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Legal Protection and Liability of the Business Actors against Tourists in Mt. Agung Bali

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ABSTRACT

Incidents of accidents during risky climbs have been reported in Bali, and yet to date there are no specific legal regulations regarding mountaineering tourism in the region. Mountaineering tourism is a type of tourism with a high risk, making it very important to implement legal regulations that can provide protection to tourists in any undesirable situation. This research aims to evaluate the legal protection of tourists according to Law No. 10/2009 on Tourism as well as the liability of mountain climbing tourism business actors to those who have experienced losses. This is a qualitative research which adopted normative and conceptual approach. The research findings indicate that there is a necessity for additional regulations as stated in the Governor Regulation of Bali No. 52/2021 concerning Regulations for the Implementation of Regional Regulation No. 5/2020 concerning Standards for the Implementation of Balinese Cultural Tourism. In accordance with Article 1366 of the Civil Code, businesses or managers of the mountain climbing tourist attractions in Bali are obliged to be responsible in the case of accidents that have caused significant losses to tourists. The liability of business actors can also refer to Article 7 of Law No. 8/1999 on Consumer Protection. In addition, the liability of business actors as managers of tourist attractions is also referred to Article 26 of Law No. 10/2009 concerning Tourism and Article 6 No. 3 of Bali Province Regional Regulation No. 5/2020 concerning Standards for the Implementation of Balinese Cultural Tourism.

Keywords: *Business Actors, Legal Protection, Liability, Tourists*

INTRODUCTION

The abundant natural wealth in Indonesia has led to the emergence of various types of tourism that attract both local and international tourists. Many of these attractions offer exciting nature experiences, but they come with certain risks, such as mountain climbing. Although mountain climbing is a popular activity for tourists, it is considered as an extreme tourism.¹ Since mountaineering is one of the riskiest types of tourism, it must be regulated through strict regulations to protect the safety of climbers from various potential dangers. The high interest of tourists on mountain climbing in Indonesia has encouraged the emergence of businesses that provide supporting services such as porters, guides, climbing equipment rentals, and so on.

The existence of tourism potential fundamentally provides a positive impact on the environment and the lives of the local communities surrounding the tourism sites. Local communities, through their organizations, manage tourism objects to support local economic growth, such as admission arrangements, accommodation facilities, and many other services. For instance, the management of tour guide associations in mountaineering. Most of the management of mountaineering tourism in Indonesia is conducted by local community organizations, although legal regulations are often ignored. As a result, accidents often occur to tourists, especially when doing tourist activities that are considered extreme.² Climbing service business actors certainly require specific regulations to ensure that their activities are legally guaranteed, including proper legal protection for the tourists doing the climbing.

Mountaineering tourism in Indonesia is managed by various organizations. For example, the management of tourism around Mount Rinjani is carried out by the Mount Rinjani National Park Center (BBTNGR), as well as tourism on Mount Bromo. These management organizations certainly have their own internal regulations in running their business activities. As an illustration, the Mount Rinjani National Park Center has regulations stipulated in the Decree of the Head of the Mount Rinjani National Park Center Number: SK/9/T.39/TU/KSA/3/2022 concerning Revision II of the Standard Operating Procedure (SOP) for Climbing Mount Rinjani National Park.³ In Chapter III of the Climbing Procedure, the rules

¹ Euis Rahmah Mar'atusholihah, E.K.S Harini Muntasib, and Siti Badriyah Rushayati, "Tourism Hazard Mitigation in Mount Rinjani National Park, West Nusa Tenggara," *Social Science, Humanities and Sustainability Research* 2, no. 2 (June 18, 2021): p5, <https://doi.org/10.22158/sshsr.v2n2p5>.

² Fitriya Hidayanti, "Perlindungan Hukum Terhadap Wisatawan Yang Akan Berkunjung Ke Tempat Wisata Di Pulau Lombok Menurut Undang-Undang Tentang Kepariwisata," *Prosiding Seminar Nasional Komunikasi, Administrasi Negara Dan Hukum* 1, no. 1 (June 10, 2023): 227–32, <https://doi.org/10.30656/senaskah.v1i1.148>.

³ Wahyu Widiyantoro, "Harga Tiket Pendakian Gunung Rinjani, Lengkap Dengan Aturan, Prosedur, Dan Peta Jalurnya," *Tribun Lombok*, 2022, <https://lombok.tribunnews.com/2022/08/08/harga-tiket-pendakian-gunung-rinjani-lengkap-dengan-aturan-prosedur-dan-peta-jalurnya?page=all>.

for climbers are explained in the archipelago climber regulations point 9, which requires climbers to purchase insurance tickets from parties that have been appointed by the Mount Rinjani National Park Center to protect the safety and security of climbing. The rules for the guide in Chapter III Climbing Procedures are regulated in points 5, 6, and 7:

1. Point 5: For guaranteed accident protection, guides are required to purchase a life insurance ticket from an insurance company that has been appointed by the Mount Rinjani National Park Center.
2. Point 6: During the climb, a guide is mandatory:
 - a. Provide education to guided climbers on climbing SOPs and health protocols as well as local cultural wisdom;
 - b. Take liability for the climbers, their belongings, and the cleanliness of the sites being used.
3. Point 7: Accompany climbers to check out at the climbing exit and sort and hand over their trash according to the check list data.

Referring to the above excerpt from the regulation of the Mount Rinjani National Park, it can be concluded that the adoption of clear regulations is very important in regulating mountaineering tourism. However, there are still many mountains in Indonesia that have no official legal management institutions, but instead only have management organizations formed by local communities. As a result, when undesirable events such as accidents occur, tourists often feel disadvantaged and the legal liability of business actors is uncertain. An example is the mountains in Bali Province, such as Mount Agung, Mount Abang, Mount Batur, and others, which are yet to have a legal management organization. This causes climbing tourists to often not comply with mountain climbing regulations and rules that should be enforced for their security and safety.

Incidents of accidents during risky climbs have been reported in Bali, and yet to date there are no specific legal regulations regarding mountaineering tourism in the region. One of the cases of climber deaths on Mount Agung proves that the enforcement of regulations on tourists is still not optimal. A foreign tourist from the United States identified as Kevin Henderson (51) was fatally injured after slipping and falling while climbing to the top of Mount Agung, Bali. Henderson's body was evacuated on Saturday (11/19/2022) early morning at around 00:15 local time.⁴ In fact, Henderson is even known to have used the services of a local guide as a climbing guide. A similar case occurred in 2007,

⁴ NV, "Terkait Wisatawan Asal AS Meninggal Di Gunung Agung: Hari Ini, Prajuru Desa Adat Besakih Bahas Ritual Pabersihan," NusaBali, 2022, <https://www.nusabali.com/berita/129861/terkait-wisatawan-asal-as-meninggal-di-gunung-agung>.

when one of the three missing climbers was found to be deceased due to climbing in poor weather conditions.⁵

From these cases, it can be concluded that mountaineering tourism is a type of tourism with a high risk, making it very important to implement legal regulations that can provide protection to tourists in any undesirable situation. As stated in Law No. 10/2009 on Tourism, Article 1 Paragraph 7 defines that tourism business is an activity that provides goods and/or services to meet the needs of tourists as well as organizing tourism. Meanwhile, Article 1 Paragraph 8 stipulates that tourism entrepreneurs are individuals or groups that run tourism business activities.

The definition clarifies that parties providing services for tourists undertaking mountaineering can be referred to as tourism entrepreneurs. Therefore, these groups or organizations are expected to comply with all the obligations required of a tourism entrepreneur, as stipulated in Article 26 letter d and e of the Tourism Law. These obligations include providing comfort and hospitality to tourists, as well as providing security and safety protection. In addition, they are also expected to provide insurance coverage on tourism activities with high risks.

In light of the accidents that have occurred to mountain climbing tourists, it appears that service providers or managers of climbing areas have not completely fulfilled their obligations, including in terms of providing insurance protection for climbing tourism activities. This is unfortunate considering that climbing is a high-risk type of tourism, hence it is expected that they shall comply with the provisions stipulated in Article 26 letter e that has been mentioned earlier.

However, in the Tourism Law, the legal regulation of tourists is still general, thereby not specifically defining the legal responsibilities of mountaineering business providers to climbers who engage in extreme tourism activities. Given the increasing popularity of climbing tours and the interest of various groups of tourists, it is important to emphasize the need for stricter legal regulations for mountaineering service providers. This aims to provide more concrete legal protection for tourists.

If we look at the example of climbing abroad such as on Mount Everest, there are quite clear legal regulations governing it. In situations where there is a conflict between guides and climbers, the parties involved may file a lawsuit. For example, in 2020, there was a case where a group of Mount Everest climbers sued a guide for canceling a climb even though the climbers had paid an advance. The case was decided in court.⁶ The example highlights the importance of having

⁵ Heru Purwanto, "Satu Dari Tiga Pendaki Hilang Di Gunung Agung Ditemukan Tewas," ANTARA, 2008, <https://www.antaraneews.com/berita/89129/satu-dari-tiga-pendaki-hilang-di-gunung-agung-ditemukan-tewas>.

⁶ Frederick Reimers, "An Everest Guide Just Won a Legal Battle over a Canceled Summit Attempt," Outside, 2021, <https://www.outsideonline.com/outdoor-adventure/exploration-survival/madison-mountaineering-everest-lawsuit-agreement>.

specific regulations for mountaineering tourism. Due to the high cost of climbing and the extreme level of difficulty, it is important to have adequate regulations to protect both tourists and organizers. By having proper rules in place, both criminal and civil liability against the guide can be enforced if tourists suffer any losses due to the organizer's negligence.

Mountaineering tourism is one of the results of the revenge tourism phenomenon that developed in the aftermath of the COVID-19 pandemic. Revenge tourism is a term to describe the surge in tourism activity following a period of vacuum due to the pandemic.⁷ The impact of this phenomenon is the increasing interest of mountaineers seeking to get back in touch with nature after the pandemic where people are paying more attention to healing and health-enhancing activities. Mountaineering is one of the main choices of nature tourism that is still in demand by some people. This situation could be utilized as a tourist attraction, especially considering Indonesia as an archipelago that is endowed with mountains that offer stunning panoramas.

Article 14 of the Tourism Law stipulates that: "tourism businesses that can be carried out in all regions of Indonesia include tourist attractions, tourism areas, tourism transportation services, travel services, food and beverage services, provision of accommodation, organizing entertainment and recreation activities, organizing meetings, intensive travel, conferences, exhibitions, tourism information services, tourism consulting services, tour guides and water and spa tourism." Several important things to be enforced for climbing tours are the bare minimum of climbing equipment that is compulsory to be used and owned during the climb, the minimum logistics that must be adjusted to the length of time of the climb, as well as the guide or guide who provides the services of the climbing trip. These things must certainly be regulated by the management of the climbing tour, in order to prevent any undesirable things from happening to tourists.

The Bali Provincial Government has also issued a regulation governing the implementation of tourism, the Bali Governor Regulation No. 52/2021 concerning the Implementation Regulation of Regional Regulation No. 5/2020 concerning Standards for the Implementation of Balinese Cultural Tourism. The Governor's Regulation apparently only regulates tourism business standards specifically for health tourism businesses and spiritual tourism destinations. The points in this Governor's Regulation do not specifically regulate climbing tourism, resulting in an absence of norms that should provide regulation of mountain climbing tourism business actors through a management board.

The Governor's Regulation No. 52/2021 mandates that tour guides must be registered and have a Tour Guide Identification Card (KTPP). In this context, mountaineering guides are also considered as tour guides under the regulation.

⁷ Desy Oktaviani and Deden Sustina, "An Analytical Study of The Readiness of Eco-Tourism Based Transactions in The Mount Putri Bandung (Indonesia) Tourism Area," *Review of International Geographical Education Online* 11, no. 3 (2021): 230.

Therefore, it is imperative to clearly regulate their liability towards mountaineering tourists in the event of losses due to accidents during the trip caused by the negligence of the tour guide. The business actors in question must operate under the supervision of a climbing tourism area management entity that is subject to applicable regulations, which also includes guides who act as tour guides.

The implementation of businesses related to the tourism sector relies heavily on the Tourism Law to ensure the legality of the business.⁸ This aims to provide legal protection to consumers in the tourism industry, including tourists using tourism services, ensuring that they can feel safe in their tourism activities. However, there is still no specific legal regulation related to climbing and climbing tourists on Mount Agung, especially in Law No. 10/2009 on Tourism. This condition creates a legal vacuum at the local management entity level, therefore this research aims to examine the legal protection of tourists to develop more comprehensive regulations for business actors in the sector.

RESEARCH METHODOLOGY

This research is a type of normative research, with the statute and conceptual approach. Normative research in legal research involves examining legal issues, focusing on the systematic analysis of legal norms and principles.⁹ Meanwhile, statute approach in legal research involves analyzing laws and legal concepts primarily through the study of legal rules, court judgments, and statutes without much reference to external factors.¹⁰ On the other hand, conceptual approach in legal research, as proposed by Carole Hafner, focuses on distilling vast amounts of case law into manageable subsets using concept indexation and search based on an annotation model and expert legal reasoning.¹¹ The collection of legal materials is carried out through recording techniques. The analysis is carried out qualitatively by compiling relevant data according to their importance

⁸ I Wayan Adrian Rainartha Nugraha, "Pengaturan Perlindungan Hukum Terhadap Wisatawan Dan Pemberlakuan Sanksi Pidana Terhadap Perbuatan Melawan Hukum Menurut Undang-Undang Nomor 10 Tahun 2009 Tentang Kepariwisataaan," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 2 (March 21, 2023): 489, <https://doi.org/10.35931/aq.v17i2.2007>.

⁹ Parid Sidik, "Pendekatan Normatif Sebagai Metodologi Penelitian Hukum Islam," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 3 (May 31, 2023): 1010–22, <https://doi.org/10.47467/as.v5i3.3843>.

¹⁰ Eny Hidayati, Nurul & Sulistyowati, "Analisis Yuridis Putusan Nomor 1213/Pdt.G/2020/PA.Sda Tentang Pembatalan Perkawinan Dan Akibatnya Terhadap Kedudukan Anak," *In Press-Syarat SPK*, no. 12 (2022): 1–10, <https://doi.org/https://doi.org/10.2674/novum.v0i0.47442>.

¹¹ Nada Mimouni, Adeline Nazarenko, and Sylvie Salotti, "A Conceptual Approach for Relational IR: Application to Legal Collections," 2015, 303–18, https://doi.org/10.1007/978-3-319-19545-2_19.

in the research, then compiled into a comprehensive and detailed description related to the research topic.¹²

RESULT AND DISCUSSION

Legal Protection of Mountain Climbing Tourists Considered from Law No. 10/2009 on Tourism

The tourists are entitled to receive services in accordance with the promises given by the tourism providers. This includes the right to a refund if the service does not meet the expected standard or if there is dishonesty in the presentation of the product or service. Responsible tourism also involves protecting the natural and cultural environment in tourist destinations. Tourists have a responsibility to respect and safeguard the environment they visit, while governments and tourism organizations have a responsibility to regulate and supervise tourism activities to protect the environment. It is important for governments and relevant authorities to strictly enforce laws against violations that harm tourists, including actions against tourism operators who do not comply with safety regulations, hotels or restaurants that do not maintain hygiene standards, or individuals who commit criminal acts against tourists.

In the context of mountaineering tourism, the existence of legal protection is particularly important as the activity involves high risks and challenges that must be addressed. Mountaineering carries serious risks to the safety and health of the tourists. Inclement weather, rocky and dangerous trails, or even low oxygen levels at high altitudes may lead to injury or even death. Through legal protection, the tourists may gain access to emergency medical aid and insurance coverage in case of accidents or health issues during the climb. The harsh and changing natural environment on the mountain can also lead to tourists getting lost, trapped, or having accidents. Legal protection can provide assistance in the search and rescue process, as well as handle any disputes or legal issues that may arise as a result of the tourists' accident or disappearance.

While there are regulations in Indonesia governing mountaineering managed by local governments, the situation in Bali indicates that regulations related to mountaineering are still legally uncertain. One of the existing regulations is the Bali Governor Regulation No. 52/2021 concerning the Implementation Regulation of Regional Regulation No. 5/2020 concerning Standards for the Implementation of Balinese Cultural Tourism. However, this does not specifically regulate mountaineering tourism, resulting in the position of mountaineering tourists in Bali being legally vulnerable. This condition points to a legal vacuum in Bali Governor Regulation No. 52/2021 since it does not clearly regulate climbing on Mount Agung, the highest and holiest mountain in Bali. This

¹² Dian Ety Mayasari, Wahyu Prawesthi, and Kadek Kadek, "Legality of Euthanasia at Patient Family's Request," *YURIS: Journal of Court and Justice* 2, no. 3 (2023): 14–27, <https://doi.org/10.56943/jcj.v2i3.381>.

is contrary to Bali's strong cultural image in cultural tourism and ecotourism, which should provide legal protection for tourists and the environment in Bali.¹³ As a result of this legal vacuum, mountain climbing tourists in Bali, especially Mount Agung, still have legal vulnerabilities, therefore providing a proper legal protection is necessary.

Mountain climbing is categorized as a high-risk activity.¹⁴ Therefore, it is recommended that the local government of Bali establish clear regulations related to legal protection for tourists who climb mountains, considering that mountaineering tourism activities in Bali are common. The legal protection should include rights and obligations that must be obeyed by both tourists and business actors involved in climbing tourism activities in the local area.

The impact of the legal vacuum in the Bali Governor Regulation No. 52/2021 suggests the importance of establishing a regulation governing mountain climbing in Bali, especially on Mount Agung. The forms of regulation that can be considered are as follows:

1. Management Board and Hiking Trails
 - a. The government will establish a management board for each mountain that has been designated as a climbing destination.
 - b. The Management Board is responsible for:
 - 1) Designing and maintaining mountain hiking trails.
 - 2) Organizing and supervising mountaineering activities.
 - 3) Monitoring the environmental impact of mountaineering activities.
 - 4) Coordinating with related traditional villages in efforts to maintain the environment.
 - c. Mountain climbing trails should be designed with environmental sustainability and the safety of tourists in mind.
 - d. The management board shall periodically maintain the hiking trails.
 - e. Utilization of climbing trails for commercial activities must obtain permission from the management board.
 - f. Climbing business actors who provide climbing goods and services including guides and climbing equipment must provide insurance to tourists as a guarantee of tourist safety.
 - g. Climbing guides must have a clear certificate in accordance with the mountain climbing guide standard.
2. Maintenance and Traditional Village

¹³ I Wayan Wesna Astara, "Legal Politics and Social Changes in Bali in the Management of the Pancasila Legal Tourism Village," *Sociological Jurisprudence Journal*, no. 1 (2024).

¹⁴ Novie Susanto, Susatyo Nugroho W.P, and Ega Rizkiyah, "Evaluating Risk Perception Based on Gender Differences for Mountaineering Activity," ed. Hadiyanto, Sudarno, and Maryono, *E3S Web of Conferences* 31 (February 21, 2018): 09028, <https://doi.org/10.1051/e3sconf/20183109028>.

- a. Maintenance of the environment surrounding mountain climbing routes is a shared responsibility between the management board, local government, and the local community.
- b. Traditional villages located around the climbing route play an important role in maintaining the environment and the sustainability of climbing activities.
- c. The local government is obliged to provide support and assistance to traditional villages in efforts to maintain the environment.
- d. Traditional villages have the right and obligation to be involved in the management of mountain climbing routes that pass through their territory.
- e. Traditional villages have the right to receive economic benefits from mountaineering activities within their territories.
- f. Traditional villages are obliged to preserve the environment and local culture in managing climbing activities.
- g. Local governments are obliged to accommodate the needs of traditional villages in mountaineering activities through local economic development programs and community empowerment.
- h. Local governments can provide incentives to traditional villages that successfully preserve the environment and culture in the mountaineering sector.

The obligations of tourists are also explained in Article 25 of the Tourism Law, which are maintaining and respecting religious norms, customs, culture, and values living in the local community; maintaining and preserving the environment; participating in maintaining environmental order and security; and participating in preventing all forms of acts that violate decency and activities that violate the law.¹⁵

The central and local governments certainly bear the responsibility to be involved in efforts to protect tourists in high-risk tourism activities.¹⁶ The role of the state and local governments in the protection of mountaineering tourists is crucial to ensure the security, safety and sustainability of mountaineering activities. In situations involving local governments, they are generally more directly involved in overseeing mountaineering activities in their areas. Due to their deeper understanding of local circumstances and the interests of local communities, they can customize mountaineering arrangements according to the characteristics and specific necessities of the region. Local government responsibilities also include developing and maintaining supporting infrastructure,

¹⁵ Pemerintah Pusat Indonesia, “Undang-Undang (UU) Nomor 10 Tahun 2009 Tentang Kepariwisataaan” (Jakarta, 2009), <https://peraturan.bpk.go.id/Details/38598/uu-no-10-tahun-2009>.

¹⁶ Mar’atusholihah, Muntasib, and Rushayati, “Tourism Hazard Mitigation in Mount Rinjani National Park, West Nusa Tenggara.”

as well as ensuring that mountaineering activities do not pose negative impacts to local communities or damage the local environment.

Several things regarding local government involvement in developing mountaineering tourism can be constructed as follows:

1. **Local supervision:** Local governments are directly involved in the supervision of mountaineering activities in their areas. They are responsible for ensuring that regulations and policies established by the central government are properly implemented at the local level.
2. **Local infrastructure management:** Local governments are responsible for the development, maintenance, and management of local infrastructure that supports mountaineering activities, such as hiking trails, shelters, and other supporting facilities.
3. **Services and supervision of the climbers:** Local governments provide services to mountaineers, including information on hiking trails, weather conditions, and available facilities. They are also responsible for supervising mountaineering activities in their area.
4. **Local community participation:** Local governments play a role in engaging local communities in the management and supervision of mountaineering tourism. This aims to ensure that climbing activities provide economic benefits to local communities and do not harm the environment and local culture.

Under the Tourism Law, preventive legal protection for mountaineering tourists is possible through several mechanisms, including safety regulations and standards; licensing and certification; information provision; insurance; and enforcement. In addition, tourists themselves are also responsible for ensuring that they understand the risks involved in mountaineering activities and take appropriate precautionary measures, such as using appropriate equipment, paying attention to the instructions of tour organizers, and preparing themselves properly before going on a climb.

Repressive protection in relation to mountaineering tourists refers to legal actions or law enforcement measures implemented following an accident or violation of the law. These repressive protections aim to uphold safety standards and service quality in the tourism industry, while providing justice for affected parties due to violations or accidents. Repressive protection includes:

1. Settlement through the court and litigation process;
2. Investigation and enforcement processes to uncover violations and uphold justice;
3. Implementation of administrative sanctions as a form of reprimand or punishment for violators;
4. Provision of compensation and restitution to the disadvantaged party as an effort to recover the losses experienced.

Liability of Mountain Climbing Tourism Business Actors to Mountain Climbing Tourists who Experience Losses Due to Accidents in Review of Law No. 10/2009 on Tourism

Mountain climbing is considered a high-risk activity.¹⁷ Therefore, it is recommended that the local government of Bali create clear rules regarding legal protection for mountaineering tourists. This is important considering that mountaineering tourism activities in Bali occur quite frequently. The legal protection must include the rights and obligations that must be obeyed by both tourists and business actors involved in climbing tourism activities in the area.

Mountaineering tourism businesses are expected to ensure that they have taken all reasonable steps to protect climbers from injury or any other dangers. This could include providing clear and accurate information on the climbing route, weather conditions, necessary preparations, and any associated risks. In case of an accident or injury, businesses may be held legally liable if it can be proven that they failed to fulfill their obligation to provide a safe environment and adequate protection.

The Regional Regulation of Bali Province No. 5/2020 also regulates the obligations of Tourist Destination Area Managers which are described in Article 6 Paragraph 3 which reads: “In addition to meeting the standards as referred to in Paragraph 2, Tourist Destination Area Managers are required to meet additional standards, including: a) Implementing security, safety and health standards for tourists; b) Providing signs about travel safety and security; and c) Protecting and preserving the environment of natural tourist destination areas.”¹⁸ Furthermore, through the promulgation of the local regulation in question, it is appropriate to be used as a guide by tourism entrepreneurs as those who manage tourist sites with high risks. In addition, the Minister of Tourism Regulation No. 18/2016 on Tourism Business Registration applies the term extreme tourism business to refer to tourism businesses with high-risk activities. Article 1 Paragraph 50 of the Regulation of the Minister of Tourism No. 18/2016 states that “Extreme tourism business is a business that provides places and/or facilities for organizing high-risk tourism activities.”¹⁹

The obligations that must be fulfilled by tourism entrepreneurs related to legal protection for consumers are stated in Article 26 letters d and e of Law No. 10/2009 on Tourism which states that: “Business actors are obliged to provide comfort and safety for tourists; and provide insurance protection to tourism

¹⁷ Susanto, Nugroho W.P, and Rizkiyah, “Evaluating Risk Perception Based on Gender Differences for Mountaineering Activity.”

¹⁸ Pemerintah Provinsi Bali, “Peraturan Gubernur Bali Nomor 5 Tahun 2020 Tentang Penyelenggaraan Sertifikat Elektronik Di Lingkungan Pemerintah Provinsi Bali” (Denpasar, 2020), <https://jdih.baliprov.go.id/produk-hukum/peraturan-perundang-undangan/pergub/25097>.

¹⁹ Pemerintah Pusat Indonesia, “Peraturan Menteri Pariwisata Dan Ekonomi Kreatif Nomor 18 Tahun 2016 Tentang Pendaftaran Usaha Pariwisata” (Jakarta, 2016), <https://peraturan.bpk.go.id/Details/171166/permenpar-no-18-tahun-2016>.

businesses with high-risk activities.”²⁰ In general, obligation is defined as an awareness triggered by individuals partially from their attitudes or activities, whether it is intentional or otherwise. Obligation also encompasses activities that a person carries out as a form of familiarity and commitment to be responsible for the outcomes of these activities.

However, it should be emphasized that those who manage tourist sites as tourism entrepreneurs have responsibility for accidents if they are caused by a lack of supervision or negligence and lack of available tools at tourist sites. Conversely, if an accident occurs due to the negligence of tourists who do not comply with the rules determined by the tourist site manager, the tourist site manager is not responsible for the accident. In other words, the tourist is responsible for the losses they suffer due to their own negligence.

In the context of mountaineering tourists, dispute regulation and resolution can also be supported by regulations and practices established by local tourism authorities, contractual agreements between tourists and tour operators or organizers, and laws governing the tourism industry. These measures may help ensure that disputes are resolved in a fair and efficient manner, and provide legal certainty for all parties involved.

Direct negotiation involves direct communication between the parties involved in the dispute in the absence of a neutral third party being involved. The parties involved may attempt to identify their respective interests and needs in order to reach an acceptable agreement for all parties. The negotiation procedure is flexible and may include face-to-face meetings, telephone conversations, or written communications.

Mediation involves a neutral third party called a mediator. The mediator has no decision-making power, but instead is tasked with helping the disputing parties reach an agreement. The mediator helps facilitate communication, clarify differences, and guide the parties towards a mutually acceptable solution. The mediation process is confidential and is usually faster and cheaper than litigation.

Arbitration involves a neutral third party or an arbitration panel called an arbitrator. The arbitrator would listen to arguments from both sides and come to a binding decision. The arbitration process is often faster than litigation and provides flexibility in choosing the arbitrator and the procedures to be adopted. Arbitration decisions are final and can be executed similarly to court judgments.

Litigation involves taking a case to court, where the parties to the dispute will present their evidence and arguments before a judge or jury. The litigation process has strict rules and procedures, and the final decision is reached by an authorized party (judge or jury). Litigation is often considered a last resort as the process can be expensive, time-consuming and carries higher risks than other alternative dispute resolution mechanisms.

²⁰ Indonesia, “Undang-Undang (UU) Nomor 10 Tahun 2009 Tentang Kepariwisataaan.”

Businesses, guides and management bodies can be criminally prosecuted if they are found to be responsible for the losses suffered by tourists due to criminal acts. Meanwhile, they can be exposed to civil legal liability if tourists suffer losses due to their negligence that can be remedied through civil proceedings.

CONCLUSION AND SUGGESTION

Conclusion

There is a legal void in Bali Province Regional Regulation concerning of mountaineering tourism in order to make hikers or mountain climbing businesses vulnerable to losses because they are not protected legally. “Legal protection for climbing tourists in Bali can refer to Article 20 letters (c) and (f) in Law No. 10/2009 on Tourism regarding tourist rights and legal protection for tourists as consumers of tourism service users related to consumer rights can refer to Article 4 number (1) and number (5) of Law No. 8/1999 concerning Consumer Protection.” Legal protection for climbing tourists in Bali specifically requires additional regulations in Bali Governor Regulation No. 52/2021 concerning Regional Regulation Implementation Regulation No. 5/2020 concerning Bali Cultural Tourism Implementation Standards, that is, “business actors are obliged to fulfill all obligations that have been promised in contracts with tourists, including providing services in accordance with the promised standards.”

Suggestion

Based on previous conclusion, the researchers suggest several suggestions, such as (1) based on the provisions of legal arrangements, the Bali Provincial Government should immediately compile and ratify regional regulation in which specifically regulates legal protection for tourists, and the responsibility of business actors in losing experienced by mountaineering tourists; and (2) for mountaineering tourists or hikers, they must consider to the rights they have as tourists who do high-risk tourism activities. Although legal protection for tourists has been regulated in the legislation, there are still many managers of tourist attractions as business actors do not respond this matter seriously. Therefore, the government, both at the central and regional levels, should act firmly against tourism actors who try to override the protection rights for tourists as consumers, to ensure the certainty of legal protection received by tourists involved in high-risk tourism activities, especially mountain climbing.

REFERENCES

- Astara, I Wayan Wesna. "Legal Politics and Social Changes in Bali in the Management of the Pancasila Legal Tourism Village." *Sociological Jurisprudence Journal*, no. 1 (2024).
- Bali, Pemerintah Provinsi. "Peraturan Gubernur Bali Nomor 5 Tahun 2020 Tentang Penyelenggaraan Sertifikat Elektronik Di Lingkungan Pemerintah Provinsi Bali." Denpasar, 2020. <https://jdih.baliprov.go.id/produk-hukum/peraturan-perundang-undangan/pergub/25097>.
- Hidayanti, Fitriya. "Perlindungan Hukum Terhadap Wisatawan Yang Akan Berkunjung Ke Tempat Wisata Di Pulau Lombok Menurut Undang-Undang Tentang Kepariwisata." *Prosiding Seminar Nasional Komunikasi, Administrasi Negara Dan Hukum* 1, no. 1 (June 10, 2023): 227–32. <https://doi.org/10.30656/senaskah.v1i1.148>.
- Hidayati, Nurul & Sulistyowati, Eny. "Analisis Yuridis Putusan Nomor 1213/Pdt.G/2020/PA.Sda Tentang Pembatalan Perkawinan Dan Akibatnya Terhadap Kedudukan Anak." *In Press-Syarat SPK*, no. 12 (2022): 1–10. <https://doi.org/https://doi.org/10.2674/novum.v0i0.47442>.
- Indonesia, Pemerintah Pusat. "Peraturan Menteri Pariwisata Dan Ekonomi Kreatif Nomor 18 Tahun 2016 Tentang Pendaftaran Usaha Pariwisata." Jakarta, 2016. <https://peraturan.bpk.go.id/Details/171166/permenpar-no-18-tahun-2016>.
- . "Undang-Undang (UU) Nomor 10 Tahun 2009 Tentang Kepariwisata." Jakarta, 2009. <https://peraturan.bpk.go.id/Details/38598/uu-no-10-tahun-2009>.
- Mar'atusholihah, Euis Rahmah, E.K.S Harini Muntasib, and Siti Badriyah Rushayati. "Tourism Hazard Mitigation in Mount Rinjani National Park, West Nusa Tenggara." *Social Science, Humanities and Sustainability Research* 2, no. 2 (June 18, 2021): p5. <https://doi.org/10.22158/sshsr.v2n2p5>.
- Mayasari, Dian Ety, Wahyu Prawesthi, and Kadek Kadek. "Legality of Euthanasia at Patient Family's Request." *YURIS: Journal of Court and Justice* 2, no. 3 (2023): 14–27. <https://doi.org/10.56943/jcj.v2i3.381>.
- Mimouni, Nada, Adeline Nazarenko, and Sylvie Salotti. "A Conceptual Approach for Relational IR: Application to Legal Collections," 303–18, 2015. https://doi.org/10.1007/978-3-319-19545-2_19.
- Nugraha, I Wayan Adrian Rainartha. "Pengaturan Perlindungan Hukum Terhadap Wisatawan Dan Pemberlakuan Sanksi Pidana Terhadap Perbuatan Melawan Hukum Menurut Undang-Undang Nomor 10 Tahun 2009 Tentang Kepariwisata." *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 2 (March 21, 2023): 489. <https://doi.org/10.35931/aq.v17i2.2007>.
- NV. "Terkait Wisatawan Asal AS Meninggal Di Gunung Agung: Hari Ini, Prajuru

- Desa Adat Besakih Bahas Ritual Pabersihan.” NusaBali, 2022. <https://www.nusabali.com/berita/129861/terkait-wisatawan-asal-as-meninggal-di-gunung-agung>.
- Oktaviani, Desy, and Deden Sustina. “An Analytical Study of The Readiness of Eco-Tourism Based Transactions in The Mount Putri Bandung (Indonesia) Tourism Area.” *Review of International Geographical Education Online* 11, no. 3 (2021): 230.
- Purwanto, Heru. “Satu Dari Tiga Pendaki Hilang Di Gunung Agung Ditemukan Tewas.” ANTARA, 2008. <https://www.antaraneews.com/berita/89129/satu-dari-tiga-pendaki-hilang-di-gunung-agung-ditemukan-tewas>.
- Reimers, Frederick. “An Everest Guide Just Won a Legal Battle over a Canceled Summit Attempt.” *Outside*, 2021. <https://www.outsideonline.com/outdoor-adventure/exploration-survival/madison-mountaineering-everest-lawsuit-agreement>.
- Sidik, Parid. “Pendekatan Normatif Sebagai Metodologi Penelitian Hukum Islam.” *As-Syar’i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 3 (May 31, 2023): 1010–22. <https://doi.org/10.47467/as.v5i3.3843>.
- Susanto, Novie, Susatyo Nugroho W.P, and Ega Rizkiyah. “Evaluating Risk Perception Based on Gender Differences for Mountaineering Activity.” Edited by Hadiyanto, Sudarno, and Maryono. *E3S Web of Conferences* 31 (February 21, 2018): 09028. <https://doi.org/10.1051/e3sconf/20183109028>.
- Widiyantoro, Wahyu. “Harga Tiket Pendakian Gunung Rinjani, Lengkap Dengan Aturan, Prosedur, Dan Peta Jalurnya.” *Tribun Lombok*, 2022. <https://lombok.tribunnews.com/2022/08/08/harga-tiket-pendakian-gunung-rinjani-lengkap-dengan-aturan-prosedur-dan-peta-jalurnya?page=all>.