

Analysis of Criminal Law Reforms Against Foreign Tourists by the Republic of Indonesia Police

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Abstract. *The importance of the role of tourism in economic development in various countries. Therefore, the role of legal protection and security of tourist attractions is very influential on the growth and development of tourism in Indonesia, especially with the natural resources in this country. Legal protection and security for tourists are very important, considering that many tourists experience theft, fraud, and other criminal acts and accidents that harm them. The formulation of the law in this article is how is the legal protection for foreign tourists in Indonesia according to the Law, and how is the criminal law updated regarding the protection of foreign tourists in Indonesia. Based on the results of the research conducted by the author, it shows that Law Number 10 of 2009 concerning Tourism has regulated the rights and obligations of tourists and tourism entrepreneurs. Article 20 regulates the rights of tourists and Article 25 regulates the obligations of tourists. Law Number 10 of 2009 concerning Tourism regulates administrative sanctions for tourists and tourism entrepreneurs as contained in Article 62. The government has stipulated Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code as a form of adjustment to legal politics, conditions and developments in social, national and state life that upholds human rights. This new law consists of 624 articles as a replacement for the old Criminal Code which originated from the colonial law Wetboek van Strafrecht voor Nederlands-Indie (Criminal Code for the Netherlands-Indie) since 1946. The renewal of the Criminal Code will not have a negative impact on the tourism and investment sectors in Indonesia.*

Keywords: *Tourism; Tourists; Updates.*

1. Introduction

Tourism is the most important and interesting part of national development that is implemented in a planned, systematic, sustainable and integrated manner. The

implementation of this development must pay attention to the responsibility to provide protection for religious values, culture that lives in society, environmental sustainability and quality, and national interests. There is no doubt about the importance of the role of tourism in economic development in various countries. Development in the tourism sector will open up new jobs,¹ increase local community income, and provide financial contributions to related business sectors.²

A journey is a temporary journey undertaken by one or more people to a place outside their place of residence.³ But now tourism has become a necessity for people. Legal protection and security of tourist attractions greatly affect the growth and development of tourism in Indonesia, especially with the natural resources in this country. Legal protection and security for tourists are very important, considering that many tourists experience theft, fraud, and other criminal acts and accidents that harm them.⁴ In the context of legal protection for tourists, what needs to be protected are the rights of tourists. Tourist rights include comfort, security, and Tourists have the right to receive the best possible service from the management of the tourist attractions concerned when visiting the tourist attractions. Therefore, business actors in the tourism sector are required to provide comfort, security, and safety for tourists in accordance with the mandate of the law. Indonesia is an area that has quite large tourism potential ranging from marine tourism, mountain tourism, artificial nature tourism, pilgrimage tourism, artificial game tourism, and many more. According to the report of the Central Statistics Agency (BPS), the number of foreign tourist visits to Indonesia reached 510,246 in August 2022. This is the highest achievement in the past year. The number of foreign tourist visits increased by around 330.46% compared to the same period last year. In August 2021, there were only 118,533 foreign tourist visits to Indonesia.⁵ Then in 2022, there were 550 million domestic tourist visits. Thus, cumulatively, the number of foreign tourist visits for the period January-September 2022 was recorded at 2.27 million

¹HMS Depa, "Legal Protection for Tourists in the Event of an Accident at a Tourist Destination," *Al Qodiri: Journal of Education, Social and Religious Affairs*, no. 85 (2021): 744–66, <http://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/view/4069%0A> <http://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/download/4069/2913>.

²B. and N. Roedjinandari. Supriadi, "Planning and Development of Tourism Destinations" (State University of Malang, 2017).

³IM S Amerta, *Alternative Tourism Development* (Surabaya: Scopindo Media Library, 2019).

⁴Muhaimin Muhaimin, "The Position of Local Wisdom in Spatial Planning of Bali Province," *De Jure Legal Research Journal* 18, no. 1 (2018): 59, <https://doi.org/10.30641/dejure.2018.v18.59-71>.

⁵Central Bureau of Statistics, "Tourism Violations in Indonesia," 2023, <https://www.bps.go.id/subject/16/pariwisata.html>, accessed on October 25, 2023 at 21.00 WIB.

visits, an increase of 2,530.58 percent compared to the number of foreign tourist visits for the same period in 2021 of 86,240.6.⁶

Based on the data above, many tourists visit marine tourism sites. Marine tourism, which includes diving, snorkeling, sailing, fishing, and surfing, is a form of sport, hobby, and education, and has even become a profession for some people and local residents. Marine tourism is classified as a high-risk tourism activity. What is meant by "high-risk activities" according to the explanation of Article 26 letter e of Law Number 10 of 2009 concerning Tourism (hereinafter referred to as the "Tourism Law") includes diving, snorkeling, rafting, rock climbing, jet coasters, and visiting certain tourist attractions, such as seeing wildlife in the wild. Diving and snorkeling are currently used as the main livelihood for some people in coastal areas.

Diving and snorkeling tourism is available in Lombok, Banyuwangi, Malang, Karimunjawa, Bali, and others. Diving and snorkeling have risks to the safety and security of tourists and are types of nature tourism, along with ecotourism and adventure tourism. Diving and snorkeling are the destinations of 35% of foreign tourists who come to Indonesia.⁷In developing diving and snorkeling tourism in Indonesia, several activities are carried out, one of which is preparing standard operating procedures and certification for marine tourism businesses.⁸

Tourists have the right to receive protection from the management of the tourism they visit through laws and regulations made by the state or region. The security in question has significant implications for the safety and security of life, dignity, and property of tourists. In addition, the aspect of legal protection for foreign tourists is one aspect that must be considered in the context of Indonesia as a country of law. It is feared that the rights of foreign tourists cannot be fully protected. This is due to the weak supervision carried out by business actors in tourist attractions.⁹

The regulation of legal protection for tourists in the legislation needs to be regulated clearly and firmly to ensure legal certainty. The trace of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) needs to be carried out to determine whether or not there are aspects of legal protection and security for tourists. Basically, the safety of tourists from this

⁶Bimrew Sendekie Belay, "Legal Consequences of Including an Exoneration Clause in an Insurance Policy," *Journal of Education and Development Institute* 10, No. 8.5 (n.d.).

⁷Ikke Febriandhika And Teguh Kurniawan, "Tourism Development Through Community Empowerment Seen From the Perspective of Policy Implementation," *Jurnal Pariwisata Pesona* 5, No. 1, (2020), <https://doi.org/10.26905/Jpp.v5i1.2793>.

⁸Abu Rizal and Joko Priyono, "Analysis of Regional Income from the Tourism Sector of Surabaya City", 2010-2014," *Journal of Economics & Business* 28, no. 2 (2016): 250-250, <https://doi.org/10.4234/jjoffamilysociology.28.250>.

⁹Annisa Puspitadelia, "Legal Protection for Tourists During the COVID-19 Pandemic", Reviewed from Law Number 8 of 1999 concerning Consumer Protection," *Jurist-Diction* 4 no. 3 (202 nd), <https://doi.org/10.20473/jd.v4i3.26973>.

accident concerns the rights and obligations of the parties involved in the related tourism business to maintain safe and comfortable conditions. The rights of tourists in Article 4 of the UUPK are to receive legal protection in the form of clear information, security, and comfort to be served honestly and to receive compensation. Then the obligations of business actors are also regulated in Article 7 letter b of the UUPK, namely to provide correct, clear and honest information regarding the condition and guarantee of goods and/or services and to provide an explanation of the use, improvement and maintenance. Legal protection is not only regulated in the UUPK. Legal protection for high-risk tourism is also regulated in Article 20 letters c and f of the Tourism Law, namely in the form of legal protection and security and insurance protection for high-risk tourism activities. Meanwhile, according to Article 26 letters d and e of the Tourism Law, one of the obligations of tourism business actors is to provide comfort, friendliness, security protection, and safety of tourists, as well as provide insurance protection for tourism business actors with high-risk activities.

All matters concerning procedures, certainty, security, and comfort of tourists are stated in the SOP. However, in reality there are still many standard clauses in the SOP in the form of transferring the responsibility of business actors to consumers. These standard clauses can be found in the form of standard operating procedures or terms and conditions. Meanwhile, in Law Number 8 of 1999 concerning Consumer Protection, Article 18 Paragraph (1) states that the provisions of the contents of standard clauses containing business actors are prohibited from including content that states the transfer of responsibility to business actors.¹⁰

The history of the development of the Indonesian National Police since independence until now has experienced several changes to the Police Law, there are three Police Laws that have been in effect, including Law No. 13 of 1961 concerning the Main Provisions of the Indonesian National Police which has been in effect since June 30, 1961, October 7, 1997, namely Law No. 28 of 1997 concerning the Indonesian National Police, and since January 8, 2002, Law No. 2 of 2002 concerning the Indonesian National Police (hereinafter referred to as the Police Law) has been in effect until now.¹¹

To prevent unwanted things, it is necessary to have strict law enforcement efforts. Especially in the field of tourism, in reality, the relationship between the police, the law and the community is very close. Regarding the relationship between the police and the effectiveness of the law, the quality and empowerment of the police in dealing with crime and protecting tourists is one

¹⁰Masrofah, "The Exoneration Clause Harms the Buyer Legal Protection for Consumers Against the Application of Exoneration Clauses in Online Sales," *UMPurwokerto Law Review* 3, nd, <https://doi.org/10.30595/umplr.v3i1.10730>.

¹¹Yoyok, Ucuk Suyono, *Police Law: The Position of the Police in the Indonesian Constitutional System after the Amendment to the 1945 Constitution*, Laksbang Grafika, Bandung. 2013, p. 25

of the factors that greatly determines the effectiveness or ineffectiveness of the applicable provisions.¹²

Based on the explanation above, this article will discuss further about the renewal of criminal law related to the effectiveness of legal protection of the Republic of Indonesia Police in overcoming crimes in the tourism sector in Indonesia. So it is hoped that the existence of tourism police, security and order especially in tourist attractions throughout Indonesia can be improved, so that it can prevent, overcome and minimize the occurrence of crimes or disturbances both from within and outside the country to be able to advance tourism in Indonesia as part of efforts to improve the tourism image of the Republic of Indonesia.

This study aims to analyze how the legal protection of foreign tourists in Indonesia is according to the Law and to analyze how the criminal law is updated regarding the protection of foreign tourists in Indonesia.

2. Research Methods

The research method used by the author is Normative or Normative Juridical.¹³ Research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These materials are arranged then reviewed and conclusions are drawn regarding their relationship to the problem being studied, then the results of this study are explained and described in sentences that are easy to understand.

The data sources in this article are secondary data, namely data obtained by conducting literature studies such as scientific books, research results and so on. Secondary data includes documents, books, journals, articles or reports and laws and regulations.

3. Results and Discussion

3.1 Legal Protection for Tourists According to Law Number 10 of 2009 Concerning Tourism

Tourism is not a new thing in Indonesia. This activity has been placed as an object of national policy since Indonesia first determined its development policy. Since the beginning, the Indonesian government has been aware of the unique character and multidimensional nature of tourism activities, and therefore tourism policy is placed as a separate sub-policy, namely tourism policy, but under different fields the most important task that must be carried out by policy makers in a tourism destination is to carry out "tourism awareness" activities that involve all stakeholders.

The definition of "tourism awareness" here does not mean forcing stakeholders

¹²Anton Tabah, *Looking with the Eyes of the Heart at the Indonesian Police*, PT. Gramedia Pustaka Utama. 1991, p. 31

¹³Azhari, *Normative Legal Analysis of Its Elements*, UI Press, Jakarta. 1995, p. 35

to simply accept when their area is used as a tourism destination. This activity should be aimed at identifying how much the needs of the community living in the tourism destination are for the development of tourism itself. Tourists generally do not have a long-term interest in the stability of social life, culture and environmental preservation in tourism destinations because they are not the owners of the area. In contrast to local residents, they are very dependent on the quality of social, cultural and environmental preservation conditions, because they are the owners and have a very close psychological and historical relationship with the tourism destination.¹⁴

Tourism has always been a sector that the government continues to develop. The Indonesian House of Representatives has enacted Law No. 10 of 2009 concerning Tourism, which replaces Law No. 9 of 1990. In terms of regulation, the law aims to encourage small and medium enterprises to help create a Sustainable Tourism Industry. The previous law was considered incapable of answering the challenges and hopes for the future of Indonesian tourism. The tourism sector can be said to be in direct contact with people at the lowest economic level, because they are the ones who will have direct contact with foreign tourists. That is why Law No. 10 of 2009 was enacted, so that craftsmen, tour guides, and small and medium tourism actors can be fostered and developed in accordance with applicable regulations.¹⁵

According to the Law of the Republic of Indonesia Number 10 of 2009 concerning Tourism in Article 1 number 1 and number 2, Tourism is a travel activity carried out by a person or group of people by visiting a certain place for recreational purposes, personal development, or studying the uniqueness of the tourist attractions visited in a temporary period. Tourists are people who carry out tourism activities. Based on the nature of the trip, the location where the trip is made, tourists can be classified as follows:

- 1) *Foreign Tourist*. A foreigner who travels for tourism, who comes to another country which is not the country where he usually lives. Foreign tourists are also called foreign tourists or abbreviated as wisman.
- 2) *Domestic Foreign Tourists*. Foreigners who reside or reside in a country due to duty, and travel in the territory of the country where they reside. For example, Dutch embassy staff who receive annual leave, but do not return to the Netherlands, but travel in Indonesia (where they are assigned).
- 3) *Domestic Tourist*. A citizen of a country who travels within the borders of his own country without crossing its borders. For example, an Indonesian citizen

¹⁴Basuki Antariksa, *Tourism Law Enforcement in DKI Jakarta as an International Tourism Destination*, Department of Tourism and Culture of DKI Jakarta Province, in Jakarta (presentation conducted on November 8, 2011), p. 5.

¹⁵Aditya Yuli, , *Tourism Reviewed From the Aspect of Brand Law (Case Study of City Branding of the Special Region of Yogyakarta as a Leading Tourist Destination in Indonesia)*, QISTI Scientific Journal of Law Vol. 5 No. 1 (January 2011): 51.

who travels to Bali or Lake Toba. These tourists are also called domestic tourists or domestic tourists (wisnu).

- 4) *Indigenous Foreign Tourists*. Citizens of a particular country, who because of their duties or positions are abroad, return to their home country and travel for tourism in their own country. For example, a French citizen who works as a consultant in a foreign company in Indonesia, when on vacation he returns to France and travels for tourism there. This type of tourist is the opposite of a Domestic Foreign Tourist
- 5) *Transit Tourist*. Tourists who are traveling to a certain country, who are forced to stop or transit at a port/airport/station not of their own volition.
- 6) *Business Tourist*. A person who travels for business purposes, not tourism, but the tourism trip will be done after the main purpose is completed. So, tourism is a secondary purpose, after the primary purpose, namely business, is completed.¹⁶

Article 4 of Law Number 10 of 2009 concerning Tourism, Tourism aims to: increase economic growth, improve people's welfare, eradicate poverty, overcome unemployment, preserve nature, the environment, and resources, advance culture, raise the nation's image, foster a sense of love for the homeland, strengthen national identity and unity and strengthen friendship between nations. Therefore, protection of existing tourism potential must be maintained, because tourist attractions are a characteristic of a country. The development of supporting factors for tourist attractions must continue to be improved and considered so that Indonesia can compete with other countries.¹⁷

Improvements to supporting factors will facilitate visitor access to existing tourist attractions. Types of Tourism Businesses in Article 14 paragraph (1) of Law Number 10 of 2009 concerning Tourism explains that the scope of types of tourism businesses includes:

- a. Tourist attractions are businesses whose activities involve managing natural tourist attractions, cultural tourist attractions, and artificial/man-made tourist attractions.
- b. A tourism area is a business whose activities involve building and/or managing an area of a certain size to meet tourism needs.
- c. Tourism transportation services are special businesses that provide transportation for tourism needs and activities, not regular/public transportation.
- d. Travel services are travel agency and travel agent businesses. Travel agency

¹⁶Yusac L. Diyono, Introduction To Tourism Lecture Material, Untag Semarang, www.scribd.com. accessed October 14, 2018.

¹⁷Sarsiti and Muhammad Taufiq, Implementation of Legal Protection for Tourists Who Experience Losses at Tourist Attractions (Study in Purbalingga Regency), *Journal of Legal Dynamics* Vol. 12 No. 1 (January 2012): 28.

businesses include travel planning services and/or services and organizing religious trips. Travel agent businesses include travel booking services, such as ticket bookings and accommodation bookings, as well as managing travel documentation.

- e. Food and beverage services are business services providing food and beverages equipped with equipment and supplies for the manufacturing process, which can be in the form of restaurants, cafes, catering services, and bars/drink shops.
- f. Accommodation provision is a business that provides lodging services that can be complemented by other tourism services. Accommodation provision businesses can be in the form of hotels, villas, tourist cottages, campsites, caravan stops, and other accommodations used for tourism purposes.
- g. The organization of entertainment and recreational activities is a business whose scope of activities includes performing arts businesses, game arenas, karaoke, cinemas, and other entertainment and recreational activities aimed at tourism.
- h. Organizing meetings, incentive travel, conferences and exhibitions is a business that provides services for a meeting of a group of people, organizes travel for employees and business partners as compensation for their achievements, and organizes exhibitions in order to disseminate information and promote goods and services on a national, regional and international scale.
- i. Tourism information services are businesses that provide data, news, features, photos, videos and research results regarding tourism which are distributed in printed and/or electronic form.
- j. Tourism consulting services are businesses that provide advice and recommendations regarding feasibility studies, planning, business management, research and marketing in the tourism sector.
- k. Tour guide services are businesses that provide and/or coordinate tour guide personnel to meet the needs of tourists and/or travel agencies.
- l. Water tourism is a business that organizes water tourism and sports, including the provision of facilities and infrastructure and other services that are managed commercially in sea waters, beaches, rivers, lakes and reservoirs.
- m. Spa is a treatment business that provides services using a combination of water therapy, aroma therapy, massage, spices, healthy food/drink services, and physical activity with the aim of balancing the body and soul while still paying attention to the traditions and culture of the Indonesian nation.

Law Number 10 of 2009 concerning Tourism has regulated the rights and obligations of tourists and tourism entrepreneurs. Article 20 regulates the rights of tourists, including: accurate information about tourist attractions, tourism

services in accordance with standards, legal protection and security, health services, protection of personal rights, and insurance protection for high-risk tourism activities. Meanwhile, Article 25 concerns the obligations of tourists, including: maintaining and respecting religious norms, customs, culture, and values that live in the local community, maintaining and preserving the environment, participating in maintaining order and security of the environment and participating in preventing all forms of acts that violate morality and activities that violate the law.

Article 22 of Law Number 10 of 2009 concerning Tourism, the rights of tourism entrepreneurs include: getting equal opportunities in doing business in the tourism sector, forming and becoming members of tourism associations, getting legal protection in doing business and getting facilities in accordance with the provisions of laws and regulations. Meanwhile, the obligations of tourism entrepreneurs according to Article 26 include: maintaining and respecting religious norms, customs, culture, and values that live in the local community, providing accurate and responsible information, providing non-discriminatory services, providing comfort, friendliness, security protection, and safety of tourists, providing insurance protection for tourism businesses with high-risk activities, developing partnerships with local micro, small and cooperative businesses that need each other, strengthen, and benefit, prioritizing the use of local community products, domestic products, and providing opportunities for local workers, improving the competence of workers through training and education, playing an active role in efforts to develop infrastructure and community empowerment programs, participating in preventing all forms of acts that violate morality and activities that violate the law in the environment where their business is located, maintaining a healthy, clean, and beautiful environment, maintaining the sustainability of the natural and cultural environment, maintaining the image of the Indonesian state and nation through responsible tourism business activities and implementing business standards and competency standards in accordance with the provisions of laws and regulations.

Article 50 states that every tourism entrepreneur has the right to:

- a. Get equal opportunities to work in the tourism sector;
- b. Forming and becoming a member of a tourism association;
- c. Get legal protection in doing business and
- d. Get facilities in accordance with the provisions of laws and regulations.

Article 53 states that every entrepreneur who runs a tourism business is obliged to:

- a. Maintain and respect religious norms, customs, culture and values that exist in the local community;
- b. Provide accurate and responsible information;
- c. Providing excellent and non-discriminatory service;

- d. Providing comfort, friendliness, security protection and safety for tourists;
- e. Providing insurance protection for tourism businesses with high-risk activities;
- f. Develop partnerships with local micro, small and cooperative businesses that are mutually beneficial, strengthening and mutually beneficial;
- g. Prioritize the use of local community products, domestic products, and provide opportunities for local workers;
- h. Improving workforce competency through training and education;
- i. Play an active role in efforts to develop infrastructure and community empowerment programs;
- j. Participate in preventing all forms of acts that violate morality and activities that violate the law in the business environment;
- k. Maintain a healthy, clean and beautiful environment;
- l. Maintaining the sustainability of the natural and cultural environment;
- m. Maintaining the image of the region through responsible tourism business activities and
- n. Implementing business standards and competency standards in accordance with statutory regulations.

Legal protection for tourists is still low with the occurrence of losses for tourists in tourist attractions both to themselves and to the property of the tourists themselves. Such as the case that befell a tourist from Muaro Bungo Regency who became a victim of drowning in one of the tourist attractions located in Lake Lubuk Beringin and a tourist died at the Sako Batang Merangin waterfall tourist location. The provisions of Article 20 letter c of the tourism law state that every tourist has the right to obtain legal protection and security. In accordance with Article 26 letter d of Law Number 10 of 2009 concerning Tourism, tourism entrepreneurs must carry out their obligations in providing comfort, friendliness, security protection, and safety to tourists.

Law Number 10 of 2009 concerning Tourism regulates administrative sanctions for tourists and tourism entrepreneurs, which are contained in Article 62, which states that:

- 1) Any tourist who does not comply with the provisions as referred to in Article 25 will be subject to sanctions in the form of a verbal warning accompanied by notification regarding the matters that must be fulfilled.
- 2) If a tourist has been given a warning as referred to in paragraph (1) and does not heed it, the tourist in question may be expelled from the location where the act was committed.
- 3) Further provisions regarding the procedures for implementing administrative sanctions are regulated by the mayor's regulations. In Article 63 of Law

Number 10 of 2009 concerning Tourism, it is stated that:

- (1) Any tourism entrepreneur who does not fulfill the provisions as referred to in Article 15 and/or Article 26 shall be subject to administrative sanctions.
- (2) Administrative sanctions as referred to in paragraph (1) include: a. written warning; b. restriction of business activities; and c. temporary freezing of business activities.
- (3) The written warning as intended in paragraph (2) letter a is imposed on the entrepreneur a maximum of 3 (three) times.
- (4) Sanctions in the form of restrictions on business activities will be imposed on entrepreneurs who do not comply with the warnings as referred to in paragraph (3).
- (5) The sanction of temporary freezing of business activities is imposed on entrepreneurs who do not fulfill the provisions as referred to in paragraph (3) and paragraph (4). The application of criminal sanctions is contained in Article 64 of Law Number 10 of 2009 concerning Tourism:
 - (1) Any person who intentionally and unlawfully damages the physical tourist attractions as referred to in Article 27 shall be punished with imprisonment for a maximum of 7 (seven) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).
 - (2) Any person who, due to negligence and against the law, physically damages or reduces the value of a tourist attraction as referred to in Article 27, shall be punished with imprisonment for a maximum of 1 (one) year and/or a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

3.2 Criminal Law Updates Regarding Legal Protection for Tourists

In order to realize the national criminal law of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution, the Government has stipulated Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code as a form of adjustment to legal politics, conditions and developments in social, national and state life that upholds human rights.

Law Number 1 of 2023 shall come into effect after 3 (three) years from the date of its enactment or 3 (three) years after January 2, 2023. The Criminal Code or KUHP is a statutory regulation that regulates criminal acts materially in Indonesia. The ratification of the Criminal Code through Law No. 1 of 2023 is also to replace the *Wetboek van Strafrecht* or also known as the Criminal Code as stipulated in Law Number 1 of 1946 concerning Criminal Law Regulations which has been amended several times.¹⁸

¹⁸Marves, Law 1/2023: Criminal Code (KUHP), 2023, on page <https://jdih.maritim.go.id/uu-12023-kitab-undang-undang-Hukum-pidana-kuhp>, accessed on December 6, 2023, at 21:29 WIB.

Overall, the fundamental difference between the *Wetboek van Strafrecht* and Law No. 1 of 2023 is that the philosophy underlying the formation of the *Wetboek van Strafrecht* is based on classical school thinking that developed in the 18th century which focused criminal law on acts or Criminal Acts. While Law No. 1 of 2023 is based on neo-classical school thinking which maintains a balance between objective factors (acts/outward) and subjective factors (people/inner/inner attitude).

Law 1/2023 concerning the Criminal Code consists of 2 (two) books, namely Book One and Book Two. Book One contains general rules as guidelines for the implementation of Book Two as well as Laws outside Law 1/2023, Provincial Regional Regulations, and Regency/City Regional Regulations, unless otherwise specified by law so that Book One also becomes the basis for Laws outside Law No. 1 of 2023.

In its development, the update of Law No. 1 of 2023 refers to 4 (four) missions, including:

- 1) Recodification of criminal law;
- 2) Democratization of criminal law;
- 3) Consolidation of criminal law; and
- 4) Adaptation and harmonization to various legal developments that occur.

With the enactment of Law No. 1 of 2023, it is hoped that efforts to develop national law can be realized in a directed, integrated, and planned manner so that it can support national development in various fields in accordance with development demands and the level of legal awareness and dynamics that are developing in society.

Following the ratification of the Criminal Code Bill on Tuesday, December 6, 2022, various news reports have raised the view that the law could increase the attractiveness of Indonesian tourism for foreign tourists. Responding to this, Acting Director General of Immigration, Widodo Ekatjahjana emphasized that the Criminal Code Law does not affect the activities of foreign nationals while in Indonesia.

If we look at the immigration data, especially the data on foreign nationals arriving through the Sea, Air and Land Immigration Checkpoints (TPI), the number of foreign nationals arriving in Indonesia from 6-9 December 2022 has increased significantly. So there is no correlation between the view that the ratification of the Criminal Code Bill will reduce the number of foreign tourists and foreign investors and businessmen coming to Indonesia. The emergence of foreign nationals does not affect the ratified Criminal Code Bill.¹⁹

¹⁹Acting Director General of Immigration, Widodo Ekatjahjana, Results of the interview on Saturday, December 10, 2022

Several mass media in Australia reported that thousands of citizens of the Kangaroo Country canceled flights to Indonesia, especially to Bali. The issue arose because there were several articles in the Criminal Code (KUHP) that had just been ratified by the Indonesian House of Representatives, which were considered to disturb the comfort of foreign tourists. Immediately, the eyes of the international media were immediately focused on the issue surrounding the new Criminal Code in Indonesia.

The new Criminal Code, among others, contains articles on adultery and cohabitation (living together as husband and wife outside of marriage). In fact, the Australian Government responded to the ratification of the Criminal Code in Indonesia by issuing a travel warning. The Australian Department of Foreign Affairs and Trade warned its citizens who intend to travel to Indonesia to "exercise caution".

Responding to the news, the Minister of Tourism and Creative Economy (Menparekraf) Sandiaga Salahuddin Uno guaranteed that the privacy of the public and foreign tourists would remain protected after the new Criminal Code Law was passed.

In the Weekly Brief with Sandi Uno at the Sapta Pesona Building, Central Jakarta, Tourism and Creative Economy Minister Sandiaga said that tourists need not worry about the ratification of the Criminal Code Law which is considered to have an impact on the tourism sector. According to him, it provides guidelines for all tourism and creative economy actors. The institution coordinates with government officials that the private sphere of the community will remain guaranteed. We will guarantee the comfort, security, and pleasure of tourists and the private sphere of tourists during their travels will always be maintained.

Sandiaga said that now his party together with related parties continue to socialize the implementation of the new Criminal Code Law by sending teams to several countries that are the main markets for Indonesian tourism. On the same occasion, Bali Deputy Governor Tjokorda Oka Artha Ardana Sukawati denied the news that there were flight cancellations by a number of foreign tourists to Bali, in connection with the ratification of the new Criminal Code Law.

According to him, there was actually a significant increase in the number of international flights. From before December 6, 2022, around 10-11 thousand people every day, on December 11 it reached 12,400. Meanwhile, the Spokesperson for the National Criminal Code Socialization Team, Albert Aries, added that the Criminal Code Law, which was just passed on December 6, 2022, has not been enforced in the near future.

This new law consists of 624 articles as a replacement for the old Criminal Code which was derived from the colonial law *Wetboek van Strafrecht voor Nederlands-Indie* (Criminal Code for the Netherlands-Indies) since 1946. This national Criminal Code only came into effect three years later after it was ratified.

According to him, the adultery article regulated in the new Criminal Code will not have a negative impact on the tourism and investment sectors in Indonesia as widely reported by the international media. The adultery article in the new Criminal Code which will come into effect three years later is an absolute complaint offense. This means that only a husband or wife (for those who are married), or parents or children (for those who are not married) can make a complaint.²⁰

He emphasized that the absolute complaint offense cannot be reported by other parties who are not entitled to report. There will be no legal process without a complaint from the party who is entitled and directly harmed. Moreover, to the point of taking the law into one's own hands. Through the Criminal Code, Indonesia intends to respect the values of marriage through articles related to adultery. The regulation is designed so as not to violate the private space of the community, including tourists and investors who come.

Albert further explained that there are no substantive changes related to the adultery article of the new Criminal Code when compared to Article 284 of the old Criminal Code. The difference is that the government added who has the right to report the adultery article and administrative sanctions below Rp10 million in the new Criminal Code.

One thing, the new Criminal Code also never gives additional administrative requirements to business actors in the tourism sector to ask about anyone's marital status. Thus, foreign investors and tourists need not worry about investing and traveling in Indonesia.

The Directorate General of Immigration of the Ministry of Law and Human Rights also reported that the Criminal Code Law does not affect the activities of foreign nationals or WNA while in Indonesia. Acting Director General of Immigration Widodo Ekatjahjana revealed that based on immigration data, especially data on the arrival of WNA through sea, air, and land immigration checkpoints (TPI), the number of WNA arrivals to Indonesia increased significantly from 6-9 December 2022. There is no correlation between the view that the ratification of the Criminal Code Bill will reduce the number of foreign tourists and foreign investors and businessmen coming to Indonesia. The arrival of WNA is not affected by the ratification of the Criminal Code Bill.

Based on statistical data on the arrival of foreign nationals in the period of December 6-9, 2022, or after the ratification of the Criminal Code Bill, it was recorded that 93,144 foreign nationals entered Indonesia. In detail, the arrival of foreign nationals on December 6 was 19,719 people, December 7 was 20,611 people, December 8 was 24,341 people and December 9 was 28,473 people.

²⁰Nyoman Hendra Wibowo, New Criminal Law Guarantees Privacy for the Public and Tourists, 2022, on the page <https://indonesia.go.id/detik/editorial/6743/uu-pidana-baru-jamin-privasi-community-dan-wisatawan?lang=1>, accessed on December 6, 2023, at 21:29 WIB.

From the country of origin, the largest number of foreign nationals during the period was dominated by Singapore with 21,769 people, followed by Malaysia with 15,515 people, and Australia with 10,862 people. Meanwhile, the number of foreign tourists from Europe was dominated by several top spending countries such as the Russian Federation with 2,673 people, England with 2,457 people, Germany with 1,039 people, and France with 1,060 people, as well as the United States with 2,771 people.

4. Conclusion

Based on the discussion above, the author can conclude that The Indonesian House of Representatives has stipulated Law No. 10 of 2009 concerning Tourism, which replaces Law No. 9 of 1990, and the government has stipulated Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code as a form of adjustment to legal policy, conditions, and developments in community, national, and state life that upholds human rights. There are no substantive changes related to the adultery article of the new Criminal Code when compared to Article 284 of the old Criminal Code. The difference is, the government added who has the right to report the adultery article and administrative sanctions under IDR 10 million in the new Criminal Code.

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