

# **JURIDICAL ANALYSIS OF LOCAL GOVERNMENT AUTHORITY ON THE ESTABLISHMENT LOCAL REGULATIONS ECO-TOURISM DEVELOPMENT**

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## ***Abstract***

*Peraturan Daerah (Perda) are actually formed in the context of implementing provincial/district/city regional autonomy and co-administration tasks, as well as further elaborating the provisions of higher laws and regulations. Ecotourism is a concept of nature-based travel. Law Number 23 of 2014 concerning Regional Government, regulates the affairs and authorities of the provinces, districts and cities. Tourism, environment and forestry affairs are concurrent government affairs, namely the authority is divided between the central government and local governments. Government support in developing ecotourism in the regions is stated in the Regulation of the Minister of Home Affairs Number 33 of 2009 regulating the development of ecotourism in the regions optimally. It needs a strategy of planning, utilization, control, institutional strengthening and community empowerment by taking into account social, economic principles and involving stakeholders interest. However, there are no regulations that more technically regulate the development of ecotourism in the regions. So, there is a vacuum of legal norms. Therefore, local governments have a central role in forming ecotourism regulations in accordance with the ecotourism resource potential of each region. The research was conducted on the problems at which local government level has the authority to form an ecotourism regional regulation and what is the process of its formation. This research uses normative legal research methods, statutory approach, conceptual approach. This study uses an analysis of the Theory of Authority, the elaboration of norms and legislation. The results of the study found that Ecotourism Regional Regulations can be formed by each level of Regional Government according to the government affairs and regional authorities concerned. The obstacle that occurs is that there are still many regions that do not have local regulations on the Master Plan of Regional Tourism Development. This causes the Dinas Pariwisata, Kepemudaan dan Olahraga (Dispaspora) of the area does not have the basis of legal authority to make a document Rencana Induk Pengembangan Pariwisata Daerah (RIPPARDA) which serves as a guide to Tourism Management in the area.*

**Keywords:** *Local Government; Local Regulation; Ecotourism*

## **1. Introduction**

Based on mandate of 1945 Negara Kesatuan Republik Indonesia (NKRI) after second amendment in Article 18 paragraph (1) stipulates as follows: *“The Unitary State of Republic Indonesia is divided into provincial regions, and the provincial areas is divided into regencies and cities, which each of a province, district and city”*. The city has a regional government, which is regulated by law. Negara Kesatuan Republik Indonesia (NKRI) is an archipelagic country which is divided into 34 provincial areas and provincial areas are divided into 416 regencies and 98 cities. Every province, district, and city has a local government. Furthermore, related to implementation of regional government, the 1945 Constitution of Republic Indonesia in Article 18 paragraph (2) stipulates as follows: *“Provincial, district and city regional governments regulate and manage a government affairs themselves according to the principle of autonomy and*

*assistance tasks*". Then in paragraph (6) determine that regional government has the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks.

State of Indonesia is a unitary state, therefore the administration of regional government and implementation of any business and activities within the framework of state must remain with the bonds of Unitary State of the Republic Indonesia<sup>1</sup>. Indonesia, which has an area almost the same as mainland Europe, besides consisting of more than 13,000 islands and various tribes, languages, and local culture can't be effectively regulated directly by the Central Government. Therefore, local government have developed the principle of decentralization, in addition to the principle of deconcentration and the principle of Medebewind<sup>2</sup>. Rencana Pembangunan Jangka Panjang Nasional (RPJPN) 2005-2025 mandates that all development sectors in Indonesia must apply like as principles of sustainable development. For relation tourism, the paradigm of tourism development has evolved, from *mass tourism* to *sustainable tourism*.

The *International Ecotourism Society*, known as TIES (2000), estimates that growth in the ecotourism market ranges from 10-30 percent every year while overall growth in tourism is only 4 percent<sup>3</sup>. Indonesia is an archipelagic country has more than 500 ethnic cultures as potential resources and natural wealth that can be a supporter in tourism development. The tourism sector in Indonesia is one of the leading sectors and contributes significant foreign exchange for non-oil and gas produce. Law Number 10 of 2009 concerning tourism which regulates tourism as a whole, it's a philosophical basis, namely of natural wealth, means of flora and fauna is resources and capital for tourism development. All of these resources have some uniqueness, beauty, and value form of diversity is natural wealth, which are tourist attractions.

Seems as data show that ecotourism is very promising, to be developed throughout Indonesia. However, ecotourism is not just a trip to natural areas, but must be enforced in every space of tourism destination. Implementation of ecotourism is not in accordance with sustainable development, only has a result in widespread environmental damage, so that is better resources are decreasing or even becoming scarce. Increasing capacity or regulations or mechanisms is very much needed, cause there are many parties involved with various interests and different authorities so that there is no conflict of interest. According to Soerojo Wignjodipoero<sup>4</sup>, law is the

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<sup>1</sup> C.S.T. Kansil and Christine S.T. Kansil, *Regional Government in Indonesia* (Jakarta: Sinar Grafika, 2011).

<sup>2</sup> Winarna Surya Adisubrata, *Perkembangan Otonomi Daerah Di Indonesia 2 (Sejak Proklamasi Sampai Awal Reformasi)* (Semarang: Aneka Ilmu, 2003).

<sup>3</sup> R. Hendrik Nasution, Ricky Avenzora, and Tutut Sunarminto, "Analisis Kebijakan Dan Peraturan Perundang-Undangan Ekowisata Di Indonesia," *Media Konservasi* 23, no. 1 (2018): 10.

<sup>4</sup> M. Noor Fajar Al Arif F., "Harmonisasi Hukum Pidana Adat Masyarakat Baduy Dengan Hukum Pidana

rules of created life by humans to determine human behavior. This rule is coercive and people's in a citizen must comply with it. If there are violations, it will be given a penalty in the form of punishment. Law enforcement requires a complete legal basis with un-conflict of norms, like as basis enforcement.

Government support for developing ecotourism in regions is stated in Peraturan Menteri (Permen) Number 33 of 2009. This regulation explains that in order to develop ecotourism in regions optimally, it is necessary to plan, use, control, strengthen institutional strategies, and empower communities by taking into account of principles social, economic, and involving stakeholders. This needed to be follow-up with more technical regulations and can be *starting point* for local governments by establishing Peraturan Daerah (Perda) regarding ecotourism development in accordance with potential of each ecotourism resource, a while still paying attention for sustainable development<sup>5</sup>.

The results of previous studies, research conducted by Sri Karyati<sup>6</sup> with the title "Legal Policy Model for Ecotourism Development in West Nusa Tenggara" focused on issues about legal policies taken by the government in accommodating ecotourism development and environmental-based models of environmental-based NTB provincial government legal policies, while this research focuses on problems at the local government level or local regulations that are authorized to form ecotourism regulations and the process of their formation. The research conducted by Debby Fifiyanti, Janianton Damanik<sup>7</sup> with the title "Mapping the Role and Contribution of Stakeholders in Ecotourism Development in Burai Village" focuses on identifying and classifying the roles of stakeholders and their influence in ecotourism development, while this study focuses on problems at the local government or local government level that has the authority to form a regional regulation on ecotourism and process of its formation. The research conducted by Danu Suryadi and Warizal<sup>8</sup> title of "Synergy of Local Economic Development and Tourism Through Integrated Regional Regulations" especially in tourism potential management programs with local economic programs in local governments, a

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Nasional (RUU KUHP)," *De Jure Jurnal Ilmiah Ilmu Hukum* 1, no. 2 (2020): 132.

<sup>5</sup> Muchroddi Muchroddi, Rini Untari, and Dhian Tyas Untari, "Permasalahan, Kebijakan, Dan Peningkatan Kapasitas Manajemen Ekowisata Di Indonesia," *Journal of Applied Business and Economics* 1, no. 2 (2014): 56–69.

<sup>6</sup> Sri Karyati, "Model Kebijakan Hukum Pengembangan Ekowisata Di Nusa Tenggara Barat," *Media Keadilan: Jurnal Ilmu Hukum* 12, no. 1 (2021): 96.

<sup>7</sup> Debby Fifiyanti and Janianton Damanik, "Pemetaan Peran Dan Kontribusi Pemangku Kepentingan Dalam Pengembangan Ekowisata Desa Burai," *Jurnal Ilmu Sosial dan Humaniora* 10, no. 3 (2021): 448.

<sup>8</sup> Danu Suryani and Warizal Warizal, "Sinergitas Pembangunan Ekonomi Lokal Dan Pariwisata Melalui Peraturan Daerah Terintegrasi," *Jurnal Ilmiah Living Law* 11, no. 2 (2019): 152–159.

while this research focuses on problems at the local government level or local regulations that has the authority to form a regional regulation on ecotourism and the process of formation.

Referring to the research findings as described above, that there are no local legal products in the form of Peraturan Daerah (Perda) and Peraturan Kepala Daerah (Perkada) which regulate ecotourism activities in the region. So, there is a problem of void legal norms. Other Criteria, substance material content all ecotourism policies and regulations in Indonesia showed 5-score or mean much better. The un-optimal value can be said not to have comprehensive and structured objective clarity so that the dynamics of the substance contained and/or contained in the law is still partial. On that, it must be understood that ecotourism should not be interpreted as travel activities to natural/ remote areas only, but must be established in every tourism destination space. Based on the results of the search for regulatory documents including legislation (Law, Government Regulation, Presidential Regulation, Presidential Decree, Ministerial Regulation) found that between the mandated regulations with the implementing regulations are not set within a period of 2 years as appropriate. Therefore, it is necessary for the integration of the parties to revise various regulations and policies of ecotourism legislation in Indonesia comprehensively, systematically and objectively so that in the dynamics of its implementation is able to optimize the development of ecotourism in the region. In the development of National Ecotourism, regulation and policy aspects are very important to be studied as the basis for the orientation of the parties in implementing tourism development in various regions. The failure of ecotourism development occurs due to overlapping management, policy disharmony and legislation and sectoral ego in each ministry as the person in charge of ecotourism development. Therefore, it's very essential to conduct research on the formation of ecotourism regulations. The object of this research is the local government which has the authority to form a regional regulation on ecotourism and the process of its formation. Based on the description above, it appears that there are problems, namely how is the authority of local governments in the formation of regional regulations on ecotourism development and what are the processes and techniques to forming a regional regulations on ecotourism development.

## **2. Method**

In this study, the writer uses normative legal research, namely is legal approach and conceptual approach. Normative legal research (*normative legal research*) is research conducted by examining the laws and regulations that apply or are applied to certain legal problem.

Normative legal research examines law from an internal perspective with the object of research being legal norms. According by I Made Pasek Diantha<sup>9</sup>, normative legal research serves to provide juridical when arguments there is a void, ambiguity and conflict of norms. Furthermore, this means that normative legal research plays a role in maintaining critical aspects of legal science as normative science. Normative research is often referred to be doctrinal research, namely research whose objects of study are statutory regulations and library materials<sup>10</sup>.

### **3. Results and Discussion**

#### **3.1. The Authority of Regional Government in Formation of Regional Regulation on Ecotourism**

Provision of regional autonomy is: the rights, powers, and obligations of autonomous regions to regulate and manage their own government affairs and the interests of local communities in the system of the Negara Kesatuan Republik Indonesia (NKRI)<sup>11</sup>. An autonomous region is a legal community that unit has territorial boundaries that are authorized to regulate and manage government affairs and interests of local community according to their own initiative based on the people aspiration in system of the Unitary State Republic of Indonesia.

Government in a broad sense is defined as not only excerpting executive power, but also all affairs carried out by the state, including legislative and judicial powers<sup>12</sup>. The authority of regional governments to form regional regulations is mandate from Article 18 (6) of 1945 Constitution of the Republic Indonesia, the second amendment, which states that “*Local governments have the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks*”: Provisions regarding the implementation of “co-administration tasks” are regulated by the Regional Regulation (Perda) of the area assigned the “task”. Co-administration tasks carried out by Province are regulated by a Provincial Perda, and co-administration tasks organized by Regency/City is regulated by Regency/City Perda. Therefore, Perda is a product of regional law. Law number 23 of 2014 concerning and Regency/City Perda. Regional legal products in the form Regional Regulations are regulatory (*regaling*)<sup>13</sup>.

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<sup>9</sup> I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media Group, 2017).

<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2011).

<sup>11</sup> Muslim Chaniago Suharizal, *Hukum Pemerintah Daerah: Setelah Perubahan UUD 1945* (Yogyakarta: Thafa Media, 2017).

<sup>12</sup> Cora Elly Noviati, “Demokrasi Dan Sistem Pemerintahan,” *Jurnal Konstitusi* 10, no. 2 (2013): 334.

<sup>13</sup> Marten Bunga, “Pembentukan Peraturan Daerah Dalam Penyelenggaraan Otonomi Daerah,” *Al-Ishlah: Jurnal Ilmiah Hukum* 20, no. 2 (2017): 22.

The concept of regional government according to Peter Mahmud Marzuki<sup>14</sup>, namely, in 1945 Constitution affirms that Indonesian state is a unitary state in form of republic. Furthermore, it was also emphasized that Indonesia is a legal state with people sovereignty over. Thus, Indonesia is a constitutional state based on democracy and forms a unitary republic. It's implementation, the establishes Indonesia of highest state institutions, namely the legislative, executive, judicial and financial audit institutions. With condition of Indonesia's very large territory with various socio-cultural conditions, 1945 Constitution regulates needs for local government. Based on this, in the system of government of Republic Indonesia, the existence of regional government is a provision constitutional that must be realized.

According to Hanafi Nurcholis<sup>15</sup>, definition of regional Government in Regional Government Law is the administration of government affairs by regional government and Regional People's Legislative Assambly according to principle of autonomy and co-administration with principle of autonomy as wide as possible within of system and principles of Unitary State Republic of Indonesia as referred to in Constitution Republic of Indonesia 1945. In accordance with this understanding, the principle of decentralization, principle of concentration and principle of co-administration which research regencies and cities become the prepare principles on the way of administering government affairs in regions. According to Article 1 point 9 of Regional Government Law, is determined that concentration is delegation of part government affairs which are under authority of central government to governor as a representative of central government, vertical agencies in certain areas, or governors and regency or majors in charge of general government affairs. Vertical agencies are ministries or non-ministerial institutions be manage central government affairs in regions that are not handed over to autonomous regions.

Thus, according to Hans Kelsen<sup>16</sup>, the decentralization legal order, then this will be related to environment in which of legal order applies. In more the tile, territorial or administrative decentralization, autonomy as political decentralization, is transfer of authority in regional nature. Meaning of that central of government hands over the authority which are matter of government to autonomous regions. The principle of regional autonomy basic as principle of

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<sup>14</sup> Imam Komarodin, Firman Muntaqo, and Suci Flambonita, "Sinkronisasi Pengaturan Kewenangan Pemerintah Dan Pemerintah Daerah Dalam Penyelenggaraan Kehutanan Di Daerah (Studi Penerapan Pasal 14 Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah Juncto Pasal 66 Undang-Undang Nomor 41 Tahun 1999 Tentang)" (Sriwijaya University, 2020).

<sup>15</sup> Hanafi Nurcholis, *Theory and Practice of Reporting and Regional Autonomy* (Jakarta: Grasindo, 2005).

<sup>16</sup> Bagir Manan, *Hubungan Antara Pusat Dan Daerah Menurut UUD 1945* (Jakarta: Pustaka Sinar Harapan, 1994).

regions to regulated and manage regional households, with revenue and cost budget drawn up by regions themselves, compliments administration of government as stipulated in Article 1 point 7 of Regional Government Law. Therefore, regions have right, powers an obligation in formation of regional regulations in order to regulate and manage their own government affairs and interests of local communities in the system of Unitary State Republic Indonesia. The explanation of authentic according to regional Government Law, regional autonomy is not only a right but also an obligation in the sense of administration regional government must not conflict with the system of Negara Kesatuan Republik Indonesia (NKRI). In government literature, autonomy is often defined as: *zelfbeweging, eigen meesterschap, zelfstandigheid* but not *onafhankelykheid*. Loogemam<sup>17</sup> even that movement emphasized of freedom granted to autonomous regions means giving opportunity of unit state to use their own initiative from all kinds to powers for manage public interest (population) of government, which are called autonomous. It was further emphasized that the power to act independently was given to state units which govern themselves in their own regions.

Ecotourism as a government matter of choice, that areas have potential for natural resources, the environment, as well as of uniqueness is nature and culture, which can be one of sectors leading of that region have not been developed optimally, need potential to map out of ecotourism in their area so that formation of regional regulation on ecotourism can be processed. Formation of Perda/Perkada is analyzed with the theory of authority from Sudarsono<sup>18</sup> which that states if it has not been regulated, a Perda/Perkada is formed for ecotourism development to fill legal voids based on authority in carrying out regional autonomy and interests. This will become a concern for the government with the issuance of Regulation Minister in Home Affairs Number 33 of 2009 concerning Guidelines for Ecotourism Development in Regions which focuses on planning, utilizing, and activities ecotourism controlling.

In accordance with previous discussion regarding of authority to form Regional Regulations and authority to administer government affairs, related to regulation of ecotourism development, it can be regulated by regional legal products in form of Peraturan Daerah (Perda) or Peraturan Kepala Daerah (Perkada) either by the governor and/or regents/mayors in accordance with ecotourism potential owned by each province, district/city<sup>19</sup>. Based on

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<sup>17</sup> Adisubrata, *Perkembangan Otonomi Daerah Di Indonesia 2 (Sejak Proklamasi Sampai Awal Reformasi)*.

<sup>18</sup> Sudarsono Sudarsono, *Overview of Authority and Abuse of Authority* (Malang: Wisnuwardhana University, 2012).

<sup>19</sup> Kukuh Sudarmanto et al., "Implikasi Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Terhadap Pembentukan Produk Hukum Daerah," *Jurnal USM Law Review* 4, no. 2 (2021): 706.

discussion of problems the Regional Government which is authorized to stipulate the Regional Regulation on Ecotourism, which is analyzed using the Authority Theory. The main function of theory is to provide clarity to a problem, better ability a theory to explain something, higher people's acceptance of theory<sup>20</sup>. Then, the result that is Regional Government consists of 2 (two) elements, namely the Regional Government and DPRD. Covering provinces, districts and cities in administration of government based on principles of decentralization, deconcentration, and co-administration. Each local government has the authority to form local regulations. The authority in the formation of Perda is obtained either by attribution or by delegation.

Until now, policies taken by government in supporting development of ecotourism in context of legislation can be found in several laws and regulations, namely<sup>21</sup>: 1) Law Number 10 of 2009 concerning Tourism, this law regulates the development of nature-based tourism, as well as sustainable tourism an effort to protect tourism potential; 2) Law Number 5 of 1980 concerning Conservation of Biological Resources and Their Ecosystems; 3) Law Number 27 of 2007 in conjunction with Law Number 1 of 2014 concerning Management of Coastal Areas and Small Islands. Based on the mandate of Law No. 10 of 2009 concerning Tourism, the government ratified Minister of Home Affairs Regulation No. 33 of 2009 concerning Guidelines for Ecotourism Development in Region which are legal basis for regions be able to develop their ecotourism potential.

The provisions of Permendagri Number 33 of 2009 concerning Guidelines for Ecotourism Development in regions, it's that regulated of government, local governments, business, and communities engaged in tourism are ecotourism who actors have duties and responsibilities according to their portions in developing ecotourism potential in region. Therefore, it's necessary to establish an ecotourism coordination team for each province, chaired by Head of Provincial Development Planning Agency, which are expected to serve as forum for coordination and communication between ecotourism actors in the province. There are several types of ecotourism potential in the area that can be developed, including marine ecotourism, forest ecotourism, mountain ecotourism and/or karst ecotourism which must prioritize,

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<sup>20</sup> Ruslan H.R., "Functions of Legal Theory and Procedural Law in Solving Legal Problems," *Supreme Court of the Republic of Indonesia, Directorate General of the Religious Courts Agency*, last modified 2013, accessed May 23, 2013, <https://badilag.mahkamahagung.go.id/article/publikasi/article/function-teori-Hukum-dan-Hukum-acara-in-solving-legal-problems-by-ruslan-hr-245>.

<sup>21</sup> Nance Herman and Bambang Supriadi, "Potensi Ekowisata Dan Kesejahteraan Masyarakat," *Pesona: Jurnal Pariwisata* 2, no. 2 (2017): 8.



principles of ecotourism development in accordance with<sup>22</sup>: a) The suitability between types and characteristics of ecotourism; b) Conservation, namely protecting, preserving, and sustainably utilizing natural resources used for ecotourism; c) Economical, namely providing benefits to local communities and being a driver of economic development in the region and ensuring ecotourism business can be sustainable; d) Education, which contains elements of education to change one's perception, that have care, responsibility, and commitment to environmental and cultural preservation; e) Provide satisfaction and experience to visitors; f) Community participation, namely community participation in planning, utilizing, and controlling ecotourism activities by respecting socio-cultural and religious values of community around the area; and g) Accommodating local wisdom.

Tourism is an overall related activity or is multidimensional in nature, appearing as a manifestation of needs of each person and country as well as interactions between tourists and local communities, tourists, governments, local governments, and entrepreneurs<sup>23</sup>. WWF Indonesia put forward a basic concept of eco itself which includes: *nature based, ecologically, sustainable, environmentally, educative, locally benefit, general tourism satisfaction*<sup>24</sup>. This also has been accommodated in provisions of 2005-2025 Rencana Pembangunan Jangka Panjang Nasional (RPJPN), which states that all development sectors in Indonesia are required to apply the principles of sustainable development. This means are desired tourism development paradigm is *sustainable tourism*.

The authority province as an autonomous region includes authority in the field of government that is cross-district and city, as well as authority in certain other areas of government. The authority in the field of government that is cross-district and city, such as authority in the field of public works, transportation, forestry and plantations. What is meant by authority in certain other areas of government are<sup>25</sup>: a). Macro regional development planning and control; b). Training in certain fields, allocation of potential human resources, and research covering the province; c). Regional port management; d). Environmental control; e). Promotion of trade and culture/tourism; f). Handling of infectious diseases and plant pests; and g). Provincial spatial planning.

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<sup>22</sup> "Article 3 Permendagri No. 33 of 2009 Concerning Guidelines for Regional Ecotourism Development," 2009.

<sup>23</sup> "Article 1 Point 4 of Regional Regulation Number 7 of 2013 Concerning the Master Plan for Regional Tourism Development for 2013-2028," 2013.

<sup>24</sup> Lia Afriza, Anti Riyanti, and Septy Indrianty, "Pengembangan Pariwisata Kawasan Gede Bage Berbasis Ekowisata," *The Journal: Tourism and Hospitality Essentials Journal* 7, no. 2 (2017): 55.

<sup>25</sup> "Government Regulation of the Republic of Indonesia Number 25 of 2000 Concerning Government Authorities and Provincial Authorities as Autonomous Regions, Article 3 Paragraph (2)," 2000.

Guidelines in administration of concurrent government affairs are based on norms, standards, procedures and criteria as referred in paragraph (1) letter a in form of provisions of laws and regulations stipulated by Central Government. Article 20 paragraph (3) of the Undang-Undang Pemerintah Daerah (UU Pemda) stipulates that *concurrent* government affairs which are under the authority of district/city to be carried out by district/municipality or may be assigned part of implementation the village.

Based on discussions related to implementation of government affairs in the field of ecotourism, the researchers then analyzed those based on notion of ecotourism from primary legal materials, namely statutory regulations. Tourism is a *concurrent* government affair, meaning affairs are divided between the central government and local governments. That affairs are handed over to regions related to tourism are included in affairs of government choice. Therefore, government affairs in the field of ecotourism, affairs to be handed over to regions, become the basis for implementing regional autonomy, which in turn consists of mandatory government affairs and optional government affairs. Related to ecotourism, it is included in optional government affairs, meaning of government affairs based on potential of the region must be carried out. Law No.10 of 2009 concerning Tourism doesn't mandate the formation of a regional regulation on ecotourism as well as the provincial regulation in Bali of Balinese Cultural Tourism, there is no mandate to form a regional regulation, but the development of ecotourism has increased and the region still refers to Minister of Home Affairs Regulation to be manage ecotourism activities in region. Therefore, a region needs to form a regional regulation or regional regulation be based an authority and the principle of autonomy which is essentially for the benefit of the local community.

### **3.2. Process and Techniques for Formation of Regional Regulations in Field of Ecotourism**

Minister of Home Affairs Regulation Number (33) 2009 concerning Guidelines for Ecotourism Development in Regio, The Local Government states that government in developing ecotourism are carried out through: a). planning; b) utilization; c) ecotourism control; d). authority in ecotourism; e). providing incentives and; f). facilities, community empowerment, coaching and reporting as well as funding issues. Based on provisions, there is an element control in developing ecotourism activities in region, so they can be useful for accelerating of people welfare in region.

The government has an obligation to develop (*good governance*), aiming to bring of government closer with community, especially for community around ecotourism locations, by governments prioritizing role as a facilitator and regulator through<sup>26</sup>: 1) creating a conducive climate for increasing community access and participation; 2) improvement of community assets and capabilities; 3) protection of society from practices and forces that impoverish and marginalize.

The relationship between the center and regions, central government is authorized to conduct guidance and supervision of administration government affairs by the regions. So, to ensure legal certainty the formation of regional legal products have legal implications for development of regional legal products by the Minister of Home Affairs and the Governor, procedure for establishing a Regional Regulation is regulated in Regulation the Minister of Home Affairs Republic of Indonesia Number 120 of 2018 concerning Amendments to Regulation the Minister of Home Affairs Number 80 of 2018. 2015 concerning the Establishment of Regional Legal Products, namely: Provincial Regulations or other names and Regency/City Regional Regulations or other names are statutory regulations established by DPRD to joint approval of regional head.

In discussing ecotourism regulations, it is necessary to harmonize legal norms with laws and regulations as follows: a). Law Number (10) 2009 concerning Tourism; b). Law Number (5) 1990 concerning Conservation of Biodiversity and Ecosystems; c). Law Number (41)1999 concerning forest; d). Law Number (32) 2009 concerning Environmental Protection and Management (hereafter referred to UUPPLH), in its preamble are principles related to the role of regional autonomy in environmental protection and management, namely: i). The national economic development as mandated by 1945 Constitutional of Republic Indonesia is carried out based on principles of sustainable development and environmentally sound; ii). The spirit of regional autonomy in administration government of Unitary State Republic Indonesia has brought about changes in relationship and authority in the midst of Government and regional governments including with field of environmental protection and management; Furthermore, Article 2 UUPPLH states, environmental protection and management is carried out based on principles: i). state responsibility; ii) Sustainability; iii) Harmony and balance; iv). Cohesiveness; v). benefit; vi). Prudence; vii). Justice; viii). Ecoregion; ix). Biodiversity; x). polluter pays; xi). Participatory; xii). Local culture; xiii). Good governance; and xiv); regional autonomy. E). Law

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<sup>26</sup> Darwin Barani, "Kajian Yuridis Pembentukan Peraturan Daerah Model Ekowisata Di Kota Manado," *Lex Administratum* 3, no. 4 (2015): 105.

Number (1) 2014 concerning Amendments to Law No (27) 2007 concerning Management of Coastal Areas and Small Islands f). Minister of Home Affairs Regulation Number (33) 2009 concerning Guidelines for Regional Ecotourism Development. Definition of ecotourism states in Article 1: i). Ecotourism is a natural tourism activity in a responsible area by taking into account of elements education, understanding and support for natural resource conservation efforts, as well as increasing income of local communities; ii). Ecotourism development is an activity of planning, utilizing, and controlling ecotourism; iii). Ecotourism actors are governments, local governments, business world, and communities engaged in tourism; iv). Provincial Ecotourism Coordination Team is a forum for coordination and communication between provincial ecotourism actors; v). The Regency/City Ecotourism Team is a forum to coordinate and communication between Regency/City ecotourism actors.

The types of ecotourism in regions are determined in Article 2, among others: 1). Marine ecotourism; 2). Forest ecotourism; 3). Mountain ecotourism; and 4). *Karst* ecotourism; 5). Minister of Home Affairs Circular Number: 660.1/836/V/Bangda dated 28 April 2000 concerning General Guidelines for Regional Ecotourism Development.

In realizing development of tourism regions, it will depend on the formation of accommodative regional regulations (Perda). It has become a common understanding in the field of legislation, that a statutory regulation must be foundations for it's formation, as well as regional regulations in the tourism sector. There are four things that form the basis for the establishment of regional regulations on the field of tourism, among others<sup>27</sup>: a). Philosophical Foundation. The philosophical basis is consideration or a reason, that illustrates of regulations are formed take into views account of life, awareness, and legal ideals which include the spiritual atmosphere and the philosophy of Indonesian nation originating from Pancasila and Preamble of 1945 Constitution of Republic Indonesia an invitation, has substance relevant to concept of discussion will contribute more usefulness of draft regional regulation in question; b). Sociological Foundation. A sociological basis is a consideration or reason that illustrates regulations are formed to meet with the community in various aspects. The sociological basis actually concerns empirical facts regarding development of problems and requirements of society and state. Sociologically, it was clear that in order to create and prosperous society as mandated in Preamble to the 1945 Constitution, Indonesian nation would start a development

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<sup>27</sup> Siti Sumartini, "Synergy of Regional Regulations (Perda) as Public Policy in Realizing Regional Tourism Development in Legal Review," in *Proceedings of the 3rd Multi-Discipline National Seminar & Call For Papers Unisbank*, 2017, 396.

paradigm starting from the region<sup>28</sup>. Community empowerment is also needed where empowerment is an effort to increase awareness, capacity, access, and role of the community, both individually or groups, in advancing the quality of life, independence, and welfare through tourism activities; c). Juridical Foundation. The juridical basis is a consideration or reason that illustrates of regulations are formed to overcome legal problems or fill legal voids by considering existing rules, which will be changed, or which will be revoked in order to ensure legal certainty and a sense of justice for the community. The juridical basis concerns legal issues related to substance or material is regulated, so that new laws and regulations need to be formed. Some of legal issues include, among others, outdated regulations, inharmonious or overlapping regulations, types of regulations is lower than the law, so that their enforcement power is weak, the regulations already exist but are inadequate, or regulations don't exist at all; d) Political Foundation. The political basis explains that tourism is an integral part of national development which is carried out in a systematic, planned, integrated, sustainable and responsible manner while still providing protection for religious values, that culture lives in society, environmental sustainability and quality, as well as national interests and furthermore that tourism development is needed to encourage equal distribution of business opportunities and gain benefits and be able to face challenges of changing local, national and global life.

Regional regulations consist of 2 (two) types, namely Regional Regulations which are further elaboration of higher legislation or known as "*subordinary legislation*" and Regional Regulations which are regulations regarding the specific conditions of region concerned or termed "*local legislation*". *Subordinary legislation* is a regulation stipulated in the framework of implementing the provisions of law as *primary legislation* or legislative products formed by parliament and executive. Associated with theory of authority, the authority to form a regional regulation in position as *subordinate legislation* a delegation from the central government. The form of implementing regulations for laws in each country is known by different terms<sup>29</sup>.

The formulation of vision and mission from regional head through long and medium Regional Development plans associated with 2 types of regional regulations above according to researcher is a regional regulation in meaning of *subordinate legislation* because it is prepared as a further elaboration of higher legislation, namely of Law Number (32) 2004 concerning Regional Government and un-conflict with the National Development Plan. So, this the validity

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<sup>28</sup> "Consideration of Law No. 10 of 2009 Concerning Tourism," 2009.

<sup>29</sup> Donna Okthalia Setiabudi, "Hakikat, Parameter, Dan Peran Nilai Lokal Peraturan Daerah Dalam Rangka Tata Kelola Perundang-Undangan Yang Baik" (Hasanuddin University, 2010).

of Perda is tied to National Development Plan. The changes in National Development Program Planning will have implications for changes Regional Medium Term Development Plan (RPJMD) Perda.

Some obstacles in the formation of Rencana Pembangunan Pariwisata Daerah (RIPPARDA) include: 1) not yet comprehensive knowledge of all levels of government in the Dinas Pariwisata Kepemudaan dan Olahraga (Dispaspora) at the regional level in preparing various regulations related to ecotourism; 2) it can be said that the makers of regulations on ecotourism in the Department of Tourism, Youth and Sports (Dispaspora) ; 3) the high egocentrism of experts with basic non tourism study, causing the orientation of ecotourism development that is partial, as many miss understanding the concept of ecotourism which has only been seen as a form of travel to nature and/or back to nature; so in its implementation often experience "bitter " things that tend to damage the order of one-unity ecological and socio-cultural system; 4) ; 5) there is a trend of ecotourism development with a political approach orientation.

There are significant differences between the way practitioners, governments and academic groups work. Furthermore, it is generally said that the planning process carried out by academics (*wissenschaftliches plannung*) will elaborate various objectives through a structured process, while the government has a tendency to do planning on the basis of political interests (political approach); while practitioners tend to put their problems on the basis of business institutions they have (*leitsbild plannung*). The formation of Ecotourism Development regulations established in the Regional Tourism Development Master Plan is a guide in the development of regional tourism objects that contain the subject matter of the provisions of the Regional Tourism Program, which is also the general master plan and design guidelines, investment plans, control plan provisions and guidelines for controlling the implementation of Tourism object development/ tourism area. Thus the purpose of the preparation of RIPPARDA is as a foundation for the development and control of Sustainable Tourism Development. While the goal is as a controlling document or guidelines that have legal force that are a reference for granting permits for tourism development.

#### **4. Conclusion**

The establishment of local regulations ecotourism development, because ecotourism is part of the field of tourism, according to Law No. 23 of 2014 on Local Government, Tourism is a

concurrent government affairs, then the affairs in the field of tourism is divided between the central government and the provincial and regional districts/cities and needed coordination. Regional autonomy regulations give each region the freedom to manage existing resources in the area, such as the development of Natural Resources and human resources. Development planning can be started by recognizing the area that will be used as a location for tourism development. This is done to improve the role and welfare of the wider community as well as the preparation of human resources that have high competence in the field of tourism services is also a thing that needs to be done and also needs to be equipped with technical, operational and managerial capabilities in the provision of Tourism goods and services.

Constraints in the management of regional ecotourism are the absence of a regional regulation on Rencana Induk Pembangunan Kepariwisata Daerah (RIPPARDA) so that it has not been established as a regional regulation. This causes Dispaspora does not have the basic legal authority to make Ripparda documents that serve as guidelines for the management of ecotourism areas. The local government in this case the regional level Dispaspora is expected as soon as possible to make a RIPPARDA document after the enactment of the regional regulation plan on Rippada into a local regulation. So that the government has guidelines in implementing the development of tourism in the region in a systematic and directed.

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