

The National Criminal Code's Penalties for the Tourism Industry



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ABSTRACT

The number of visitors serves as a key indicator of the performance of the tourism industry, which is one of the key drivers of Indonesia's economic development. However, occasionally, tourists engage in behavior that is considered criminal in nature, for which they may be prosecuted and even punished. Additionally, Indonesia recently passed Law No. 1 of 2023 concerning the Criminal Code (National Criminal Code), which brought about several modifications to the way that punishment is conceptualized. It turns out that the tourism industry cannot take the ratification of the National Criminal Code for granted because of several contentious sections that could present risks and difficulties. It is highly intriguing to research how the National Criminal Code's concept of punishment affects the tourism industry, as these two areas are crucial to achieving community welfare. This study will go over the definition of punishment found in the National Criminal Code as well as the penalties applied to the tourism industry. This study will employ a juridical-normative approach method, meaning that the results of a literature review of primary, secondary, and tertiary legal materials will be used in the investigation of the research questions, and the results will be presented in a descriptive-qualitative manner. This research concludes that the concept of punishment in the National Criminal Code is not a threat or challenge to the tourism sector. Reforms in the National Criminal Code provide support for protecting local and foreign tourists by emphasizing the granting of rights as regulated in Article 20 of Law No. 10 of 2009 concerning Tourism, especially regarding providing accurate information and protecting security.

Keywords: National Criminal Code, Prosecution, Tourism Sector, Tourist

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INTRODUCTION

One of the key areas of Indonesia's economic growth is tourism. The tourism industry can boost state revenue, which will boost the economy of the populace. Tourism and its rich cultural heritage are Indonesia's greatest assets. This is evident from the vast number of tourist villages that are dispersed throughout Indonesia's different provinces; by 2023, about 4,573 tourist communities will have been officially recognized. It is possible to argue that this industry is the most well-liked in terms of national development since growth there can provide jobs, which in turn improve community welfare. An indicator of the sector's development is the rising number of visitors, both domestic and foreign.

The Indonesian penal code is one of the issues preventing the tourism industry from developing further and becoming an impediment. The ideas of codification and unification that are applied in Indonesian criminal law are the source of this. According to Soeroso (1993), the idea of unification refers to the application of the law on a national level, but the concept of codification refers to the compilation of the law in a book with the same substance

or content. This idea forms the basis of the Criminal Code (KUHP), a text that governs punishment in Indonesia. so that this book will apply to everyone who is in Indonesian territory and is susceptible to punishment. This provision also applies to tourists who are traveling in Indonesia. Punishment is usually interpreted as giving punishment to individuals who commit crimes, but it can also be interpreted as moral education for perpetrators of crimes not to repeat their actions (Hiariej, 2014).

The government and the House of Representatives (DPR) authorized the Draft Criminal Code to become law at the end of 2022, posing a new challenge to the tourism industry. The National Criminal Code, also known as Law Number 1 of 2023 regulating the Criminal Code, was formally ratified by the government in 2023. The travel and tourist industry did not instantly embrace the ratification of the National Criminal Code. This claim is the result of several contentious articles that are thought to pose a risk to Indonesia's ability to draw tourists, particularly those from abroad. These controversial articles include, among other things, expanding the principle of material legality, regulating cohabitation, and regulating alcoholic beverages. This then gave rise to debate because the National Criminal Code as a part of punishment has the aim of realizing community welfare in the field of security and order. The development of the tourism sector also has the same goal, but in the economic sector, there will be differences in the principles and rules used.

According to the justification given above, it is crucial to comprehend and research the penalties outlined in the National Criminal Code. This encompasses the tourism industry, which is centered around tourists as a key indicator of its success but is also punishable under the National Criminal Code. Thus, the issue that will be covered in this study is: What does the National Criminal Code mean by punishment, and what does that mean for the tourism industry?

METHOD

Normative research is the foundation of legal research (Marzuki, 2010), however many methods and viewpoints are employed. This study employs a juridical-normative methodology to perform a thorough literature review of primary, secondary, and tertiary legal sources to investigate punishment in the National Criminal Code for the tourism industry. To explain and characterize the current legal materials using logically ordered language, this research employs qualitative data analysis. The analysis will be presented in this research using a deductive approach, which involves inferring conclusions from a general topic and then describing it to address the research's issues.

RESULTS AND DISCUSSION

Sentencing is a fundamental component of criminal law. The presence and efficiency of criminal law can be recognized from the harshness and clarity of existing sentences. Oftentimes, punishment is understood to involve punishing criminals; however, punishment truly refers to the full process of imposing a crime through a valid and persuasive trial (Arief, 2017). This means that the goal of punishment is not just to punish criminals; it also considers how the punishment is administered, as well as assessing and counseling the offenders. The National Criminal Code has formulated punishment with a new concept that will be applied in Indonesian criminal law. This new concept of punishment is then considered to influence

the tourism sector. This statement is still a matter of debate because the influence that will be felt is not yet known whether it will be a positive influence or a negative influence. Therefore, it is necessary to understand the concept of punishment in the National Criminal Code and its impact on tourists as an important element in the tourism sector.

The Concept of Punishment in the National Criminal Code

After being inaugurated in 2023, the National Criminal Code will enter the socialization stage for 3 (three) years before being implemented by the public. This stage is an important stage for reviewing and providing criticism and notes in the National Criminal Code when there are deficiencies or obstacles to the provisions regulated therein. One part that needs to be studied more deeply is the concept of punishment. Punishment cannot be understood only as providing punishment or criminal sanctions but must be interpreted broadly from the initial stage to the final stage of administering punishment.

The concept of punishment with a broad interpretation has already been recognized and summarized in the National Criminal Code. This assertion is predicated on the existence of laws defining the goals and principles of punishment, which provide explicit boundaries for applying and enforcing punishment (Hiariej, 2014). The expansion of the principle of material legality is also a new concept in the basis of punishment, so determining actions that can be punished or punished is not only focused on provisions in the law (principle of formal legality) but can also be based on provisions in living law (principle of legality). These provisions are based on the idea that criminal acts are essentially acts against the law both formally and materially (Arief, 2017).

The aim and guidelines for punishment are regulated in the National Criminal Code, not to reduce the "freedom of judges" as regulated in Law Number 48 of 2009 concerning Judicial Power. The formulation of sentencing objectives and guidelines is a form of the judge's responsibility to ensure that the sentence imposed is appropriate, commensurate, and appropriate for the criminal (Kusuma, 2016). This provision will provide guarantees to everyone who encounters criminal law to achieve the final goals they want to achieve (Alin, 2017). The purpose of punishment is a supporting part of the function of criminal law to achieve the intended final goal, namely the realization of welfare and protection of society which is oriented towards protecting society to achieve social welfare (Irmawati & Arief, 2021). Sentencing guidelines are not only instructions for applying punishment for judges but also instructions for all parties involved to understand the judge's considerations in imposing sentences (Kusuma, 2016).

The National Criminal Code regulates the objectives and guidelines for punishment in Chapter III Part One with the title "Objectives and Guidelines for Sentencing" starting from Article 51 to Article 56. The objectives of punishment in Article 51 of the National Criminal Code explain that punishment aims to: a) prevent the commission of criminal acts by enforcing norms law for the protection and protection of society; b) socialize convicts by providing training and guidance so that they become good and useful people; c) resolve conflicts arising from criminal acts, restore balance, and bring a sense of security and peace in society; and d) foster a sense of regret and relieve the convict of guilt. The conjunction in this article uses the word "and" so that it has a cumulative meaning, so the objectives

contained in this provision must be achieved as a whole without exception. Furthermore, if you pay attention to Article 52 of the National Criminal Code, it is also added that punishment is not intended to degrade human dignity. Based on this provision, it can be explained that punishment in the National Criminal Code does not only focus on providing a deterrent effect to the perpetrator but also pays attention to all aspects, both towards the victim and the community (Soponyono, 2012).

Sentencing guidelines are also formulated systematically in the National Criminal Code as guidance for judges in determining and imposing sentences (Irmawati & Arief, 2021). Article 53 of the National Criminal Code explains that when trying a case the judge is obliged to uphold the law and justice, whereas if there is a conflict between legal certainty and justice, the judge is obliged to prioritize justice. Furthermore, Article 54 paragraph (1) letter k explains that one of the considerations that must be used in sentencing is the value of law and justice that exists in society. This is in line with the regulations contained in Article 2 of the National Criminal Code by providing space for laws that exist in society as a basis for punishment. Based on this explanation, the justice referred to in the sentencing guidelines is not limited to justice in written law but also includes justice contained in local community wisdom as a form of unwritten law (Herlius, 2022).

Apart from expanding the principle of legality and formulating the objectives and guidelines for punishment in the National Criminal Code as changes to the new criminal concept, the National Criminal Code also provides changes to the provisions on criminal responsibility. Article 37 letter b of the National Criminal Code explains that every person can be held responsible for criminal acts committed by other people. This provision is a regulation of vicarious liability, namely as an exception, and complements the principle of no crime without fault known as the adage *geen straff zonder schuld* (Alin, 2017). Based on these provisions, the new criminalization concept will pay attention to the origin or causes of a criminal act, so that every person who has a role in causing a criminal act to occur can be held criminally responsible. This explains that a person's responsibility can be expanded due to the situation and conditions within a person for actions carried out by other parties (Supriyadi, 2018).

Punishment of the Tourism Sector

As stated in Article 1 Point 4 of Law No. 10 of 2009 Concerning Tourism, tourism encompasses all tourism-related activities that are multifaceted and multidisciplinary in nature. It is a response to the needs of each individual and nation as well as interactions between travelers and local communities, other tourists, the government, regional government, and business owners. Taking this interpretation, punishment for crimes committed in the tourism industry is defined as the imposition of penalties for the offenses specified in the article. Whether they are committed by travelers, business owners, or other parties, crimes in the tourism industry are rather varied. However, in this case, what will be the focus of discussion are criminal acts committed by tourists.

Tourists are people who travel and are a benchmark for success in the tourism sector. In this regard, it has become a necessity to protect tourists. Law No. 10 of 2009 concerning Tourism has attempted to provide legal protection for tourists with the hope of providing

comfort and security in carrying out tourism activities (Oktaviarni, 2018). Article 20 Law no. 10 of 2009 regulates the rights obtained by tourists, namely:

- a. Correct information about tourist sites;
- b. Standard-compliant tourism services;
- c. Protection of law and security;
- d. Health services;
- e. Protection of individual rights; and
- f. Insurance protection for high-risk tourism activities.

It can be inferred from this article's provisions that certain rights are granted cumulatively. The right to correct information and protection from security risks for tourists are two rights that currently require attention. This holds great significance as, in the present era, information and communication technology plays a vital role in furnishing precise information to tourists to facilitate their discovery of tourist attractions and the amenities offered by them (Nurhindarto, Santoso, & Hidayat, 2020). Apart from that, security protection for tourists must also be given special attention, this is related to the existence of the National Criminal Code and understanding of legal fiction. Legal fiction explains that everyone is considered to understand the law when it has been promulgated and ignorance of the legal provisions is not a basis for exempting someone from legal prosecution (Marwan, 2016).

The expansion of the principle of legality in the National Criminal Code must be a concern in providing accurate information to tourists because the existence of this provision will be in the spotlight for local and foreign tourists. The expansion of the principle of legality in Article 2 of the National Criminal Code is the basis for the concept of punishment which recognizes living laws that apply to certain areas (Widayati, 2011). This statement explains that the provisions of the principle of material legality will apply locally where the living law exists. Thus, information related to the laws that apply at a tourist location should be known and understood by tourists. The phenomenon that has occurred recently is that there are still tourists who do not receive accurate information regarding the values and laws that exist in the tourist location area. This can cause tourists to have to face the law and some also have to receive punishment for their ignorance.

Cases of foreign tourists that occur in Bali, such as taking random photos in sacred areas, are an example that not all tourists know and understand the values and laws that live in that region. Based on reports in the media, the process applied to these tourists can be in the form of customary or legal solutions. However, when the National Criminal Code was implemented, these cases became part of criminal law enforcement, so that tourists' ignorance cannot be used as an excuse not to be prosecuted, as explained by the theory of legal fiction.

The National Criminal Code has regulated the principle of material legality, which means that every act that is prohibited by living law can be used as a basis for making the act a criminal act. However, it is also necessary to pay attention to the objectives and guidelines for punishment as well as vicarious liability contained in the National Criminal Code. If these provisions are related to the tourism sector, the concept of punishment in the National

Criminal Code has the aim of protecting tourists. In this regard, it reminds us of the right to obtain accurate information and security protection for tourists contained in Article 20 of Law No. 10 of 2009. This article explains that providing accurate information is a right for tourists and the information referred to is all information that is necessary and must be known and understood by tourists, so that tourists will obtain legal protection and security in carrying out tourism activities.

The concept of criminalization of the tourism sector in the National Criminal Code is not only limited to acts committed by tourists. Criminal cases that occur in the tourism sector will be looked at as a whole so that criminal responsibility can be given to other parties who have a relationship or role in the criminal act. This section focuses on parties who must provide accurate information to tourists. Tourist service bureaus and tourist attraction managers are examples of parties who must provide accurate information to tourists. Thus, these parties will have responsibility when tourists do not receive accurate information and commit a criminal act based on a law that complies with the provisions of the principle of material legality.

CONCLUSION

The National Criminal Code's definition of punishment has changed significantly. The National Criminal Code has been updated with regulations about material legality principles, goals, and standards for punishment, and substitute criminal liability. Because these regulations enforce criminal law against tourists, they will indirectly affect Indonesia's tourism industry. Because it will assure travelers that they will receive correct information and security protection, this influence is not negative but rather favorable for travelers. Criminalization of the tourism sector based on the National Criminal Code will provide support to realize the provision of rights for tourists. The next challenge and suggestion in this study are stricter and clearer regulations in conveying accurate information to tourists, both from the government, tourism service bureaus, and tourism managers. Thus, there must be special regulations governing this matter, so that it will reduce the crime rate that occurs in the tourism sector.

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