourism investment, should not damage the function of space and the environment in sustainable tourism development. Controlling sustainable tourism investment through spatial management, becoming a future model that can be considered by the Government and Regional Governments, needs to be regulated firmly and clearly in laws and regulations.

The role of public policies, including law, in implementing sustainable tourism investment is to control the bad behavior of each component in each sub-system (internal and external systems) and increase the positive workforce of each component in each sub-system, including spatial planning behavior as a system component in the internal sub-system, which is one part of the sustainable development component of the sustainable tourism investment system (Albasri & Sammut, 2022; Hengky & Kikvidze, 2018; Partelow & Nelson, 2020). Lawsell advocates the use of a more comprehensive approach in public policy formulation. Lawsell's approach goes beyond the policy process approach which puts forward the stages of the policy process as an analytical approach. Lawsell advocates for a broader contextual approach to problems, social processes, values, and institutions, where policy-making and policy analysis are carried out. In Kuhn's paradigmatic terminology, the policy paradigm used is more advisable to use an adaptation or modification approach, rather than revolution, to make policy analysis more democratic, contextual, and prioritize particularities localities. Without ignoring the overall nature (coherency) and sequences (consistency).

This teaching has become a paradigm for all modern nations today and it is time for Indonesia to refer to the same approach as the one commonly used by other modern nations. Consideration of the organic nature of a policy object and consideration of the object affecting the regulated system are the principles of policy formulation that must be used properly in the policy formulation process, both aimed at developing or simply changing existing policy formulations. The purpose of this study is to analyze reveal the problematic function of the weak function of laws and regulations in controlling sustainable tourism investment to prevent environmental damage from philosophical, juridical aspects and to make ideal construction of spatial regulation norms as legal instruments to control tourism investment.

## **2. METHOD**

This type of research is normative juridical. This type of juridical normative research is legal research conducted by examining primary, secondary and tertiary legal materials. The informants were determined purposively. Data was taken in Bali Province with a total of 18 informants in 8 districts and 1 municipality with samples of the tourist villages of Tanah Lot, Tabanan Regency, Lovina, Buleleng Regency, Amed in Karangasem Regency, and mangrove forests in Denpasar district command. The informants involved include traditional village leaders, environmental cadres, and tourism service actors, and related stakeholders including PHRI (Indonesian Restaurant Hotel Association) who are involved in developing the tourism industry to become one of the eco-friendly tourism models. Determination of the sample aims to determine the involvement of citizens in environmental care social movements including the formation of environmental cadres, environmental awareness education, waste recycling, waste bank management, and ecotourism development. This analysis departs from existing norms to analyze existing problems and the results of problem analysis are used to construct and clarify norms or to find options in case of norm conflicts. The results of the analysis of legal materials are presented using descriptive analysis techniques.

## **3. RESULT AND DISCUSSION**

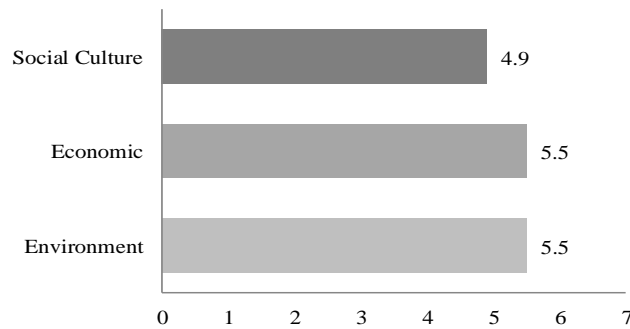
### **Result**

With regard to spatial planning regulations in Bali in particular and Indonesia in general, it is necessary to discuss complex legal and institutional arrangements in the process of developing a spatial planning regime as a representation of interests through various legal repertoires (Wardana, 2015). Environmental cadres, by involving the role of citizens, are oriented towards criticizing violations of spatial planning in tourism investment activities. The statutory approach and the case approach are used by referring to the legal documents for regional spatial planning and tourism in order to provide input on the model for reconstruction of investment control policies. Reflecting on the percentage of cases of environmental pollution, the nature of the Government's responsibility is very large by taking into account several aspects such as strategic environmental studies, strategic environmental assessments, quality environmental standards, environmental damage criteria and environmental impact analyze. The target of the policy is a tourism village in the context of implementing a green and clean Bali, a representation of the operationalization of Balinese people's concern for environmental protection and sustainable development from an ecological civic perspective. This forum serves as a bridge to reach consensus in managing conflict between groups of tourism service actors and traditional villages, and between tourism service actors related to tourism investment with spatial use and environmental conservation. Actualization of the process of determining the policy for tourism investment legal instruments in the form of: (1) Determining game rules that become group agreements. (2) Organizing compromises into the ideal setting model for tourism investment. (3) Arranging compromises and developing eco-friendly tourism interests and based on the beliefs held by the local community, and (4) Strengthening compromises between the parties concerned. This research uses deduction analysis method and induction analysis.

Based on the Global Code of Ethics for Tourism (GCET), tourism must contribute to, benefit and respect the community and existing associations, uphold high ethics, customs, tolerance, and respect for differences in religion, philosophy, moral beliefs, which are a consequence of the shared responsibility of all. components in tourism development. Tri Hita Karana as the philosophy of life of the Balinese people is regulated in Article 1 number 6 of the Bali Provincial Regulation Number 16 of 2009 concerning the Bali Provincial Spatial Plan for 2009-2029. Further provisions in the Bali Provincial Regulation Number 8 of 2015

concerning Directives for Provincial System Zoning Regulations. Article 1 point 6 also regulates the Tri Hita Karana concept, as the philosophy of life of the Balinese people which is used as guidelines in utilizing space and the environment, including in utilizing space for sustainable tourism investment in Bali. Perda Zoning Directives Article 1 point 18 specifying spatial use is an effort to create a spatial structure and spatial pattern in accordance with the spatial layout plan through the preparation and implementation of programs and their financing. Control and utilization of space are regulated in the Regional Regulation Zoning Directives Article 1 number 19 which stipulates that controlling spatial use is an effort to create an orderly spatial layout. Article 1 point 29 also states that a space utilization permit is a permit required for space utilization activities in accordance with statutory provisions. Article 1 point 74 of the Zoning Directives Regulation regulates that the Tourism Area is a strategic tourism area that is geographically located in one or more administrative areas of a village / sub-district in which there is a potential for tourist attraction, high accessibility, availability of public facilities and tourism facilities as well as community socio-cultural activities. which support each other in the realization of tourism.

The Tri Hita Karana philosophy which is used as a guideline by the Balinese people in utilizing the function of space and the environment known as the traditional Balinese spatial planning concept, is in accordance with the principles adopted in the Global Code of Ethics for Tourism and the Tourism Law, so that this concept can used as a guideline. Foreign investment, including tourism investment, in addition to providing positive benefits for the economy and welfare, also has the potential to cause negative impacts on the environment, business space, and business activities, such as: building density and business density in certain areas, unfair business competition, pollution, traffic jams, damage to the function of space and the environment. The findings of the problem based on preliminary observations in the field, several tourist objects in Bali experience environmental problems in the form of erosion of coastal areas, disruption of the survival of marine life, damage to coral reefs, and environmental pollution, development of tourist areas that have not heed the concept of Tri Hita Karana, Tri Mandala, and Asta Kosala-Kosali. In the aspect of partnership cooperation, there has not been coordination between tourism actors and traditional villages. Therefore, the bad effects of tourism investment, on the other hand, are controlled to reduce, minimize, prevent and eliminate the bad effects of investment, and maximize the positive effect of foreign direct investment in the sustainable tourism sector in Bali Province, on the damage to spatial and environmental functions. life. Investment control as regulated in Article 1 number 3 Regulation of the Head of the Investment Coordinating Board Number 23 of 2009, as amended by Regulation of the Head of the Investment Coordinating Board Number 7 of 2010, which determines that investment control is an activity to monitor, develop, and supervise so that the implementation of investment activities is in accordance with the provisions of laws and regulations. The impact of foreign investment in tourism in Bali, the socio-cultural impact that has shifted due to spatial and environmental functions is still neglected by investors shows that the development problem of the tourism sector is more oriented towards economic growth (economic oriented). A number of basic problems in the development of tourism in Bali have threatened the sustainability of social institutions, where the percentage can be seen in Figure 3.



**Figure 3.** Bali Tourism Development Has Threatened The Sustainability Of Social Institutions

### Discussion

The Investment Law, the Tourism Law, and the Spatial Planning Law has regulated and elaborated the principles of sustainability and environmental insight for tourism investment and activities, however, not all investors obey the practice of organizing tourism investment activities (Andani, 2020; Kairupan, 2013). On the other hand, tourism investment activities that are contrary to these principles and norms are increasingly developing in various places (Arliman, 2018; Landra, 2018). Legislation products in the fields of investment, tourism and spatial planning have not been able to control the negative effects of foreign investment in the tourism sector, in particular against the damage to spatial functions and the environment (Hardianto, 2015; Putri, 2012; Sulistyowati, 2015). The Investment Law and the Tourism Law do not explicitly and clearly designate and become the legal basis for the spatial planning law in utilizing space for investment, including tourism investment to achieve sustainable investment, including sustainable tourism investment (Arliman, 2018; Susilawati et al., 2020).

Utilization of space for tourism investment in Bali should also consider aspects: religious / Hindu religion, culture, social society, and aspects of human rights (Cole et al., 2021; Law et al., 2016). This phenomenon of legal regulation or function problems requires handling, prevention, to be immediately stopped and legal solutions sought. How to create Bali as an attractive, comfortable, profitable, and sustainable tourism investment place by maintaining the traditional Balinese spatial concept and not destroying the environment, so that it benefits the welfare of the community. Investment, including tourism investment, does not function space and the environment in sustainable tourism development (Cole et al., 2021; Gurtner, 2016; Tajeddini et al., 2017). There is a need to improve laws and regulations that are unable to control tourism investment in utilizing space and the environment, and the need to construct new norms in laws and regulations. The contradiction of spatial and environmental regulation does not hinder tourism investment. The target material for model content includes partnership cooperation that develops relations between the state and citizens by carrying the ecological icon of citizenship leading to a form of harmony, non-discriminatory content in tourism management, and tourism governance models that lead to aspects of cultural development, customs, religious systems. and the environment.

#### 4. CONCLUSION

The phenomenon of legal dysfunction shows that investment law, tourism law and spatial planning law have not functioned optimally in controlling tourism investment against spatial and environmental damage in achieving sustainable tourism investment. The difference between the existence of legal principles and norms and the reality of activities regulated by norms based on these principles indicates that regulatory norms are not sufficient or even describe norm problems, both norm inconsistency and norm incoherence. The problem of norm regulation that is unable to control tourism investment that has the potential to damage space and the environment, granting permits for tourism investment based on statutory regulations, should seriously consider the analysis of spatial functions, spatial characteristics, spatial carrying capacity, and tolerance and adaptability. space to impact.

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