

Juridical Analysis of the Existence of Digital Nomads from an Indonesian Positive Legal Perspective

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ABSTRAK

Pandemi Covid-19 sangat berdampak pada seluruh sektor industri, khususnya pariwisata. Salah satu upaya untuk meningkatkan kembali perkembangan pariwisata pasca pandemi COVID-19 adalah melalui pengembangan teknologi informasi, salah satunya pariwisata digital. Penelitian ini bertujuan untuk menganalisis keberadaan digital nomaden di Indonesia dari sudut pandang hukum positif. Jenis penelitian yang digunakan adalah hukum normatif, yaitu penelitian yang didasarkan pada data sekunder. Penelitian ini menggunakan pendekatan peraturan perundang-undangan (the statute Approach) dan pendekatan analisis konsep-konsep hukum (the Analytical and Conceptual Approach), yang kemudian dikaji dengan menggunakan penafsiran hukum berupa uraian argumentatif berdasarkan asas, konsep hukum, dan teori-teori yang relevan dengan peraturan perundang-undangan. permasalahan penelitian. Hasil penelitian menunjukkan bahwa dampak pariwisata digital adalah munculnya digital nomad yang memberikan gaya kerja dan budaya saat berlibur baik kepada wisatawan domestik maupun mancanegara. Namun permasalahannya jika dilihat dari hukum positif Indonesia, dimana belum ada peraturan yang jelas mengenai pariwisata digital di Indonesia, sehingga harus dilakukan analisa yuridis mengenai keberadaan digital nomads.

ABSTRACT

The Covid-19 pandemic has greatly affected all industrial sectors, especially tourism. One effort to increase tourism development again after the COVID-19 pandemic is through the development of information technology, one of which is digital tourism. This research aims to analyze the existence of digital nomads in Indonesia from a positive legal perspective. The type of research used is normative law, which is research based on secondary data. This research uses an approach to legislation (the statute approach) and an approach to analyzing legal concepts (the analytical and conceptual approach), which is then studied using a legal interpretation of argumentative descriptions based on principles, legal concepts, and theories relevant to the research problem. The research results show that the effect of digital tourism is the emergence of digital nomads who provide a work style and culture while on holiday for both domestic and foreign tourists. However, the problem is from the perspective of positive Indonesian Law, where there are no clear regulations regarding digital tourism in Indonesia, so a juridical analysis must be carried out regarding the existence of digital nomads.

1. INTRODUCTION

Tourism is familiar to people, both local and foreign. Indonesia, which makes tourism one of the country's foreign exchange earnings, has a very wide variety of tourist destinations, where activities related to tourism development have a wide scope from various aspects relating to aspects of people's lives, starting from accommodation, transportation, food and drink as well as service (Witari & Sariasih, 2020; Yana, Astra, & Suwiwa, 2021). Tourism development is a complex activity involving tourist activities, tourists, facilities and infrastructure, objects and tourist attractions and supporting facilities provided as well as environmental facilities and so on (Anto, Sahili, Rahmatyah, Eviyanti, & Togala, 2022; Sihombing, 2021). Tourism is also a commodity that is a source of income for the Indonesian people (Nugraha, Paturusi, & Wijaya, 2019; Ryanda & Wulansari, 2021). It happens because the development of tourism objects is deemed capable of absorbing labor and increasing tourist visits every year. However, the COVID-19

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pandemic has hit the entire world and is the cause of the economic decline from 2020 to 2022 (Nasution, Erlina, & Muda, 2020; Purwahita, Wardhana, & Ardiasa, 2021). Bali, which has made tourism its main employment commodity, has felt the impact of the pandemic very badly. Based on data, tourists who came in 2020 after the Covid-19 pandemic hit experienced a very drastic decline, which in terms of the percentage of arrivals was only 25% of the number of tourist arrivals in 2019 (Amrita, Handayani, & Erynayati, 2021; Kusuma, Wijaya, & Mariani, 2021). Even in 2021, from September 2021 to January 2022, only 11 tourists came. With the COVID-19 pandemic starting to subside in 2022, tourism development in Bali shows an upward trend but still has not reached half of the tourists who came before COVID-19. From the data obtained, in February 2022, tourist visits increased to 1,313 people, and in September 2022, visits increased 100-fold to 291,162 tourists.

The Covid-19 pandemic is a nightmare for all industrial sectors, especially tourism. However, technological developments provide fresh air for the tourism sector and creative economy to survive and develop amidst the pandemic (Anggariani & Paramartha, 2021; Aziz, 2022). One thing that gives tourism actors the ability to survive is adapting, innovating, and collaborating well, marked by the start of the digital tourism (Anggariani & Paramartha, 2021; Bramantyo & Ismail, 2021). Digital tourism is an effective strategy for promoting various tourism potentials and destinations through various online platforms. It can be considered that digital tourism is a big leap for the tourism sector and creative economy in Indonesia. Digital tourism indirectly makes society more open and adapts to technological developments (Anggariani & Paramartha, 2021; Sukmadi, Goeltom, Darmawan, Simatupang, & Tarunajaya, 2023).

The interesting thing about digital tourism is where the digital nomad phenomenon began. A digital nomad is someone who builds a work style and culture while on vacation that is related to the remote working system, which is increasingly widely used, such as remote work or work where you do not have to come to your workplace even though you have a workplace (Nash, Jarrahi, Sutherland, & Phillips, 2018; Sofia, Wirawan, Febianti, & Arcana, 2023). Workcations carried out by the mushrooming digital nomads are a logical consequence of digitalization, which has penetrated various social activities. The result is that many foreign tourists come to adopt this lifestyle (Mulyana, Sudana, & Sagita, 2020; Muntashir, 2022). With the increasing number of digital nomads that exist, there is a problem related to their status as foreign citizens by declaring themselves as freelance workers or digital nomads and coming to Indonesia, especially Bali, so their arrival should be as tourists to increase people's income but making Bali a workplace to earn money (McElroy, 2019; Prabawati, 2021). So, it is necessary to carry out a juridical analysis of the existence of these nomads.

Juridical Analysis systematically assesses and understands legal issues or problems using legal methods and principles (Marli Pakasi, 2022; Sudirman & Sari, 2018). Juridical Analysis aims to understand the legal implications of a particular situation or event and develop arguments or solutions based on applicable legal norms. Juridical Analysis can be carried out in various contexts, including legal research, dispute resolution, and contract drafting. Various parties, including legal practitioners, researchers, and policymakers, can conduct juridical Analysis. It is an important step in law-based decision-making and can help ensure that an action or decision complies with the applicable legal framework. This juridical Analysis is important to understand the legal framework that may affect digital nomads and guide them to operate legally and fulfill their obligations in various jurisdictions (Prathama, 2022; Tanonggi, 2021).

Previous research findings state that it is important to conduct a juridical analysis to determine the consequences and consequences of violations committed by digital nomads (Marli Pakasi, 2022; Prabawati, 2021). Other research states that normative juridical Analysis is carried out to analyze how the laws or regulations relate to foreign workers in a country (Marli Pakasi, 2022)(McElroy, 2019; Sudirman & Sari, 2018). With previous research findings and existing problems, this research aims to analyze the existence of digital nomads in Indonesia from a positive legal perspective.

2. METHODS

The type of research used is normative law, which is research based on secondary data, which can be said to be research that is more focused on analyzing research objects in the form of legal norms to produce new arguments, theories, or concepts as prescriptions (judgments) in the problems faced. This research uses an approach to legislation (the statute approach) and an approach to analyzing legal concepts (the analytical and conceptual approach), which is then studied using a legal interpretation of argumentative descriptions based on principles, legal concepts, and theories relevant to the research problem.

3. RESULTS AND DISCUSSIONS

Results

Juridical Analysis of the Existence of Digital Nomads from the Perspective of Indonesian Positive Law

In Indonesia, there are no specific regulations governing the existence of digital numbers. Presidential Regulation Number 21 of 2016 concerning Visa Exemption for Visits can only limit a person to being in Indonesia for 30 days but cannot mention what activities. Meanwhile, Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers in Indonesia only regulates Indonesian companies that employ foreigners. In this case, what is meant by employing is an agreement and a certain period.

A foreign digital nomad who enters Indonesia visa-free is not allowed to take additional work from any consumer or client in Indonesia because this is because the visa-free visa obtained by tourists who come based on Presidential Regulation Number 21 of 2016 concerning Visa-Free Visits is a free visa intended for tourism. However, if you end up doing a job, as long as you do not get income from anyone in Indonesia, it can be considered that no rules have been violated.

Based on the understanding above, apart from relating to the categories, a person can be said to be a digital nomad looking at the legal aspect of digital nomads is the existence of work relationships, freelance work, and the use of technology, which in its implementation uses legal actions or events. Regarding digital nomads, it is also necessary to pay attention to citizenship and positive law in the sense of the law that applies in that country.

The regulation regarding Employment and its derivatives, such as employment relations and also its utilization, has been regulated in Law Number 13 of 2003 concerning Employment (from now on referred to as Law No. 13/2003), especially in Article 1 number 2, which states that labor is every person who is capable of doing work to produce goods and services both to meet one's own needs and those of society, the elements of which are 1) each person, namely the legal subject, 2) capable of doing work, 3) producing goods and services, and 4) to fulfill his needs.

Therefore, workers in this case are digital nomads in their workplaces who are included in the category of workers who work in Indonesia. So based on the principles of statehood and *ius solus*, namely the positive law that applies in carrying out labor in Indonesia, it is Indonesian positive law starting from the 1945 Constitution of the Republic of Indonesia to specifically Law no. 13/2003.

Apart from the Analysis of Law No. 13/2003, based on Law Number 28 of 2007 concerning Taxation and Law Number 11 of 2020 concerning Job Creation (from now on referred to as Law No. 11/2020), it has been explained that taxpayers are individuals or entities, including taxpayers, tax cutters and tax collectors who have tax rights and obligations by the provisions of tax laws and regulations. Therefore, people can be subject to income tax (PPh) if they meet subjective and objective requirements. Subjective requirements are requirements where a person or business entity is included in the tax subject category as regulated in law. Meanwhile, objective requirements are requirements where the tax subject receives or obtains income, a tax object regulated in law.

Their meaning must be described to see that digital nomads fulfill subjective and objective requirements. Law No. 11/2020 states that tax subjects can be divided into domestic and foreign. Domestic tax subjects are: 1) Individuals residing in Indonesia or individuals who are in Indonesia for more than 183 (one hundred and eighty-three) days within 12 (twelve) months or individuals who are in Indonesia in a tax year and have the intention to reside in Indonesia; 2) Entities established or domiciled in Indonesia; And 3) Undivided inheritance as a unit, replacing those entitled to it.

As long as the digital nomad meets one of the abovementioned conditions, it can be categorized as a domestic tax subject based on Law No. 11/2020. Meanwhile, what is meant by foreign tax subjects are: 1) Individuals who do not reside in Indonesia or are in Indonesia or are present in Indonesia for no more than 183 (one hundred and eighty-three) days within 12 (twelve) months, and entities that are not established and domiciled in Indonesia who run a business or carry out activities through a permanent establishment in Indonesia; 2) Individuals who do not reside in Indonesia or are present in Indonesia for no more than 183 (one hundred and eighty-three) days within 12 (twelve) months and entities that are not established and domiciled in Indonesia that can receive or obtain income from Indonesia not from running a business or carrying out activities through a permanent establishment in Indonesia.

In the case of taxation on income that crosses national borders/tax jurisdictions or international tax aspects, it is also necessary to pay attention to the provisions of the Double Taxation Avoidance Agreement (P3B) as regulations that are *lex specialis* from the provisions of Law no. 11/2020. Therefore, based on the Agreement on the Avoidance of Double Taxation (P3B), it can be referred to as a domestic tax subject as long as the person concerned is domiciled in the relevant country, taking into account 1)

Ownership of permanent residence; 2) There is a place to carry out daily activities, which include personal matters and economic activities, And 3) There is a place to carry out their habits/hobbies.

By using the provisions of the Double Taxation Avoidance Agreement (P3B), a digital nomad can be categorized as a domestic tax subject in Indonesia as long as the person concerned has a place of residence and lives his or her life in Indonesia.

Before the enactment of Law no. 11/2020, for income received or obtained by domestic tax subjects who are foreign citizens, the principle of World Wide Income taxation applies, namely taxation of all income received or obtained by tax subjects whether originating from within the country or abroad. Therefore, income earned by digital nomads is categorized as subject to domestic tax by foreign citizens, whether from domestic or foreign sources or whether in rupiah or other currencies, which are subject to tax in Indonesia as long as the income obtained was obtained from the time the person was registered meet the subjective requirements as a taxpayer.

With the enactment of Law No. 11/2020, for income earned by domestic tax subjects who are foreign citizens, the territorial taxation principle will apply as long as the foreign citizen has certain skills and is valid for 4 (four) years. The territorial principle is that taxation is only carried out on income obtained from Indonesia. However, this provision will be invalid if the person concerned takes advantage of the Double Taxation Avoidance Agreement (P3B).

Apart from that, in terms of the use of technology, the juridical basis used is based on Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (from now on referred to as Law No. 19/2016) providing an explanation regarding Electronic Information in Article 1 number 1 is one or a collection of electronic data, including but not limited to writing, sound, images, maps, plans, photos, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed that have meaning or can be understood by people who can understand them. Meanwhile, electronic transactions in Article 1 Point 2 state that legal actions are carried out using computers, computer networks, and other electronic media.

With the definition above, in the context of digital nomads, every activity that uses electronic information and a legal act that uses computer media or computer networks such as laptops and others is included in the electronic transactions category so that the law's provisions can bind this. No. 19/2016. Meanwhile, foreign citizens who carry out online application-based activities with electronic information systems must understand Government Regulation 11 of 2019 concerning implementing Electronic Systems and Transactions. It is because it is included in the implementation of electronic systems in the private sector, where the implementation of electronic systems by people, business entities, and the public must be able to meet the minimum criteria based on Article 4, Article 5, and Article 6 regarding obligations that must be registered as explained in paragraph (3). which states that the registration of electronic system operators, as intended in paragraph (1) is submitted to the Minister through the electronically integrated business licensing service by the provisions of statutory regulations

With the above, digital nomads are one of the jobs increasingly occurring in society along with the development of information technology. Tax provisions must be applied to all parties without distinction from one another. This is because the business process of the work carried out is not limited by location.

Discussion

Research results show that in Indonesia, there are no specific regulations governing the existence of digital numbers. A foreign digital nomad who enters Indonesia visa-free is not allowed to take additional work from any consumer or client in Indonesia because this is because the visa-free visa obtained by tourists who come based on Presidential Regulation Number 21 of 2016 concerning Visa-Free Visits is a free visa intended for tourism. However, if you end up doing a job, as long as you do not get income from anyone in Indonesia, it can be considered that no rules have been violated.

A digital nomad has decided to work freely or independently by utilizing technology to avoid being tied to time and place (Mulyana et al., 2020; Sofia et al., 2023). A digital nomad can work whenever and wherever he wants. Apart from that, digital nomads can also be called workers whose main job requires a special place with internet access, so they are not required to come in person, so they are called location independent. Digital nomads are a new cultural development in the modern global society that facilitates human mobility by always moving around (Muntashir, 2022; Prabawati, 2021). If you look at it, what makes a lifestyle appropriate and attractive to society is the combination and innovation of several structural trends, including globalization, technological innovation, and changes in work and social life rules. This cultural development can be a challenge for many people worldwide because it makes work more flexible and risky, and often earns less than expected (Anto et al., 2022; Mahyuni & Satriawan, 2021). However, digital nomads can create new alternative life patterns without destroying the fabric of social life. It can be

said that the work of a digital nomad does not require traveling but has chosen to travel non-stop for his pleasure.

Several indicators determine which countries or regions are suitable as nomadic tourism destinations, starting from internet network access and speed, apartment or accommodation rental costs, language difficulties, openness to digital nomads, costs and access to work visas, and long-distance work visas. In the context of the tourism phenomenon, nomadic tourism has become a product and market development discourse intensively promoted in many development destinations, especially in Indonesia (Prabawati, 2021; Warmayana, 2018). A digital nomad with no attachment to time and place when doing work makes this activity one of the goals of tourists who come to Indonesia. There are several categories of someone who can be said to be a digital nomad, namely as follows: a professional who works independently by providing counseling, an accountant or other assistance, an entrepreneur who organizes his workers using online media, someone who sells digital media products such as websites, e-books, guides and so on, someone who is a freelance worker who has a profession as a web programmer, freelance writer, or social media admin who manages client assets online, and someone who uses the digital world to create works such as YouTube, Instagram or Tiktok who earns income from the number of viewers or influencers who often get sponsors.

It is necessary to monitor the whereabouts of digital nomads to anticipate possible violations. Juridical Analysis is a systematic process of assessing and understanding legal issues or problems using legal methods and principles (Marli Pakasi, 2022; Sudirman & Sari, 2018). Juridical Analysis aims to understand the legal implications of a particular situation or event and develop arguments or solutions based on applicable legal norms. Juridical Analysis can be carried out in various contexts, including legal research, dispute resolution, contract drafting, etc. Various parties, including legal practitioners, researchers, and policymakers, can conduct juridical Analysis. It is an important step in law-based decision-making and can help ensure that an action or decision complies with the applicable legal framework.

This Juridical Analysis is important to understand the legal framework that may affect digital nomads and guide them to operate legally and fulfill their obligations in various jurisdictions (Prathama, 2022; Tanonggi, 2021). Previous research findings state that it is important to conduct a juridical analysis to determine the consequences and consequences of violations committed by digital nomads (Marli Pakasi, 2022; Prabawati, 2021). Other research states that normative juridical Analysis is carried out to analyze how the laws or regulations related to foreign workers in a country (Marli Pakasi, 2022)(McElroy, 2019; Sudirman & Sari, 2018).

4. CONCLUSION

In connection with the Juridical Analysis regarding the presence of digital nomads in Indonesia, as seen from the perspective of positive Indonesian Law, no special regulations explicitly regulate the presence of digital nomads. So, to see the presence and existence of digital nomads, it must be seen from the legal aspect of digital nomads, namely the existence of work relationships, freelance workers, and the use of technology, which in its implementation uses legal actions or events.

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