

LEGAL CONSEQUENCES OF THE RATIFICATION OF THE INTERNATIONAL TREATY LAW MADE BY INDONESIA IN THE OF THE WORLD TOURISM ORGANIZATION PERSPECTIVE (UN-WTO)

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ABSTRACT

Indonesia is one of the participating countries of the WTO to ratify the international agreements of the WTO with Act No. 7 of 1994. As a WTO member country, Indonesia has also given his commitment to tourism services within the GTAs settings (General Agreement on Trade in Services). Then Indonesia ratifies international treaties in this regard WTO are Indonesia stated willingness or consent to be bound with respect to international agreements, it is poured in the Vienna Convention of 1969, article 2 of the International Covenant. In a deal that will give rise to obligations which are binding in international law, in particular in the field of tourism services trade, tourism activities has become a basic need that is valued as a human right, Indonesia Tourism has led to the sustainable tourism which is community empowerment so as to increase people's welfare as well as reduce poverty, without having to sacrifice environmental sustainability both natural and socio-cultural and this has been poured in the UN-WTO Global Code of Ethics, for Tourism. In 2013 Indonesia tourism sector earned 8.802.129 foreign tourists visit or growing foreign exchange earnings with 9,42 percent of 10.05 billion US dollars. Statistics Indonesia (BPS) and the Central Data and Information (PUSDATIN) of the Ministry of Tourism and Economy Creative, Indonesia recorded in the last two months of November and December of 2013 house visits reaches record highs each of 807.422 and 860.655 foreign tourists. Visits of foreign tourists in December 2013 grow 12,22 percent compared to December 2012 is simply amounted to 766.966 House. While based on nationality, foreign tourist visit in December 2013 in comparison to December 2012 that are experiencing the highest growth in Saudi Arabia, namely: registration (39,37 percent), Bahrain (36,11 percent), United Arab Emirates (35,59 percent), Egypt (25,93 percent) and Hong Kong (23,42 percent). Started by 2014 the Government of Indonesia tourism promotion activities to foreign countries, among others, participated in the Tournament of Roses (ToR) 2014 in Pasadena, United States which took place on 1 January 2014 with the aim to enhance the growth of Indonesia's economy in the perspective of tourism and is not incompatible with international treaties which have been mutually agreed.

Keywords: International Treaty, Ratification, Tourism, General Agreement on Trade in Services, World Tourism Organization, and World Trade Organization.

INTRODUCTION

Realization of international relations in form of international treaties has been done a long time ago by countries throughout the world. Those treaties was a law which should be respected and followed by the contracting parties of it. The ups and downs of every international treaties depends on the ups and downs of nation-states relations or countries (I Wayan Parthiana, 2002). International Treaty was so important for every country, because every activity or cooperation in for of politics, economic, social, and culture, has to be developed in form of international treaties bilaterally or multilaterally.

International treaties has been one of the source of international law lately to create a state relation one another. From the data given, it shows that Indonesia has already made 4000 treaties (Treaty Room, 2009), where the first treaty was made on June 10th 1947 with Egypt. Globalization in the field of trade and investment as well as the emergence of free trade has also brought the pattern of of a cross-border relationships that require an understanding of international treaty law. Today's Treaties, especially in economics, investment, and trade has touched a lot of field, not only the interests of the state as the party of the Treaties but also gave birth to the rights and obligations of individuals in the country. Practices in countries that have experienced the free market shows that the understanding of international treaty law by legal practitioners including the "law firm" (Clifford, 1955) has become absolute, because the treaty has become an interest for market participants, investors, and traders.

Basic laws governing International Treaties is The 1969 Vienna Convention on the Law of Treaties, and the 1986 Vienna Convention on the Law of Treaties between State and International Organization and between Internasional Organization and International Organization and International Organization. With these two conventions, it does not mean that the rules of treaty law was all covered by the convention, outside of these two conventions are still rules of international treaty law taken from the customary international law, as long as it does not contrary to the rules of international treaty law.

International treaties between nations was governed in Article 2 Paragraph 1 of the 1969 Vienna Convention, that stated: "Treaty means an international Treaties conclude between State in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation". While international Treaties

between countries and international organizations as well as among international organizations, is contained in Article 2 Paragraph 1 Item (a) the 1986 Vienna Convention, as follows : “Treaty means an international Treaties governed by international law and concluded in written form : (i) between one or more State and one or more internasional organisation; or (ii) between international organisation, whether that Treaties is embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

Under the convention, every country and international organizations are entitled to make an international Treaties, to bind themselves to an international treaty that would carry implications for both parties, including Indonesia as an independent and sovereign country that has the right to participate as a participant in an Treaties internationally. One of them those participatory is the participation of Indonesia in the World Trade Organisation (WTO) which Indonesia has ratified the WTO Treaties with Law No. 7 of 1994 (UU No. 7 / 1994). As a WTO member, Indonesia has made a commitment to the regulation of tourism services in the General Treaties on Trade in Services (GATS). The purpose of the Treaties contained in the GATS-WTO itself create a system that would gradually eliminate some obstacle in the development of tourism (Violetta Simatupang, 2009).

Indonesia has a strong base of the strength of economy through tourism, because it has a very interesting tourist attraction, it makes a continuing visits of tourists, very positive and helpful as a source of foreign exchange. Indonesia has attractions that are spread from Sabang to Merauke, one of which is located in Bali, especially Buleleng Lovina Beach at North Bali, visiting its famous dolphin attraction. Also at Manado City, tourists can see the beauty of Bunaken Marine Park, as well as in the city of Samarinda there are UNMUL Botanical Garden that attract tourists to come to the place, and these places are only a small part and can be visited in Indonesia.

It should be informed that the tourism activities in Indonesia was declared for the first time at the Hotel Indonesia when it inaugurated in 1962, and Indonesia for the first time had a law on tourism in 1990, namely Law No. 9 of 1990 (UU No. 9 / 1990). Tourism has a very close relation to the security. A country must be able to provide security and pleasure for every person who is being traveled at the country. Experiencing this matter, still remembered in our minds and the international community, Indonesia has been hit by the crisis, especially tourism through Bali bombing in 2002 and in 2005, it is certainly a very heavy blow for Indonesia.

From the incident, Indonesian tourism experienced the lowest point in particular tourist visit to Bali. Bali was known by the international community as a paradise for the tourists, but it suddenly turned into a nightmare for all who wants to visit, and it must be handled properly to ensure the existence of Indonesian tourism. Indonesia continues to strive to reverse this situation and the most important thing is to make the image of Indonesia back into a tourist destination in Asia. It is very important, which Indonesia who voluntarily and consciously become a member of the WTO so any rules contained in the treaty should not be violated and Indonesia are committed to uphold the Global Code of Ethics for Tourism which has been designed by the World Tourism Organization (UNWTO) in 1999.

UNWTO term is to refer to the UN World Tourism Organization recently used in 2003, to distinguish it from the World Trade Organization. UNWTO own a birth history began in 1925. In 1925, it was established the International Congress of Official Tourist Traffic (ICOTT) in The Hague, Netherlands. In 1934, ICOTT changed its name to the International Union of Official Tourist Publicity Organizations (IUOTPO). After the end of World War 2, along with the increasing international tourism, IUOTPO turned into the International Union of Official Travel Organizations (IUOTO). As an international non-governmental organization, it aims to promote tourism IUOTO, as well as utilizing tourism as a component of international trade and economic development strategies for developing countries.

UNWTO main objective is to improve and build tourism as a contributor to economic development, international understanding, peace, universal prosperity, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion. UNWTO has been helping its members in the tourism industry world, which is believed to be an important factor in stimulating economic growth and creating jobs, providing incentives to protect the environment and historical heritage, as well as promote peace and understanding between nations. To achieve these goals, UNWTO implement various programs that aim to reduce poverty, promote gender equality, and promoting sustainable development. By ratifying the WTO Treaties, Indonesia has to adhere the rules that exist in it. This article will discuss the legal consequences arising under the national law as a result of the ratification by the Government of Indonesia to international Treaties, especially the WTO / UNWTO.

THE HISTORY OF INDONESIAN TOURISM

Tourism is all the trips generated by the traffic flow of people from outside into a country or region and everything related to the process such as eating or drinking, transportation, accommodations and attractions or entertainment. Tourism is the act of travel for predominantly recreational or leisure purposes , and also refers to the provision of services in support of this act (Wikipedia). Barth in hospitality law says tourism consists of the activities directly to pleasure travel (Stephen Barth, 2009). The term also means all the processes of tourism generated by the flow of traffic traveling from outside people or foreigners who come and go from and to a place, region, or country, and everything that has to do with the process such as transportation, food and drink, accommodation, the object of interest, entertainment attractions as well as other services (Nyoman S. Pedit, 2005). Definition of tourism according to The British Tourist Authority is a stay of one or more nights away from for holidays, a visit to friends or relatives, business conferences or any other purpose except such things as boarding education or semi-permanent employment (Philip Kotler, 1996).

Universally, tourism according to the World Tourism Organization / UNWTO is an activity of the tourist or people who travel to and stay in places outside their usual environment for not more than one consecutive year for leisure, business and other purpose not related to the exercise of an activity remunerated from within the place visited (www.unwto.org). According to Law No. 10 of 2009 of the Republic of Indonesia on Tourism, at Article 1, paragraph 3 says that "tourism is a wide range of tourist activities which supported by a wide range of facilities and services provided by the public, employers, governments, and local governments," whereas in Article 1 paragraph 4 of Tourism was declared as "the overall activities related to tourism and is multidimensional and multidisciplinary emerging as a manifestation of the needs of each person and the state as well as the interaction between tourists, Government, Local Government and Employers".

History of Indonesia in the field of service with unique services related to tourism has been growing since the days of ancient Indonesia, it can be seen in the reliefs of Borobudur in the 8th century, where there is a scene in the relief of beverage sales, shop, or eating house. Indonesia has a cultural tourism history since the 14th century. Kakawin Nagarakretagama noted that King Hayam Wuruk had surrounded what is now called the Kingdom of Majapahit in East Java region using a convoy of carts with state officials (Dieny Ferbianty, 2007). Bujangga Manik Travel Notes, a Hindu sage wanderer from Padjadjaran Pakuan written in the 15th century, tells his journey around the island of Java and Bali. Although the journey is a pilgrimage, but sometimes he spent time as a modern-day travelers: sit, fanning his body and enjoy the scenery in the Puncak area, especially Mount Gede which he described as the highest point of the area Pakuan (Noorduyn, 2006).

After the entry of the Dutch to Indonesia in the early 19th century, the Dutch East Indies area began to develop into an attraction for the immigrants who came from the Netherlands. The Governor-General at the time decided the establishment of tourist agency called *Vereening Toeristen Verkeer* which its office building was also used for an airline called *Koninklijke Nederlansch Luchtfahrt Maatschapij Indies* (KLM). Hotels began to appear, such as the *Hotel des Indes* at city of Batavia, *Oranje Hotel* at city of Surabaya and *Hotel De Boer* at city of Medan. In 1913, *Vereening Toeristen Verkeer* made a guidebook about tourist attractions in Indonesia. Since then, Bali became known by foreign tourists and the number of foreign tourist arrivals increased by more than 100% in 1927. On July 1, 1947, the Indonesian government tried to revive Indonesia's tourism sector by establishing a body called HONET (Hotel National & Tourism), chaired by Ruslan R. Tjitpo. The agency immediately took over those hotels that was located in the area around Java and all hotels named Hotel Merdeka. After the Round Table Conference, the agency was renamed NV HORNET (Dieny Ferbianty, 2007).

During the Orde Baru era, the number of foreign tourists visiting Indonesia was growing slowly. The government has conducted a program to increase the number of foreign tourist arrivals to Indonesia called the Visit Indonesia Year. This program increase international tourist arrivals to 400,000 people. Additionally in 1992, the government launched the *Dekade Kunjungan Indonesia* (the Decade of Visit Indonesia), which is the theme of the annual tourism until 2000.

Indonesian government has in many ways to establish the tourists visits to Indonesia, but the Indonesian tourism has decreased drastically caused by several events such as the Bali bombing incident in 2002. By this incident, the international tourists were afraid to come to have a vacation in Indonesia, especially Bali, even though, Bali is still as one island that frequently visited by foreign travelers. Until there, other terrorist acts emerged from the JW Marriot bombing in 2003, and the Bali bombings in 2005, it no longer makes international world put their trust in Indonesia about the security for tourists who want to have a vacation in Indonesia.

Various methods was conducted by Indonesian government to restore international confidence about security for travelers who will come to Indonesia in accordance with applicable international rules, for example by way of punishing the perpetrators of terrorism that have been found guilty. This condition gradually recovered and improved, this is evidenced by the data of the Central Statistics Agency (Badan Pusat Statistik, BPS) and the Center for Data and Information (Pusat Data Informasi, Pusdatin) Ministry of Tourism and Creative Economy Indonesia, recorded that in the last two months of November and December 2013 reached a highest record of foreign tourists visiting each of 807.422 and 860.655 foreign tourists. Foreign tourists visit in December 2013 grew 12.22% compared to December 2012, which was amounted to 766.966 foreign tourists only. Based on nationality, foreign tourists visit in December 2013 experienced the highest growth than in December 2012, such as: Saudi Arabia (39.37%), Bahrain (36.11%), the United Arab Emirates (35.59%), Egypt (25.93%), and Hong Kong (23.42%).

Look at the beginning of January 2014, Indonesia has been visited by 753.079 tourists or foreign tourists. From the data obtained from the Central Statistics Agency, is the most visits of tourists was from Singapore with the number 117.207 tourists. Then, it followed by tourists from Malaysia (105.410 tourists), China (88.583 tourists), Australia (83.700 tourists), and Japan (34.520 tourists). Comparing the tourist arrivals between January 2014 and January 2013, there was a growth of 22.59% (Afif Farhan, 2014), and of course it is a positive trend for Indonesia.

LEGAL CONSEQUENCES FOR INDONESIA RATIFYING THE INTERNATIONAL TREATIES.

International Treaties are the main means owned by a country to initiate and develop international relations. International Treaties are form of all legal actions and transactions within the international community, and as a means to assign liability to the parties to the Treaties. The 1969 Vienna Convention establishes an international treaty as a Treaties that is used by two or more countries to hold a relationship between them according to international law.

Definition of International Treaties by G. Schwarzenberger is "Treaties are Treaties between subjects of international cross beam creating binding obligations in international law. The treaties may be bilateral (i.e concluded between the contracting parties) or

multilateral (i.e. concluded more than the contracting parties) (Schwarzenberger, 1984). Oppenheim-Lauterpacht then give the definition of an International Treaties as follows: "International treaties are Treaties between states of contractual character, creating legal rights and obligations between the parties" (Oppenheim-Lauterpacht).

In a general and broad sense, International Treaties are Treaties between two or more subjects of international law regarding an object or a particular problem to form a legal relationship or bring forth the rights and obligations governed by international law. International Treaties in a more narrow scope are treaties between two or more subjects of international law (the state, The Vatican, the liberation or belligerent groups, international organizations) regarding a particular object that are formulated in writing and are subject to or governed by international law.

Indonesia had ratified the WTO Agreements with the Law No. 7 of 1994 on the Ratification of Treaties Establishing The World Trade Organization, and as a WTO member, Indonesia has implemented the WTO rules, endorse its contents and agree to abide its commitment. WTO is nothing but the development of the General Agreement on Tariffs and Trade (GATT) which begins with the signing of the Atlantic Charter in August 1941. One purpose of this charter is to create a world trading system that is based on the principle of non-discrimination and freedom of exchange of goods and services . Official GATT was formed after World War II in 1947 as a an institution or a temporary agreement. At that time, there were a raised awareness in the international community of the need for multilateral organizations in addition to the World Bank and the IMF. GATT has two forms, first , GATT as an institution or organization that is engaged in trade, second, GATT as an international community agreement on trade (Violetta Simatupang, 2009).

According to the teachings of Anzilotti, the legally binding of international agreement is based on the principle of *pacta sunt servanda*. This principle is in accordance with the provisions of the practices set out in the Declaration of the Conference of London in 1871 that states recognizing the principle of international law that put the state unable to distinguish themselves from the bonds of international treaties or change of its use without the consent of the other party that promised through mutual friendship understanding . Thus, state approval require a state to obey. So that an agreement can be internationally binding, the agreement must be made by the authorities and in accordance with applicable procedures. The authorities that are legally establish the international agreements are international organizations that meet the requirements of international law (F. Sugeng Istanto, 1994).

World Tourism Organization (WTO / UNWTO) is a specialized agency of the United Nations and international organizations leadership that engaged in the field of international tourism. The organization serves as a global forum for communication of tourism policy issues and a useful resource for seeking insight into international tourism. At first, the WTO is the International Union of Official Tourist Publicity Organization on 1925 with headquarters in The Hague , Netherlands. After the end of World War II, the name of the organization was changed to International Union for the Official Tourism Organization (IUOTO), and its headquarters moved to Geneva, Switzerland. IUOTO itself was a non- governmental organization, which consist of tourism bodies of countries. In 1967, IUOTO issued a recommendation to transform itself into an inter- state organizations (multilateral). After 1974, the UNWTO was established with headquarters in Madrid and is headed by Robert Lonati as the Secretary General.

Currently, tourism activity should be recognized as a basic need that must be respected as a human right. The development and global trends will lead to sustainable tourism that are empowering people so that in the end he was able to improve people's welfare and reduce poverty, without having to sacrifice the environment both natural and socio – cultural. This has been arranged on the principles of the code of ethics of the world tourism in harmony with tourism development and human rights, namely the Global Code of Ethics for Tourism (Violetta Simatupang, 2009). In the practice of international treaty law, international treaties that bound every parties, express an approval of the agreement by way of ratification. In Article 2 of the 1969 Vienna Convention, the ratification is defined as an international action of a state expressed willingness or emerging consent to be bound by an international treaty. Therefore , ratification is not retroactive, but it binds from the date of signing of the ratification.

Approval of a state to be bound by an international treaty contains two aspects: external and internal aspects. External aspect of the country is concerned with the attachment of an treaty in conjunction with other countries that are equally bound by the treaty. A country which states consent to be bound to a treaty means that the countries expressed their willingness to obey and respect the international treaties. The state is bound by a treaty which has been approved together with other countries as well as in the relationship between them with one another. The treaty will bring forth the rights and obligations of either jointly or reciprocally between countries alike that have expressed consent to be bound. Everything was subject to the principles and norms of international law in general and international treaty law in particular. Thus , the external aspect is relatively more certain because of there is one particular law that govern it, it is the international law, and that it includes international treaty law that applies to all countries in the world. The internal aspects is concerned with the internal problems in of the relevant country (I Wayan Parthiana, 2002).

An international treaty that has been ratified by a country means that international agreements entered into the part of the country's national laws. Just as it was done by Indonesia when ratified the WTO Agreements, the legal consequences arising in the country of Indonesia are the inclusion of an international treaty become a part of Indonesian national law, through a long process of establishing the ratification instrument. The conflict with other rules of national law should be avoided in entering an international treaty become part of national law. Things like this can be difficult for the country itself, internally nor externally. Internally, the country will face difficulties regarding the provision which should come first in its application, whether the provisions of national legislation or international treaty provisions itself. Internally, the country will put its national legislation become the main law.

CONCLUSION

Trade services for Indonesian tourism is essential for economic growth, and therefore Indonesia has ratified the WTO Agreements which is engaged in the field of tourism with the Law No. 7 of 1994. Meaning of ratification by Indonesia as a whole is receiving legal rules contained in the treaty into domestic law, as well as in the Global Code of Ethics for Tourism which is set in the UNWTO which contains the code of ethics of tourism that should be in harmony with the world tourism development and human rights, where applying it in the contracting parties is required regarding the contribution of tourism to foster mutual understanding and respect between nations and communities, respect for human rights, protection of the natural environment, water and energy savings and maintaining bio – diversity, ecosystems, human cultural heritage, as well as focusing on the rights of workers and entrepreneurs in the tourism industry. What has been set out in the Global Code of Ethics for Tourism has been implemented by the Government of the Republic of Indonesia, which has been formulated in the Law of the Republic of Indonesia Number 7 of 1994.

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REGULATION

1. The Vienna Convention on the Law of Treaties 1969
2. The Vienna Convention on the Law of Treaties between State and International Organization and between Internasional Organization and International Organization and Internasional Organization 1986
3. Law No. 7 of 1994
4. Constitution of the Republic of Indonesia 1945
5. Law No. 10 of 2009 of the Republic of Indonesia on Tourism
6. Law No. 9 of 1990