

The Meaning of Private and Independent Tourism Promotion Board: A Juridical Study in the Context of Accelerating Tourism Recovery

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Submission date: 07-Mar-2021 06:45PM (UTC-0800)

Submission ID: 1526870678

File name: IKAT_Article_Mr._Agung_Santosa.doc (539K)

Word count: 7396

Character count: 39375

The Meaning of Private and Independent Tourism Promotion Board: A Juridical Study in the Context of Accelerating Tourism Recovery

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Abstract

Indonesia/Regions Tourism Promotion Board (or I/RTPB) are private institutions and independent having duties to assist the development of the tourism sector has not been able to play optimally in performing their duties and responsibilities. The purpose of this study is to find out and understand the institutional arrangements for the I/RTPB in the current legislation and to find out and formulate the ideal form of the I/RTPB in the context of accelerating it. future recovery of the tourism sector. This research uses a juridical normative research with a statutory approach and analysis of legal concepts and uses the document study technique applied in this journal as a legal material tracing technique with qualitative analysis. The results of the study show that the provisions of the regulations for the I/RTPB in the legislation in Indonesia are regulated in the Tourism Law in Chapter X from Article 36 to Article 49 which regulates the basis for the formation, position, basic structure, duties and general functions of the I/RTPB. Regarding ideals I/RTPB to restore the tourism slump conditions in different regions of the post-pandemic COVID-19 by performing institutional restructuring of the I/RTPB is to hold a Memorandum of Understanding (MoU) to cooperate in holding a One Stop

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Tourism Promotion. Long-term should be put through the arrangement of back institutional I/RTPB through the proposed revision of the Law on Tourism to clarify the status of the I/RTPB as a private organization with a mandate in the field of tourism promotion with independence.

Keywords: Tourism, Board, Promotion, Recovery, COVID-19.

Introduction

Tourism Promotion Board (hereinafter referred to as TPB) as one of the institutions owning the tasks in the development of the tourism sector until now has not been able to play optimally in carrying out its duties and authorities as mandated by Law No. 10 of 2009 on Tourism (hereinafter referred to as the Tourism Law). TPB until now has not performed up to handle due to the impact of Pandemic COVID-19 on the tourism sector in the national and in each region, which has lasted for one (year). Even before the COVID-19 Pandemic, TPB did not show its role in advancing the tourism sector. Though the TPB pursuant to juridic normative mandated in its formation as supporting organs of tourism sector of the professional assigned to promote and increase national or regional revenues from the tourism sector through innovation of tourism promotion program. TPB is specifically regulated in Chapter X of the Tourism Law on the Indonesian Tourism Promotion Board with the provision that the Indonesian Tourism Promotion Board (hereinafter referred to as ITPB) is regulated in Article 36 to Article 42, while the Regional Tourism Promotion Board (hereinafter referred to as RTPB) is regulated in Article 43 to 49 of the Tourism Law. (Bagiastuti, 2017)

Even though TPB, both ITPB/RTPB, has a legal basis in its formation, which firmly regulates its duties and authorities, it does not necessarily make TPB a body capable of having a positive influence on long-standing problems in the tourism sector. Moreover, this condition is increasingly impact of Pandemic COVID-19. As a result of the impact caused by Pandemic COVID-19, the government has stimulated the tourism sector to bounce back with its various strategic policies. The government also has made various efforts to improve the conditions of tourism sector to bounce

back. Highlighting various efforts to optimize tourism stimulus policies by the Government to date, it appears that these policies were issued without involving TPB in the formulation process. Whereas Article 36 to Article 49 of the Tourism Law states that "this body is established by the Central and Regional Governments which are private and independent institutions (Article 36 paragraph (2) in conjunction with Article 43 paragraph (2) of the Tourism Law) with its duties. as regulated in Article 41 paragraph (1) jo. Article 48 paragraph (1) of the Tourism Law, one of which is to increase foreign tourist visits and foreign exchange earnings."(Bagiastuti, 2017)

If its role is optimized by the central and regional governments, TPB is actually able to develop and advance the tourism sector, which can contribute when making strategic policies for the development of the regional tourism sector. In fact, the TPB is not given the space to carry out its duties and functions in a formal manner as stipulated in the Tourism Law. This happens because the local government assume with the Ministry of Tourism and Creative Economy and Tourism Department in each has its own structure in running tourism program in fact not enough to be able to organize this tourism sector for both the central and local levels. Whereas the duties and functions of the Ministry of Tourism and Creative Economy and the Department of Tourism with the ITPB/RTPB in principle a difference as set forth in the respective laws. It should have been in the Pandemic COVID-19 situation, TPB could take quick and appropriate steps to help revive the tourism sector by optimally carrying out its duties and functions. This has implications for the slow handling of tourism sector during the Pandemic COVID-19 has entered a period of recession which is quite deep and prolonged. ("Resesi Akibat Pandemi Covid-19 Hantam 92,9 Persen Negara Di Dunia - Bisnis Liputan6.Com," n.d.)

In a situation like this, we are faced with the fact that tourism is a vulnerable sector and cannot be allowed to stand alone as the main source of the economy in certain areas such as Bali and several areas that are highly dependent on the tourism sector. Circumstances like this also be the right moment for each area depends on the

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sector tourism to make changes in policy implementation strategies in developing the tourism sector to make it more effective and targeted. Whereas the tourism objectives stipulated in the Tourism Law can be recognized, namely that tourism contains various dimensions, tourism does not only concern economic issues but also social, political, cultural and other issues (A. Santosa & Saraswati, 2020). Tourism is a multi-complex system by linking various aspects that affect other aspects where in recent times tourism has played an important role as a driving force for community dynamics that affect socio-cultural change (A. Santosa & Saraswati, 2020). The complexity of the tourism system is a logical consequence for the government to involve various stakeholders in order to create solutions and applicable policies.

Various policies were taken by various governments in the context of handling a pandemic such as the Regional Quarantine policy or lock down, Large-scale Causal Restriction (PSBB) and the Enforcement of Restrictions on Community Activities (PPKM)(“Apa Itu PSBB Hingga Jadi Upaya Pencegahan Covid-19? Halaman All - Kompas.Com,” n.d.). This policy automatically hit the tourism sector, including in various regions, especially those that pocketed their regional income from the tourism sector. Companies operating in the tourism sector are closed and do not earn income as a result laying off employees and creating unemployment. Likewise, various tourism businesses no longer operate, even if they are still operating, their sales turnover drops dramatically. For example, losses from Pandemic COVID-19 to tourism sector in Bali that losses reached USD, 9.7 trillion each month and it certainly will cause a domino effect on other sectors in Bali(“Dampak Pandemi Covid-19, Pariwisata Bali Rugi Rp 9,7 Triliun Tiap Bulan,” n.d.).

Appropriate measures should be taken by each region with planning and tourism integration managing. Whereas with the synergy or cooperation formed to manage the tourist attractions of each region, it will be easier to carry out promotions even though it is still in the state of the COVID-19 Pandemic. That interaction as such will

be able to involve various stakeholders such as business operators and travel, accommodation and transport for travel as well as observers and observers of the world of tourism and educational institutions as well as non-profit organization (Fatah & Yuniningsih, 2019). Therefore, it is important to make partnerships between parties involved in the development of tourism businesses, in order to create adequate facilities for marketing tourism destinations in each region by correcting the weaknesses and ambiguities of both ITPB and RTPB (Fatah & Yuniningsih, 2019). The weakness and uncertainty can be seen from several things, namely the position of the ITPB/RTPB in the state administration system, the structure of ITPB and RTPB, and the funding of ITPB and RTPB, as well as the duties and authorities of the ITPB/RTPB administrators which still do not show their real performance. RTPB existence as a private and independent institute showed that the ITPB/RTPB as non-governmental agencies or bodies set up to help the government promote the sector regional tourism (Arifin & Yuniningsih, 2019). This provision is contained in the Tourism Law as a juridical basis for the birth of the ITPBI and RTPB.

The question then is, how to be independent private institution established by the government as a public official to carry out the interests of public, however it is private or private. Not only that, the ITPB/RTPB in its structure is also regulated by the government in relation to its institutional elements and the funding comes from government grants and other legitimate funding contributions. These provisions indicate conflicting norms which cause the space for movement of the ITPB/RTPB to become unclear and not function optimally. Therefore, it is important to research these problems in order to be able to resolve these conflicting norms and find solutions that are able to solve the problems of tourism sector development in each area that have occurred so far and are exacerbated by the impact of the Pandemic COVID-19.

Based on the background above, the problems mentioned above, while the problems are formulated into the scope of the research this is how institutional Tourism

Promotion Agency of Indonesia and the Regions in the legislation at this time? and what is the ideal form of the Indonesian and Regional Tourism Promotion Board in the future recovery of the tourism sector? In order to know the purpose of this study is to know and understand the institutional arrangements for the Indonesian and Regional Tourism Promotion Board in the current legislation and to find out and formulate the ideal form of the Indonesian and Regional Tourism Promotion Board in the future recovery of the tourism sector. That this study is a study that is original and new ideas to help the development of sector the future of tourism. Although there are previous studies that discuss the Regional Tourism Promotion Board, namely in several national journals, one of which is entitled "The Effectiveness of the Surakarta Regional Tourism Promotion Board (TPBDS)" with the authors "Adi Nur Fatah and Tri Yuniningsih" which analyzes a "the effectiveness of the Promotion Agency's performance. Surakarta Regional Tourism (TPBDS) and identifies factors that hinder the effectiveness of the TPBDS organization". Article published in the "Journal of Public Policy and Management Review" in 2019. Of course, the purpose of this article study is different from the study in this article which focuses more on the idea of a solution to reposition the form of TPB, both ITPBI/RTPB so that it becomes more ideal in the future so that it can restore the sector. tourism going forward after the COVID-19 Pandemic.

Literature Review

The term tourism is defined as a journey that carried from one place to place the other to recreational needs (Asmara, 2020). Several tourism experts provide views on the definition of tourism, including:

1. Hunziker and Kraft states that tourism is the whole of symptoms that arise as a result of the journey of the people of foreign as well as providing a place to stay temporarily, which people are not settle and do not earn income from activities such.(Bedasari, Prayuda, & Saputra, 2020)

2. AJ Burkat give a view on the definition of tourism, namely the displacement that is done by people to while the time and the period of time short to a point of interest that is not usually, they live and work.(Haryati & Hidayat, 2019)

In positively Indonesia law, about tourism has been regulated in the provisions of Law No. 10 Year 2009 on Tourism. Under the provisions of clause 1 number 3 of the Law that the tourism, at the point which referred to tourism are all kinds of activities of travel which is supported by amenities and services and is provided by the public, employers and government both government centers and regions.

Tourism is also able to encourage equitable growth in the development of the region which has the potential of natural and potential history. By because its tourism activities considered to have a function that is very important such as an agent of economic development and agents of cultural development (Ida & Wyasa, 2003). One of an effort to make tourism as an agent of economic development is to attract interest of travelers abroad to pay a visit to Indonesia, which will be an impact on the acceptance of foreign exchange. To be able to increase foreign tourist visits to Indonesia, it is necessary to carry out tourism promotion.

Promotion is an activity that aims to inform about a product or service that will be offered to the consumer that in case this is the travelers who made the target market. Promotion is considered as a marketing component (Atiko, Sudrajat, & Nasionalita, 2016). Herman Bahar, define sale as any business or activities of marketing that aims to distribute information and convince the consumer about a product, goods or services that encourage consumers to initiate the purchase of the products are marketed such (Bahar & Marpaung, 2002). According to Kotler and Armstrong Developing a promotion will be effective if it meets several elements including: 1) me to do the identification of the target market, 2) determine the purpose of communication, 3) designing a message that will be delivered, 4) choose the media to distribute messages, and 5) measure promotion results and manage and coordinate the communication process (Rachmayanti & Nofharina, 2018).

Methods

In the preparation of this scientific article which refers to the results of research, research methods are used which are fundamental in essence meaningful to provide guidance in studying, analyzing, and understanding the law in question. In other words, knowledge and knowledge are obtained through research with the scientific method. This research uses methods of legal research with this type of research juridical normative that kind of research that discuss and analyze the level of norms, principles and legal doctrine (Muhammad, 2015). The types of approaches used to support normative juridical research are the statutory approach and legal concept analysis. The statutory approach is applied by examining all legal products ranging from laws to regulations that are relevant to the scope of the problem under study (Muhammad, 2015). This research focuses on the legal arguments built in the study of existing legal regulations, namely the Tourism Law, while the legal concept analysis approach is used to examine the concept of the ideal legal entity form for ITPB/RTPB in the future. The document study technique is applied in this journal as a technique of tracing legal materials with qualitative analysis as a study analysis.

Results and Discussion

1.1. Regulation of the Indonesian and Regional Tourism Promotion Board in the Tourism Law

Efforts to promote the tourism sector will be maximized if it involves related stakeholders and the government not as the sole actor. The existence of synergy between the government and other stakeholders is a good step to maximize the design of the development program that will be carried out. Charles Kaiser Jr. and Larry E. Helber emphasized that "the levels of tourism planning start from regional tourism development which includes physical development of tourist objects and attractions,"(Aditama & Husni, 2019) Then an evaluation is carried out to see the level of success based on the level of visits and the number of tourists whether they

reach the target that has been set priorities. Whereas according to Carlina and Pandoyo that "tourism business is an activity aimed at providing tourism services or providing or commercializing tourist objects and attractions, such as those in the Tourism Law on tourism goods businesses and other businesses related to the said sector."(Carlina, 2020) To maximize these efforts, the government then formed several supporting institutions or agencies in the tourism sector, one of which was the TPB (both national and regional levels).

In addition to having a Ministry of State who took care sector tourism and local government with the Department of Tourism, the government also mandated by the Act of Tourism to form the TPB, the ITPB for national and RTPB for in each province and regency/cities with their duties and functions, as regulated in Chapter X in the Tourism Law. through Presidential Decree Number 22 of 2011 concerning the Indonesian Tourism Promotion Board (hereinafter referred to as Kepres ITPB) dated August 1, 2011, ITPB was officially established. The presence of ITPB is the government's step to spur the advancement of the national tourism industry so that it can compete with other countries. The stipulation of the ITPB Presidential Decree is a mandate of the Tourism Law, namely Article 36. Meanwhile RTPB formed through a Governor/Regent/Mayor's decree ¹ as stipulated in Article 43 paragraph (4) of the Tourism Law.

RTPB is regulated in the second part of Chapter X of the Tourism Law, starting from Article 36 to Article 49. That ITPB/RTPB is in accordance with Article 36 ¹ paragraph (1) jo. Article 43 paragraph (1) of the Tourism Law states that government both central and local mandated to facilitate the formation of TPB to help the government carry out strategic task's development sector tourism nationally and each region. Furthermore, in 36 paragraph (2) jo. Article 43 ¹ paragraph (2) of the Tourism Law states that provision indicates that ¹ the status of ITPB/RTPB is a private institution that is independent, although the procedures for its formation and structure are regulated by the government, it still has the status of an independent private

institution in carrying out its duties and functions. That meaning is private and independently as explanation article by article not described further, which means that the interpretation commonly used is the ITPB/RTPB not public body that regulated by the government, so that the ITPB/RTPB can be run in accordance with the decision of the elements in it as well as body law.

Whereas it is linked to the doctrine of the general teaching of legal entities as described by R. Ali Rido that "to qualify as a legal entity of the legal subject criterion require their own separate assets, has a specific purpose, has its own initiative, and their regular organization." By this doctrine, should the existence of ITPB/RTPB as a private institution that is independent has a separate wealth of funding sources has been sourced from ABPN and Budgets and other legitimate donations. So that, the ITPB/RTPB has a specific goal, namely to become an agency capable of maximally promoting the national and regional tourism sector to increase foreign exchange and state and regional opinion through its strategic work program. In addition, with this objective, ITPB/RTPB should have their own interests that do not get strong influence from the government even though the funds can come from the government. To then ITPB/RTPB really become an independent private institution in managing their organizations regularly, so that the general doctrine of legal entities is met by the ITPB/RTPB useful in performing the tasks and functions of the body formed in the Tourism Law.

In execution of their duties and functions, the ITPB/RTPB also stipulated in Article 41 paragraph (1) and (2) j o. Article 48 paragraph (1) and paragraph (2) of the Tourism Law. Whereas the relationship between ITPB and RTPB is regulated in Article 43 paragraph (3) of the Tourism Law, that means any development policy sector TPBD tourism shall coordinate with the ITPB to harmonize and unify the perception before taking steps to do the programs. Whereas for the initial establishment, as referred to in Article 43 paragraph (4) of the Tourism Law, that the RTPB is formed by the regional head and if in the future it is to be dissolved it must be based on a regional

head's decision. This also applies to the TPBI¹ as stipulated in Article 36² paragraph (3) of the Tourism Law. If we look closely this provision is contrary to the provisions of Article 36 paragraph (2) jo. Article 43 paragraph (2) of the Tourism Law which states that ITPB/RTPB are private and independent institutions. When RTPB is an independent private institution, it should not be done by the official formation public but follow the establishment of other private entities such as corporations through agreements and dissolution by agreement of the parties in it or a court ruling that declared the private entity bankrupt and dissolved. This has resulted in legal uncertainty of the ITPB/RTPB at the juridical level and then has implications for their less-than-optimal performance. Furthermore, in Article 37 jo. Article 44 of the Tourism Law states that, "The organizational structure of the Indonesian / Regional Tourism Promotion Board consists of 2 (two) elements, namely the policy determining element and the implementing element."

The provisions that are no less important regarding the TPBD are in Article 41¹ paragraph (1) jo. Article 48 paragraph (1) of the Tourism Law states that "The Indonesian/Regional Tourism Promotion Board has the following duties:

1. improve the image of Indonesian tourism;
2. increasing foreign tourist visits and foreign exchange earnings;
3. increasing domestic tourist visits and spending;
4. raise funding from sources other than the State Revenue and Expenditure Budget and the Regional Revenue and Expenditure Budget in accordance with the provisions of laws and regulations; and
5. conduct research in the context of developing tourism businesses and businesses."

Furthermore, Article 40 paragraph (2) jo. Article 48 paragraph (2) states that "The Indonesian / Regional Tourism Promotion Board has functions as: a. coordinator of tourism promotion carried out by the business world at the central and regional levels; and b. Government and Local Government partners. " The imposition of the duties and functions of the ITPB/RTPB clear in the Act of Tourism can be done

optimally when the norms governing the status of the ITPB/RTPB harmonized with the provisions of the ITPB/RTPB other in the Tourism Law. This is because there are still discrepancies between Article 36 paragraph (2) jo. Article 43 paragraph (2) of the Tourism Law, for example with Article 42 paragraph (1) jo. Article 49 paragraph (1) of the Tourism Law which states that "The source of funding for the Regional Tourism Promotion Board comes from: a. stakeholders; and b. other sources that are legal and not binding in accordance with the provisions of the legislation." Then, in Article 42 paragraph (2) jo. Article 49 paragraph (2) of the Tourism Law states that "Fund assistance originating from the State Revenue and Expenditure Budget and the Regional Revenue and Expenditure Budget is a grant in accordance with the provisions of statutory regulations." The provisions in Article 42 paragraph (1) to (3) jo. Article 49 paragraphs (1) through (3) of the Tourism Law shows that the ITPB/RTPB still allows government funding through grants and funds as stakeholders for the implementation of the ITPB/RTPB program, this is because the formation and appointment of policy-determining elements is formed by the government. Therefore, the government is one of the stakeholders in ITPB/RTPB, so the government has the authority to provide these funds as a source of funding for ITPB/RTPB.

Based on the explanation above, there are inconsistencies and disharmony between norms in Chapter X, the first part about ITPB and the second part about RTPB that the status of ITPB/RTPB as a private institution and is independent as stipulated in Article 36 paragraph (2) jo. Article 43 paragraph (2) of the Tourism Law and Article 36 paragraph (3) jo. Article 43 paragraph (3) of the Tourism Law that is not harmonious. Which, the provisions of Article 36 paragraph (3) jo. Article 43 paragraph (3) Law on Tourism which further highlight the role of government to set the ITPB/RTPB regarding president or head area lifts authority to decisive element in the policy of the ITPB/RTPB. In addition, the government's still strong role in regulating ITPB/RTPB can be seen from the limitation of the working period of the implementing elements

which is regulated by the government. Not only that, the government is also one of the sources of ITPB/RTPB funds, which of course the government will take a fairly central role in regulating ITPB/RTPB. This provision is the basis for the lack of clarity regarding the meaning of "private and independent institutions" which is embedded in the ITPB/RTPB, if the government still regulates too deeply about the ITPB/RTPB institution which should operate independently as a private legal entity. ITPB/RTPB should be given the freedom as other private legal entities that are in line with the general doctrine of legal entities to clarify the meaning of "private and independent" ITPB/RTPB today as a strategic step to accelerate the recovery of the tourism sector after the Pandemic COVID-19.

1.2. Tourism Promotion Board arrangement Indonesia/ Regions future

1.2.1. Reviewing the Concept of Public and Private Legal Entities to Clarify the Status of the Tourism Promotion Board in the Future

Ramdhon, AS explained that "in the tradition of a welfare state, the role of the state in providing as much welfare as possible to citizens does not only come from the terminology of the welfare state itself, but also as a manifestation of the implementation of the modern rule of law concept."(Ramdhon, 2020) Furthermore, Ramdhon, AS added that "the implementation of government administration in the framework of the welfare of citizens is in principle the main commandment of the democratic concept which requires people's participation in government administration."(Ramdhon, 2020) "The state, in carrying out government administration activities, is carried out through government institutions or is usually categorized as a public legal entity," this was explained by Putra, AS in his journal who then added that "what is called a public legal entity is because it is a legal entity. the establishment or formation is based on the construction of public law, a work environment that carries out public actions or actions, and is given public powers such as making regulations and decisions."(Putra, 2018)

According to the general doctrine of legal entity teaching as explained by R. Ali Rido, "to meet the criteria as a legal entity legal subject requires the criteria of having separate assets, having certain objectives, having their own interests, and having regular organization."(Rido, 2004) Etymologically the term legal entity d nature Dutch language is defined as, " a legal entity as a legal subject is a translation of *rechtspersoon* to humans as legal subject translation from *natuurlijke persoon*, while it was in English literature of legal entities as subject law in the so-called legal person while natural person is translated as human being as a legal subject."(A. A. G. D. H. Santosa, 2019) Soedikno Mertokusumo also explained about the definition of a legal entity, namely " a legal entity is an organization or group of people who have certain goals that can carry rights and obligations. State and Limited Liability Companies, for example, are organizations or groups that are legal entities."(Prananingrum, 2014) Furthermore Soedikno Mertokusumo asserts that " legal entities that act as a unit in the traffic law such as the law creating the legal entity for the recognition of organizations or groups of people as subjects of law is necessary because the benefit to the traffic law."(Mertokusumo, 2005) Based on the opinion of these experts, it can be concluded that legal entities:

"It is an organization or association of people;

- a. Able to establish legal relations and be able to take legal actions;
- b. Own assets of their own;
- c. There is a management;
- d. Have obligations and rights; and
- e. Can sue and be sued before the court. "

Furthermore, by E. Utrecht described the basic division of the legal entity that " based on the division of law in public law and private law, agency law can be divided into two, namely public law bodies, and private law bodies."(Prasetianingsih, 2014) Furthermore, E. Utrecht stated that "the classification of public legal entities and private legal entities is based on the criteria of legal division, namely public law and

private law." In line with E. Utrecht, opinion Man. S. Sastra Widjaja stated that "there are several criteria for determining a legal entity as a public legal entity and a private legal entity" including:

1. "Based on the occurrence, or based on its founder, it means that if the legal entity for its establishment applies the provisions of public law or is established by a general authority the legal entity is a public legal entity, but if the legal entity is established by an individual so that the civil law provisions of the legal entity apply against it including private legal entities;
2. Employment field, meaning if the employment of a legal entity is for the public interest, including a public legal entity, if the job field is for the benefit of an individual or a group of people, including a private legal entity."(Rohendi, 2018)

Based on the explanation above, the criteria that form the basis for the classification of private and public legal entities are based on the classification of private and public law. Whereas what is meant by a public legal entity is a part of public law that can vertically act unilaterally to carry out public legal functions in its public jurisdiction with all the legal consequences it causes. Private legal entities are included in the field of private law whose personalities are established by individuals or groups of people for the benefit of their parties with all the legal consequences. Therefore, RTPB should set a *rechtpositie* as soon as possible, whether it is a private institution to carry out public functions in the tourism sector or not. It depends on the steps that each country will take.

Therefore, it can be said that the criteria for determining a private legal entity ¹² can be based on the form and purpose of the legal entity itself which usually has certain objectives such as to obtain profit or social purposes, the next criterion is that the legal entity is the same as an individual and does not has powers like a public legal entity (A. A. G. D. H. Santosa, 2019). In the development of constitutional dynamics

and the complexity of the people's needs in accordance with the principles of the "welfare state" which are starting to be adopted by many modern countries today, which makes the scope of the government wider. In order to carry out these functions, in fact the quantity of public legal entities that are unable to carry out these civil functions, in practice the government establishes private legal bodies which are given the function of carrying out government civil functions. This basis may be the reason for the government to form ITPB/RTPB as a private institution that is independent, but is still controlled by the government directly or indirectly, as is the case today.

In Indonesia, in order to differentiate the scope of public and private law, a combined opinion is used to refer to *de heersende 'leer* and the German legal experts, which is then supported ¹³ by the provisions of Article 1653 of the Civil Code (A. A. G. D. H. Santosa, 2019). In the case of classifying or differentiating public and private law, if it is linked to the provisions of Article 5 letter (a) of Law No 12 of 2011 concerning Procedures for the Formation of Laws and Regulations, whereas "one of the principles for the formation of laws and regulations is a matter of clarity of purpose." (Putra, 2018) This means that the regulation regarding the position of a legal entity, both public and private, must be clear and firm to ensure legal certainty, not merely as a practical need when it is needed to resolve disputes that question the status of a legal entity."

However, in everyday life, legal entities are not only differentiated as public legal entities and private legal entities, this is because currently there are still private legal entities that have the duty to carry out public actions, and the reverse also occurs. Whereas until now, there are still public legal entities that carry out civil actions. More concretely, that "the government, which is basically an organ of government (*bestuurorgan*), is also a legal entity (*rechtspersoon*)."(A. A. G. D. H. Santosa, 2019) In that regard, government actions are always on and / or in the name of the government when carrying out legal actions or actions both from a public and

private perspective. "This fact shows that it is now difficult to divide a legal entity into a public legal entity or a private legal entity conceptually due to the dynamic development of law to keep up with the rapid development of human life itself.

4.2.2. Rearrangement of the Indonesian/Regional Tourism Promotion Board for the Recovery of National Tourism

First thing to do both central and local government conduct a study and then fix structures are at management institutionally ITPB/RTPB. Whereas in Article 37 jo. Article 44 of the Tourism Law has regulated the organizational structure of the ITPB/RTPB consisting of policy-making and implementing elements. It should be noted that the determining elements of ITPB/RTPB policies are stipulated by a Presidential Decree or a Regional Head Decree as regulated in Article 38 paragraph (2) jo. Article 45 paragraph (2) of the Tourism Law and further provisions related to work procedures and so on are further regulated by Ministerial Regulations for ITPB and "Pergub/Perbup/Perwali" for RTPB. Meanwhile, the implementing elements of the ITPB/RTPB are further regulated by the ITPB/RTPB Regulations, meaning that the implementing elements are formed by the element determining the policy. It can be criticized that the formation of the implementing element by the policy-making element which is actually a government formation does not show the independent nature of the ITPB/RTPB in determining its organizational structure as a private institution in determining policies that should be issued without government intervention. Status quo is therefore a conflict of interest that should be minimized if the structure of the ITPB/RTPB true as private bodies with their independent nature.

Second, it is necessary to reformulate the source of funding for ITPB/RTPB in the previous regulation. In order the source of funding for ITPB/RTPB in line with the status of the ITPB/RTPB the private bodies or private entity which is independent. That is important for the organization or bodies important to get a clear and adequate financing in order to carry out its duties and functions to the maximum. However, the source of financing is ITPB/RTPB as regulated in Article 42 paragraph

(1) and ¹¹ paragraph (2) jo. Article 49 paragraph (1) and (2) of the Tourism Law. This further reinforces that ITPB/RTPB not constitute private bodies self-reliant because these provisions and in practice ITPB/RTPB still await government funding.

Third, things that need to be improved in the ITPB/RTPB institution are regarding the position of the ITPB/RTPB. Referring to Article 36 paragraph (2) ² jo. Article 43 paragraph (2) of the Tourism Law and in comparison, with the ² provisions of Article 36 paragraph (3) jo. Article 43 paragraph (4), Article 38 paragraph (2) and (4) ¹ jo. Article 45 paragraph (2) and (4), and Article 42 paragraph (1) and (2) jo. Article 49 paragraph (1) and (2) of the Act of Tourism looks contradiction of norms regarding the position or status of the ITPB/RTPB. It is important to clarify the meaning of "private and independent" ITPB/RTPB in order to avoid overlapping authority with other bodies and strengthen the status and position of the ITPB/RTPB as a private entity independent to be able to work together with the government to advance the tourism sector nationally and in each region.

Because of this, while the ideas to improve the management institutionally ITPB/RTPB to clarify the ⁸ meaning of the status of a private institution which is independent divided into two time periods, short-term and long-term. For a ² short-term solution to recovering the deteriorating conditions of tourism in various regions after the COVID-19 Pandemic so that they are able to rise this year, namely by restructuring Provincial and District/City ITPB/RTPB institutions throughout Indonesia. As the first steps to be fetched for short-term advice is to hold a Memorandum of Understanding (MoU) between RTPB regencies/cities in each region to work together to hold the Tourism Promotion One Door Regions. Through this One Stop Tourism Promotion activity, it is hoped that the tourism promotion policies of each region can be implemented effectively in a joint effort to restore regional tourism after the COVID-19 Pandemic.

Other the solutions that can be carried out is consistent with the ² provisions of Article 43 paragraph (3) of the Tourism Law. This means that every RTPB tourism sector

development policy must coordinate with TPBI to harmonize and unify perceptions before taking steps to implement the program. This could be the beginning of the formation of a holding company between ITPBI and RTPB, where ITPB can become the parent of all RTPBs by implementing a holding company concept as described in company law. Whereas a holding company or group company is an association or composition of companies that are juridically independent, which are so closely related to one another that it forms an economic unit that is subject to the leadership of a holding company as the central leader. This central leadership has the authority to control the companies that are under it, which is then called the term subsidiary. With the authority of the central leadership controlling the subsidiary, the central leadership is deemed to run the holding company. Based on this explanation, ITPB will become the parent of all RTPBs in Provinces and Regencies/Cities in Indonesia as a private institution that is independent in carrying out certain objectives and interests as an organized organization.

Meanwhile, for the long-term solution, first, RTPB ¹⁴ as mandated by Article 43 paragraph (2) of the Tourism Law which is an independent private institution must be strengthened by being able to form a private legal entity as long as it fulfills the elements ⁶ of a private legal entity as the doctrine of a legal expert. Second, giving strategic tasks and functions in the development of tourism in each region so that the TPBD in the future can provide strategic and effective tourism development strategies. Third, to provide the right and strategic position with qualified institutional support. This means that the elements of policy making and implementing elements are determined by the internal ITPB/RTPB itself based on the consideration of the capacity and capability of the people. Fourth, provide certainty regarding regulations regarding funding sources and a more concrete funding mechanism from outside the government so that the ITPB/RTPB performance can be maximized. Fifth, that it is important for ITPB/RTPB elements in the future to determine goals in order to determine how to achieve these goals, not vice versa. That it is important to carry out the institutional arrangement of ITPB/RTPB in all

regions through the proposed revision of the Tourism Law by clarifying the status of ITPB/RTPB as a private organization that is given a mandate in the field of tourism promotion with its independence. So that ITPB/RTPB can move in the right path going forward.

Conclusion

The institutional arrangements for the Indonesian/Regional Tourism Promotion Board in the laws and regulations in Indonesia are regulated in the Tourism Law in Chapter X Article 36 to Article 49 which regulates the basis regulation of ITPB/RTPB about position, basic structure, duties and general functions of ITPB/RTPB. This provision indicates a disharmony of norms, namely in Article 36 paragraph (2) jo. Article 43 paragraph (2) states that the ITPB/RTPB is a private and independent institution. Due to the unclear meaning of "private and independent" ITPB/RTPB in the Tourism Law. It is necessary to provide ideas for solutions related to the formulation of shape ideal ITPB/RTPB in the framework of the future recovery of the tourism sector in Indonesia. For short- term road solutions, it can be done by restoring the deteriorating conditions of tourism in various regions after the COVID-19 Pandemic so that they are able to rise this year, namely by rearranging Provincial and District/City ITPB/RTPB institutions in all regions by holding a Memorandum of Understanding (MoU) to hold a One Stop Tourism Promotion. For that solution can be done by do institutional arrangement ITPB/RTPB across the area through the proposed revision of the Tourism Law to clarify the status of RTPB as a private organization with a mandate in the field of tourism promotion with independence and can apply the concept of the company group or holding company between ITPB and RTPB.

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