

Protection of Tourism Rights for Persons with Disabilities

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Abstract.

People with disabilities in Indonesia still experience difficulties in benefiting from the facilities at tourist attractions. The matter is not only related to tourist attractions but most of the supporting facilities for the implementation of tourism activities such as hotels, tour packages and adequate means of transportation are also difficult to find for persons with disabilities to support tourism activities. Motivated by these matters, there are two issues examined in the study: (1) how is the protection of persons with disabilities legally regulated in Indonesia? (2) How is the fulfillment of tourism rights for persons with disabilities in Indonesia implemented?. The method used in this study is empirical juridical research method. Data for the research were collected using field data collection technique and library data collection technique. The data were processed and analyzed qualitatively and presented in a qualitative descriptive method. The results of the study are: first, the essence of protecting the right to carry out tourism activities, especially in the provision of tourism accessibility rights for persons with disabilities is a form of Indonesian state's obligation to provide respect, protection and respect for human rights for all its citizens without discrimination in order to realize welfare for persons with disabilities. This proportion is regulated in Law Number 8 of 2016 concerning Persons with Disabilities, Law Number 10 of 2009 concerning Tourism, and Government Regulation of the Republic of Indonesia No. 42 of 2020 concerning Accessibility to Settlements, Public Services, and Protection from Disasters for Persons with Disabilities. Second, the fulfillment of tourism rights for persons with disabilities in Indonesia has not been implemented properly. These obstacles are caused by the absence of legal certainty guarantees regarding regulations on the minimum standards of accessibility rights for persons with disabilities. As a result, in practice, there are still many public facilities supporting tourism activities that are inaccessible to persons with disabilities. To overcome these problems, it is necessary to have mandatory minimum standards that must be met so that persons with disabilities can enjoy traveling activities safely and comfortably.

Keywords: Disability, Accessibility, Tourism and Human Rights.

I. INTRODUCTION

Tourism is one of the leading sectors in Indonesia in foreign exchange production. Bali is a province in Indonesia which is the first tourist destination in the world. In fact, Indonesia was once listed as the country with the third fastest growing tourism sector in Asia [1]. A shift has occurred in the community's paradigm of the world of tourism. Previously, conducting tourism activities was a prestigious activity. Now, these activities have become a community need and lifestyle as well as a means to support community performance [2]. As an effort to realize sustainable tourism, it is necessary to pay attention to the development of tourism activities that are not only centered on tourist destinations but also on the tourists, especially persons with disabilities. Persons with disabilities in general are one of the vulnerable and minority groups, the number of which reaches 600 million people or two-thirds of visits [3]. Article 5 letter b of Law Number 10 of 2009 concerning Tourism (hereinafter referred to as Law No. 10 of 2009) regulates the link between tourism activities and Human Rights, especially the principle of Individual rights, one of which is the right of every person to tourism [4]. In the 2020 Convention on Tourism Ethics, emphasis is placed on arrangements regarding Human Rights, as it reads "aiming to promote responsible, sustainable and universally accessible tourism in the framework of the right of all persons to use their free time for leisure pursuits or travel with respect for the choices of society people" [5]. This endeavor has become the obligation of all parties, especially tourism actors to be able to realize tourism activities as a community right that must be fulfilled.

Tourists who visit a tourist destination are not only "normal tourists but also tourists with disabilities and their presence needs attention. Limitations experienced by persons with disabilities should appear as an obligation for all parties to provide accessible facilities to explore tourist destinations as a realization of equal rights. Accessible facilities at tourism destinations for persons with disabilities are very important to

provide considering that persons with disabilities cannot carry out activities like normal people in general, and therefore facilities that facilitate their access to enjoy activities at tourist destinations are needed. People with disabilities in Indonesia still experience difficulties in enjoying the facilities at tourist destinations. This difficulty is not only in tourist objects but most of the supporting facilities for the running of tourism such as hotels, tour packages, adequate means of transportation are also difficult to find for persons with disabilities to support independence in an effort to participate in taking benefits of tourism activities in a safe and comfortable way. The aim of accessibility is to make it easy for persons with disabilities to carry out their daily activities and to get equal opportunities in obtaining public services for physical and non-physical access. Until now, the issue of accessibility, unfortunately, has always been considered a minor matter to pay attention to because it is deemed to involve a fairly high cost [6]. Article 21 Law no. 10 of 2009 stipulates that: "Tourists who have physical limitations, are still children, and are elderly shall be entitled to special facilities according to their needs".

The Ministry of Tourism and Creative Economy of the Republic of Indonesia also requires standard facilities related to persons with disabilities adopted from UNWTO policies, namely: (1) special parking areas; (2) ramps; (3) special toilets for disabilities; (4) ticket booths; and (5) special officers for persons with disabilities [7]. Today, improvement of the quality in the tourism sector that can be felt by everyone is imperative. It is time for the concept of disability-friendly tourism to really be applied, not only to increase income from the tourism sector but also to provide equal opportunities and rights for all people, including persons with disabilities [8]. Motivated by this proposition, the issues examined in the present study are formulated in the form of two questions: (1) how is the protection of persons with disabilities legally regulated in Indonesia? and (2) how is the fulfillment of tourism rights for persons with disabilities in Indonesia implemented? The purpose of this study is to stimulate regulatory reforms regarding tourist destinations so that they do not only consider the needs of "normal" tourists as they do as usual, but also prioritize accessibility facilities for persons with disabilities. So far, many people still think that tourism activities are only intended for normal people without attention to the rights of persons with disabilities because it is seen that they should only live in safe places without being able to enjoy entertainment and happiness like when doing tourism activities.

II. METHODS

This type of research is empirical juridical research that examines existing laws at the level of norms (*das solen*) and facts that occur in the field (*das sein*) [9]. This research is a descriptive analysis. The types of data used for this research are primary data and secondary data [10]. These data were collected using field data collection technique and library data collection technique [11]. Once collected, the data were processed and analyzed qualitatively and presented in a qualitative descriptive method in order to obtain clarity regarding the resolution of the problems discussed, so that a truth and conclusion are obtained [9].

III. RESULTS AND DISCUSSION

1. Regulations concerning the Protection of Persons with Disabilities in Indonesia

Problems regarding the existence of persons with disabilities are problems that often live in the society. Persons with disabilities refer to any person who has disturbances, abnormalities, damage, and/or loss of physical, mental, intellectual or sensory function for a long period of time, which may hinder full and effective participation on an equal basis with other people in society [12]. The attention of the public around the world has seen groups with disabilities as people who must receive the equal treatment to that of society in general. The world's attention to people with disabilities is contained in Resolution Number A/61/106 of the General Assembly of the United Nations regarding the Convention on the Rights of Persons with Disabilities (hereinafter referred to as CRPD 2008) and took effect on 3 May 2008 [13]. In the 2008 CRPD, countries in the world agreed that persons with disabilities refer to people who have physical, mental, intellectual or sensory limitations for a long time. In addition, in interacting with the environment, the group may encounter obstacles that make it difficult for them to participate fully and effectively. The emphasis on the notion of disability in this concept is a long-lasting functional disorder that limits participation in society

[14]. Indonesia has signed the Convention on the Rights of Persons with Disabilities on 30 March 2007 which was ratified on 30 November 2011. As an integral entity of a country, persons with disabilities have rights that are equal to the rights of other normal people, especially in terms of tourism [15]. In Indonesia, provisions regarding tourists are regulated in several laws and regulations. Law no. 10 of 2009 implies the regulations regarding the rights of persons with disabilities as a reflection of the protection of human rights contained in Article 20 and Article 21, as explained below.

Article 20

Every tourist shall be entitled to:

- a. accurate information regarding tourist attraction data;
- b. tourism services according to standards;
- c. legal protection and security
- d. health services;
- e. protection of personal rights;
- f. insurance protection for high-risk tourism activities.

Article 21

Tourists who have physical limitations, are still children, and are elderly should be entitled to special facilities according to their needs.

Provisions of Article 20 and Article 21 of Law no. 10 of 2009 imply rules regarding the fulfillment of the rights of persons with disabilities in tourism activities. The fulfillment of these rights is implemented by providing supporting facilities at each tourist spot. Supporting facilities for persons with disabilities are also needed to facilitate access for persons with disabilities, especially in tourism activities. Rights regarding culture and tourism for persons with disabilities in Indonesia are also regulated in Article 16 letters (a), (b) and (c) in Law Number 8 of 2016 concerning Persons with Disabilities (hereinafter referred to as Law no. 8 of 2016). The following is the explanation of it.

Article 16

Cultural rights and tourism rights for persons with disabilities include the rights to:

- a. gain equality and opportunity to participate actively in arts and cultural activities;
- b. obtain equal opportunities to carry out tourism activities, conduct tourism businesses, become tourism workers, and/or play a role in the tourism development process; and
- c. get easy access, treatment, and proper accommodation according to their needs as tourists

Regulations regarding the government's obligation to provide accessibility for persons with disabilities, especially regarding provision of implicit information, are regulated in Article 85 subsections (1) and (2) letters a and b of Law no. 8 of 2016. The following is an explanation of the provisions.

Article 85

- (1) The Government and Regional Governments are required to guarantee accessibility for Persons with Disabilities to obtain cultural and tourism services.
- (2) The easy-to-access tourism services for Persons with Disabilities as referred to in subsection (1) include:
 - a. availability of tourism information in audio, visual and tactile forms; and
 - b. availability of tour guides who possess the ability to describe tourist attractions for tourists with visual disabilities and to guide tourists with hearing disabilities with sign language, and have the skills to provide mobility assistance.

Regarding the accessibility for persons with disabilities, this is also regulated in Article 18 subsection (1) and subsection (2) in the Government Regulation Number 42 of 2020 concerning Accessibility to Settlements, Public Services, and Protection from Disaster for Persons with Disabilities (hereinafter referred to as Government Regulation No. 42 of 2020) which contains provisions related to public services for persons with disabilities.

Implementation of public services based on the substance of the Government Regulation no. 42 of 2020 is obliged to provide easy-to-access public services for persons with disabilities on the basis of the principle of equality in diversity for persons with disabilities and being responsive to the needs of persons with disabilities.

Article 18

- (1) Public service providers are obliged provide optimal, fair and dignified facilities and treatment without discrimination to persons with disabilities. This includes:
 - a. guidance, translators, assistance, and provision of easily accessible facilities at public service locations without additional costs;
 - b. provision of easily accessible infrastructure and facilities for persons with disabilities; and
 - c. information systems, both electronic and non-electronic, that are easily accessible to persons with disabilities
- (2) Public service providers are obliged to provide information and professional human resources in the administration of services and to be able to assist persons with disabilities

Apart from being based on the provisions regarding citizens' rights regulated in laws and regulations, the provision of facilities for persons with disabilities at tourist objects must also be oriented towards forms of public services in the form of tourism services for tourists, especially persons with disabilities. The aim is to create a sense of security and comfort, as well as a positive impression that is always given to visitors to existing tourist destinations. With reference to the theme of "World Tourism Day 2016" entitled "Tourism for All", the United Nations World Tourism Organization (hereinafter referred to as UNWTO) wants the world of tourism to be enjoyed by everyone without exception. UNWTO's commitment with the theme "Tourism for All" is motivated by the Global Code of Ethics of Tourism - Article 7, in that access to discovering and enjoying resources is a right for all citizens of the world. Apart from that, in the Global Code of Ethics of Tourism – Article 7 point 4, it is determined that families, youth, students, the elderly, and people with disabilities must be supported and facilitated in carrying out tourism activities. As one of the countries that has participated in ratifying the Universal Declaration of Human Rights (UDHR) as well as in international conventions that discuss human rights, Indonesia has entered into an agreement that every person shall be entitled to all the rights and freedoms as stipulated therein, without distinction of any kind, reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities for the fulfillment of their rights to be guaranteed without discrimination [16].

As a state of law, it is imperative for the State of Indonesia to protect the rights of Persons with Disabilities, as one of the constitutional rights as stipulated in Article 28 subsection (2) of the 1945 Constitution of the Republic of Indonesia [17]. Regulations regarding persons with disabilities are needed to fulfill their rights in accordance with constitutional foundations, specifically those stipulated in Article 28 (A) of the 1945 Constitution of the Republic of Indonesia, which reads: "Everyone whosoever shall have the right to live and defend his or her life." Equal treatment and recognition of the existence of persons with disabilities should be continuously improved. In the rule of law theory, the guarantee of the protection of human rights which is considered as the most absolute respect that must be owned by every country and given to all its citizens is also included. This is intended to guarantee justice (*gerechtigheit*), legal certainty (*rechtssicherheit*) and expediency (*zweckmabigkeit*) [18]. Even within the foundation of the Republic of Indonesia, when linked to human rights, there is a reflection that social justice must be realized by practicing general welfare for all Indonesian people without exception [19]. This means that justice for all people (social) implies that every individual who enters the social community (citizen) has the right to enjoy a decent life as a respectable human being in the sense that there must be no imbalance in the sense that there are groups who receive rights as citizens in full but there are other groups who do not get their rights [20].

2. Implementation of the Fulfilment of Tourism Rights of Persons with Disabilities in Indonesia

Persons with disabilities possess equal status, rights and obligations with those of non-disabled members of society [21]. Regarding the implementation and fulfillment of rights for persons with disabilities, there is still a lot of discrimination or inequality that occurs in society. One of the disproportions that often arises is the fulfillment of rights to accessibility for persons with disabilities in enjoying the world of tourism. To be able to enjoy the right to carry out tourism activities, the availability of accessible public facilities as well as adequate accessibility is urgently needed. Most stakeholders, the government and the private sector or investors and the community until recently, have not really considered persons with disabilities as potential tourists. This problem is reinforced by the fact that there are still many tourism destinations, especially in the Province of Bali, which do not yet have supporting accessibility for persons with disabilities. Such partiality is an excuse for persons with disabilities not to carry out tourism activities at existing tourist attractions. In fact, the visit of tourists with disabilities is potential enough to support the improvement of the image of tourism in Indonesia.

Availability of physical and non-physical facilities at tourist destinations will make it easier for persons with disabilities to access them like normal people in general. However, the reality is that people with disabilities are still part of a minority community that the government has not paid proper attention to, one of which is the aspect of accessibility. The imbalance occurs because there is still no legal regulation that specifically regulates the standardization of the construction of facilities for persons with disabilities, especially in tourist destinations. Fulfilment the rights of persons with disabilities in an activity is a complex issue. Based on the results of an interview with Ida Ayu Sri Manuaba, Head of *Pusat Pemberdayaan Disabilitas* (PUSPADI) of Bali, the center for the empowerment of disabilities, the fulfilment of the accessibility rights of persons with disabilities is still an obstacle and does not yet reflect standardized accessibility. The problems are as follows:

1. Designs of building in tourist destinations in Bali are not safe and comfortable for persons with disabilities. Even though accessibility has been provided, such as ramps for wheelchair users, it is still not accessible or does not meet the standards set by law. Sometimes the angle of inclination of the ramp that is too steep and slippery can endanger persons with disabilities.
2. Lodging accommodation facilities, such as hotels in Bali are still not accessible, especially for wheelchair users. The obstacles faced were when looking for rooms and toilets, or access from rooms to public areas such as restaurants, swimming pools and lobbies.
3. Transportation in Bali is also not accessible, especially access from the roadside for boarding vehicles. The bus stops that were built are also inaccessible for persons with disabilities, especially regarding ramp. The angle of inclination of the ramp that is too steep and the road and garden sign posts at the end of the ramp can be dangerous for persons with disabilities when crossing it.
4. Human resources still do not understand how to be friendly towards persons with disabilities. This is due to the lack of qualified skills related to how to use sign language when communicating with the hearing impaired, how to help the blind and disabled with wheelchairs and other mobility aids.
5. There is no curriculum on disability that is applied and taught in tourism schools and capacity building training for human resources working in the tourism sector. Provisions regarding the curriculum concerning persons with disabilities really need to be enforced so that tourism actors can communicate and provide services to persons with disabilities properly, especially when carrying out tourism activities.

Problems related to accessible facilities for persons with disabilities are caused by the absence of mandatory minimum standards in public places that must be owned as accessibility for persons with disabilities as regulated in laws and regulations. The absence of mandatory minimum standards results in a lack of facilities for the accessibility of persons with disabilities, especially in tourist attractions. In fact, the Ministry of Creative Tourism and Economy of the Republic of Indonesia has required minimum standards for persons with disabilities, such as: (1) a special parking area; (2) ramps; (3) special toilets for disabilities; (4) ticket booths; and (5) special officers for persons with disabilities. However, laws and regulations related

to persons with disabilities still do not regulate these mandatory minimum standards. The absence of mandatory minimum standards for public facilities forces the government to make regulations that can support accessibility for the travel needs of persons with disabilities. Tourism stakeholders must also design the travel needs of tourists with disabilities and must see that as a business opportunity to develop tourism activities. In addition, the role of the community is needed, especially those who have knowledge or mindset about the travel needs of persons with disabilities and do not regard persons with disabilities as “a disgrace” or a burden but as an equal part of social life.

As a tribute to the Indonesian state’s respect for the rights of individuals with disabilities related to the right to travel, the provision of accessible accessibility for persons with disabilities in carrying out tourism activities is realized. As a first step, what has been done in the context of providing friendly facilities for persons with disabilities is to apply the concept of “universal design”, a concept of design made to accommodate human needs, especially persons with disabilities [22]. The development of advanced and sustainable tourism should be supported by the availability of adequate facilities for tourists who visit existing tourist attractions, because nowadays tourism activities have become a way of life for most people. To date, traveling is no longer a luxury activity that is difficult to enjoy. The development of various types of tourist destinations has made travel activities an “obligation” that should be enjoyed by all levels of society, including persons with disabilities. Persons with disabilities have an equal position in all aspects of life and it has become a necessity for the state to fulfill all their rights, just like the general public, including in tourism activities.

IV. CONCLUSION

Based on the discussion in the previous section, some conclusions from this study are drawn as follows.

1. The essence of the protection of the right to carry out tourism activities in the provision of tourism accessibility rights for persons with disabilities is a form of the state’s obligation to provide respect, protection and respect for human rights to all its citizens without any discrimination in order to realize welfare for persons with disabilities. These provisions are regulated in Law Number 8 of 2016 concerning Persons with Disabilities, Law Number 10 of 2009 concerning Tourism, and Government Regulation of the Republic of Indonesia No. 42 of 2020 concerning Accessibility to Settlements, Public Services, and Protection from Disasters for Persons with Disabilities,
2. The fulfillment of tourism rights for persons with disabilities in Indonesia has not been implemented properly. The default is caused by the absence of guarantees of legal certainty related to setting minimum standards for the accessibility rights of persons with disabilities. As a result, in practice, there are still many public facilities supporting tourism activities that are inaccessible for persons with disabilities. To overcome these problems, mandatory minimum standards are needed, that must be met to create a sense of security and comfort for persons with disabilities in enjoying tourism activities.

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