

# **The Role of *Bale Mediasi* in Settlement of Tourism Disputes in West Nusa Tenggara (NTB)**

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## **ABSTRACT**

Tourism development, which is a way for the Government to accelerate economic growth to realize the community's welfare, will lead to disputes in the process. West Nusa Tenggara (NTB), which is made one of the areas in the priority of national and international tourism development, must look at sustainable tourism development so that the values that exist in the community are maintained and can respond to disputes that will arise. Bale Mediasi, an out-of-court dispute resolution institution based on local wisdom, can play a role in this. This research was conducted through legal research method juridical-normative using literature study. The results showed that Bale Mediasi is an out-of-court dispute resolution institution based on legally valid local wisdom. So, Bale Mediasi can be used as a dispute resolution mechanism in tourism to provide basic needs for people's lives with a sense of security, order, and peace.

**Keywords:** *Bale Mediasi, Dispute Resolution, Local Wisdom, Tourism.*

## **1. INTRODUCTION**

National economic development based on the 1945 Constitution of Indonesia Article 33 must be conducted on the economic democracy with togetherness, efficiency, justice, sustainability, environmental insight, independence, keeping the balance of progress, and also national economic unity. This is also inseparable from national agenda related to the acceleration of economic growth to realize people's prosperity.

Development of tourism business sector is one way for the Government to accelerate the country's economy, which is part of a plan that has been studied together. Tourism refers to various tourism activities encouraged by many facilities and services given by the community, businessmen, government, and local governments. While, tourism is about all activities related to the tourism and multidimensional also multidisciplinary that arise as the manifestation of the needs of each person and country and interactions between the tourists and local communities, fellow tourists, government, regional governments, and also entrepreneurs.

In achieving the target of 16-17 million foreign tourists by spending US\$ 1345 and the target of local tourist movement of 330-355 million in 2024, the mutual synergy between parties like community, businessmen, and the government are needed. The Government, both

represented by the regions and the center in terms of governing, actually has an obligation in tourism development. Article 23 paragraph 1 regulates the Government's obligations in:

- a) Giving tourism information, legal protection, as well as security and safety to tourists;
- b) Making a conducive climate for the development of tourism businesses which consists of the opening of the equal opportunities in running business, facilitating, and giving legal certainty;
- c) Maintaining, developing, also preserving national assets that are tourist attractions and potential assets that have not been explored; and
- d) Supervising and controlling tourism activities in preventing and overcoming various negative effects in the community.

The authority that has been given is a mandate that must be implemented. The province of West Nusa Tenggara (NTB) is no exception, which is currently one of the priority areas in national and international tourism development (development of the Mandalika Special Economic Zone, halal tourism destinations, Tambora national geopark destination, and UNESCO global geopark Rinjani). However, it should be remembered that the tourism development process, oriented towards economic and business benefits, must be accompanied by the concept of sustainable and responsible development

to keep environmental sustainability, religious values, culture in society, and also the quality as the national interests.

West Nusa Tenggara administratively consists of 8 regencies, two cities, 117 sub-districts, and 1143 villages/kelurahan. There are three main tribes, namely Sasak, Samawa, and Mbojo tribes with local values, customs, and also culture who has long been present in managing all aspects of people's live. These values of NTB culture are as "local wisdom," that is, the noble values that occur in the community's life to, among other things, save and manage the environment sustainably. The subsequent understanding, local wisdom, in the foreign language, is as the local policy or local knowledge refers to a view of life and knowledge as well as many life strategies in the form of activities carried out by local communities.

As for tourism development, legal protection is undoubtedly needed in preventing or dealing with matters that give rise to legal disputes and social conflicts that exist in the people of West Nusa Tenggara based on local wisdom that has been respected and recognized by the state. For example, there is a growing national issue regarding the development of the Mandalika Special Economic Zone (SEZ) regarding allegations of the violations of the human rights by the United Nations, also the dispute over the conflict, tanak pecatu Jerowaru sub-district, East Lombok, both of which are tourism destinations.

The West Nusa Tenggara regional government has enacted the West Nusa Tenggara Provincial Regulation Number 9 of 2018 concerning Bale Mediasi in responding to development relations to business activities in the tourism sector in its region which is prone to conflicts and interests which can hinder the ongoing activities by forming alternative institutions for resolving disputes based on local wisdom outside the Court.

For this reason, this study will analyze the role, authority, and legal consequences that Bale Mediasi can do in resolving tourism disputes in West Nusa Tenggara. The problem in this study is as follows:

1. What is the Role of Bale Mediasi in the settlement of Tourism Disputes in West Nusa Tenggara (NTB)?

## 2. METHOD

The research method used in this research is legal research juridical-normative, with library materials that include primary legal materials, namely the 1945 Constitution, the Republic of Indonesia Law Number 8 of 1999 concerning Consumer Protection, Law Number 30 of the Year 1999. 1999 concerning Arbitration and Alternative Dispute Resolution, Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism, Law

Number 48 in 2009 concerning Judicial Power, Regional Regulation of West Nusa Tenggara Province Number 9 in 2018 concerning Bale Mediasi, Regional Regulation of Nusa Tenggara Province West Number 7 in 2013 concerning the Master Plan for Regional Tourism Development in 2013-2028. The secondary legal materials, like previous legal studies, legal books, scientific journals, and the other legal materials, then tertiary legal materials, including Indonesian dictionary and also encyclopedia.

## 3. RESEARCH AND DISCUSSION

### 3.1 *The Role of Bale Mediasi in Settlement of Tourism Disputes in West Nusa Tenggara (NTB)*

#### 3.1.1 *Bale Mediasi institutional, juridical analysis*

Bale Mediasi itself was born from an understanding of the importance of recognizing, respecting, and protecting cultural and customary values into an institutional law whose formation is based on national philosophical, sociological, and juridical foundations and specifically the people of West Nusa Tenggara. Constitutionally, the recognition of state of "cultural and customary values" has been promulgated in the Article 18B paragraph (2) of 1945 Constitution:

"The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and by the development of society. Moreover, the principles of the Unitary State of the Republic of Indonesia as regulated by law".

Article 28 paragraph (3) NRI Constitution in 1945 "cultural identity and traditional rights be respected in line with the times and civilization". Article 32 paragraph (1) also explains, "The State shall promote Indonesian national culture amid world civilization by guaranteeing the freedom of the people to maintain and develop their cultural values".

Then, the establishment of the Bale Mediasi institution itself cannot be separated from regional authority based on statutory regulations that have been weighed to become the legal basis. Bale Mediasi is an institution that carries out the function of mediation, guidance, and coordination in implementation of the mediation in community following the local wisdom and it is not part of the judiciary state, but the institution that resolves disputes outside the Court. While, mediation refers to the settlement of disputes through deliberation and consensus negotiation to get the agreement between the parties with the help of mediator. Mediation is the dispute resolution process between two or even more parties through negotiation or consensus with the help of neutral party who does not have the authority to determine.

The development of the judiciary's policy in Indonesia, which has unified all forms of Court under the

Supreme Court based on Law Number 48 in 2009 regarding Judicial Power. Customary courts in this era have not yet been included “structurally” or “nomenclature” into the national judicial power institutions that base the entire series of legal dispute resolutions from the initial trial to the sentencing (decision). However, the Bale Mediasi institutional “gaps” that were formed can still be traced by:

1. Looking at the meaning of the court process, it is not always resolved by litigation (inside the Court) but can be carried out non-litigation (outside the Court). CHAPTER XII Settlement of Disputes Outside the Court Article 58 of Law Number 48 the Year 2009 with regard to Judicial Power stipulates, “Efforts to settle civil disputes can be carried out outside the state court through arbitration or even alternative dispute resolution.” Then, Article 60, paragraph 1 states that alternative dispute resolution is the institution for resolving disputes or the differences of opinion through procedure agreed upon by the parties, that is, settlement out of Court using consultation, negotiation, mediation, conciliation, or even expert judgment.
2. Using the theory of legal pluralism, namely more than one legal order in social arena. Because the system of formation of Indonesia itself is formed from western law, customary law, and Islamic law, customary law, which is one of the elements forming the customary judiciary in the mediation mechanism, is *Bale Mediasi*. Although the concept develops two forms of legal pluralism, the first is known as the weak legal pluralism, and the second is as strong legal pluralism. “Weak legal pluralism” is the separate regulation created by the state for different groups of people, either based on ethnicity and religion or even district of residence. This is practical technique applied by the government to regulate a pluralistic society. Thus, Indonesian state is still leading to the concept of “weak” legal pluralism. Where the customary laws, religious laws, and the other laws must be subject to explain law. It can be seen from Indonesian judicial system in the form of incorporation to date.
3. Nowadays, there are also many institutions that, although not explicitly referred to as the courts, have the authority and working mechanism adjudicating. Under the provisions of the law, the institutions have the authority to examine and decide something the dispute, and even the matters of ethical violations specified by the final decision and binding (final and binding) and court rulings are “inkracht”. Institutions that are ‘judicial’, but are not as the courts are the form of quasi-court or semi-trial. For instance, some of them can be stated as follows:

- 1) Business Competition Supervisory Commission (KPPU);
  - 2) Indonesian Broadcasting Commission (KPI);
  - 3) Central Information Commission (KIP) and Regional Information Commission (KID);
  - 4) General Election Supervisory Body (Bawaslu);
  - 4) Ombudsman of the Republic of Indonesia (ORI);
  - 5) And the others.
4. In the formation of laws and regulations related to *Bale Mediasi*, one of them is considered legally, one of them is based on Law Number 15 in 2019 concerning Amendments to Law Number 12 in 2011 regarding the Establishment of Laws and Regulations regarding regional authorities, provincial and government. Regencies or cities were informing regional regulations. In the example of the recognition of the customary courts in Papua, which is based on Chapter XIV on Judicial Powers of Law Number 21 in 2001 regarding Special Autonomy for the Papua Province.

The establishment of the *Bale Mediasi* institution is legally valid and can be an extension of the judicial Power in resolving disputes based on the local wisdom because of the continued accumulation of the cases in the district courts. Regarding Article 4 of the Law on Judicial Power that the Court assists justice seekers and attempts to pass the obstacles and to get simple trial, fast, and also low cost.

### **3.2 Authority of Bale Mediasi in Settlement of Tourism Disputes**

The establishment of Bale Mediasi itself aims to:

- a. government recognition as the protection, honor, and empowerment of traditional institutions in carrying out the functions of mediation;
- b. prevent and reduce conflicts or disputes in the community earlier; and
- c. the implementation of dispute resolution in the community through mediation to create a harmonious, orderly and harmonious atmosphere.

As for the task, it can be seen in 11, namely:

- a. create a database of certified and uncertified mediators;
- b. facilitating socialization, education, research, training, seminars, workshops, workshops on mediation;
- c. compiling and establishing Standard Operating Procedures (SOP) for the Mediation Bale;

- d. submit reports on the implementation of duties and authorities;
- e. assistance of dispute resolution carried out by institutions carrying out mediation functions; and
- f. coordinate with institutions and institutions related to the implementation of their duties. And authorized to:
  - a) strengthen the capacity of institutions that carry out mediation functions in the community;
  - b) to increase the capacity of mediators;
  - c) coordinate with institutions that carry out mediation functions; and
  - d) resolve disputes through mediation.

Meanwhile, concerning the resolution of tourism disputes, it is to make Bale Mediasi authority based on law into a dispute resolution institution outside the Court or better known as the Alternative Dispute Resolution to resolve legal disputes in NTB tourism. APS is such a tool of legal experience and technique that aims to: (a) resolve legal disputes out of court for the benefit of the parties; (b) Reducing the costs of conventional litigation and the usual time delays; and (c) Preventing legal disputes, which are usually brought to Court. Because nowadays, alternative dispute resolution methods are getting more attention and are used by various groups, especially those in the business world, as a dispute resolution method that needs to be developed to overcome the bottleneck of settlement through the courts.

Suppose you look back at the highest regulations regarding tourism, for example, in Law Number 10 in 2009 regarding Tourism. There is no article written in a separate article or chapter regarding tourism disputes. The regulation only provides provisions for sanctions of a procedural or administrative nature (Articles 62 and 63) by limiting them to tourists and tourism companies. In contrast, tourism itself in planning, development, implementation, management, and evaluation involves many communities, Government, Local Government, academics, local communities, and others. Although there is a criminal provision in the tourism law, it is again limited to Article 27 of the law, which organizes the "prohibition" of damaging tourist attractions. Even because of the tourism development in West Nusa Tenggara, it is not even possible for disputes in all lines of the tourism process to give rise to disputes that are not only civil but criminal. As mentioned in the background of this writing, the NTB community itself has indigenous peoples who maintain traditional and cultural values or better known as indigenous peoples (in a more specific context) in protecting their territory. Moreover, the tourist destinations in West Nusa Tenggara are primarily located in village areas that still maintain their noble values.

Although in terms of dispute resolution out of Court, either referring to Law of Indonesia Number 8 in 1999 with regard to the Consumer Protection, the Law of the Republic of Indonesia Number 30 in 1999 focusing on Arbitration and Alternative Dispute Resolution or Law Number 48 in 2009 with regard to Power In the judiciary, the three of them place "civil disputes" as the objects. Nevertheless, this is not the case with the NTB regional government, which gives Bale Mediasi authority to settle "criminal" disputes. Because in the realm of law based on custom, it does not recognize the division of nature into law (criminal and civil law), but the makers of Bale Mediasi who are in the unification of the judiciary must submit to the Power of the judiciary but do not also "put aside" the values of the local community because they look at history. The NTB area puts forward a cultural approach through the mediation of consensus (mediation) in maintaining the orderliness of the community. This depends on Article 17 of the NTB Regional of Regulation Number 9 in 2018, that includes:

- (1) *Bale Mediasi* to resolve disputes in the community using mediation through the principle of deliberation and consensus outside the Court.
- (2) Types of disputes that Bale Mediasi can resolve include:
  - a. civil disputes; and
  - b. criminal act.
- (3) Settlement through mediation as in paragraph (2) shall be made at the request of parties.
- (4) The dispute, as referred to in paragraph (2), can be resolved through Bale Mediasi without the parties' request but with the participation of the community who reports it.

Furthermore, to get legal certainty to protect the parties to the dispute. The mediation results are made in the form of mutual agreement as the peace deed signed by the parties, the mediator, and known by the Chair of the Mediation Bale, which is final and binding. Then, the peace deed referred to can be registered with the local District Court to get the executory decision.

On occasion, the Governor of NTB, Dr. Zul, said, "Conflict resolution by means of mediation or prioritizing deliberation, will support the development pursued by the Government. The reason is that people who can solve their problems also take care of their order and security without having to use higher legal instruments". The development in question can be related to the tourism development of the NTB region itself, which includes: a. Tourism destination; b. Tourism marketing; c. Tourism industry; and D. Tourism institutions. So, *Bale Mediasi* can resolve the disputes that are local wisdom for the tourism development in the NTB area, which can prosper live of people with sense of security, order, and also peace.

#### 4. FIGURES AND TABLES

The conclusions of this research are as follows:

- (1) *Bale Mediasi*, which was promulgated as an institution through NTB Provincial Regulation Number 9 in 2018 regarding *Bale Mediasi*, became an out-of-court dispute resolution institution based on the local wisdom that is legally valid by referring to the Indonesian national legal system and aims to prevent, reduce, protect, and resolve disputes that exist in the community first without having to go to Court.
- (2) The development of tourism in the NTB region, which is the Government's effort to evolve the economy to realize the prosperity of the people, have created conflicts of interest that have harmed the local community whose territory has become a tourist destination. So, *Bale Mediasi* is here to trestle disputes that arise to help accelerate development to give the basic needs for the live of people with sense of security, order, and also peace.
- (3) By looking at the absence of regulations or mechanisms for resolving disputes, specifically in regions that still uphold local wisdom in Indonesia at the level of the law. In its regulations, Alternative Dispute Resolution only bases its object on civil disputes must change its approach to criminal things. Seeing the development of the legal study, *Bale Mediasi* makes criminal cases into the type of dispute that can be resolved.

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