

# **In The Covid19 Pandemic Era, Frame working Tourism Business in Bali Through Agreements Based on The Principle of Good Faith**

I Nyoman Sujana  
(nyomansujanaa2015@gmail.com)

Universitas Warmadewa

**Abstract.** This article analyzes “Framing the Tourism Business in Bali through Agreements Based on Good Faith Principles in the Covid19 Pandemic Era. The focus of the study in this paper is regarding the legal aspects of business activities in the tourism sector that occurred in Bali during the Covid19 pandemic era in supporting the economy of the Balinese people who rely on tourism. Bali as one of the world's tourist destinations that is relied on by the Indonesian state needs to frame the tourism business in this era of the Covid19 pandemic with the principle of trustworthiness Two legal concerns are examined in this essay related to the principle of good faith in the tourism business, namely: 1) Is an agreement based only on good faith safe enough to transact in the tourism business sector during the COVID-19 pandemic era? and 2) how is the settlement of business disputes in the tourism sector, considering that each party transacting Is there a different legal structure in place for the tourism industry? Of the two problems discussed, the authors analyze using A sociological approach is used to support normative legal research methodologies that include a statutory approach, a conceptual approach, and a case approach. Based on the findings of the analysis, it is clear that the tourism industry in Bali may not be able to operate in an orderly and smooth manner without first entering into a good faith agreement. The "Tri Hita Karana philosophy" is manifested in behavior that truly maintains a harmonious relationship between "Man and God," "Man and Nature," and "Humans" by Balinese people who have a unique culture with Hindu religious nuances in their daily lives as well as in running a business in the tourism sector with other Humans”. It is in this philosophy that the principle of good faith in doing business (business) is reflected, so that all agreements or contracts made by tourism business actors in Bali always express their agreements which are framed with the principle of good faith even though they are in a Covid-19 pandemic situation.

**Keywords:** Framing; Tourism Business; The Principle of Good Faith; Covid19

## **1 Introduction**

The island of Bali is known as the Island of the Gods which is rich in unique culture nuanced Hindu religion is a source of natural wealth that is not found in other regions of the world. Balinese customs and culture are what brings Indonesia's diversity to Indonesia increasingly known in the world, in addition from Sabang to Merauke, to the richness of natural and human resources Natural and human resources come in a variety of shapes and sizes owned by the

Indonesian nation can actually strengthen the existence of Bali as a world tourist destination. Bali tourism that only relies on domestic and foreign tourists is currently in recovery due to the impact of the Covid19 pandemic so that contracts in the sector of tourism are made for the last almost three years have experienced obstacles and even failed to be implemented due to the Covid19 pandemic.

Bali tourism that was eroded by the impact of the Covid 19 pandemic deserves to be maintained by framing through the principle of good faith, in order to provide happiness for all people without discriminating between tribes, religions and races. And one of them is through the Because in the sphere of tourism, business contracts are based on the idea of good faith every tourism business transaction, because the world of tourism is a world full of peace and beauty. The beauty and peace of Indonesian tourism, especially the island of Bali, shows that Indonesia is a safe and comfortable country to visit. Maintaining the preservation of Bali Island Indonesia owns culture as one of the world's tourist destinations. Indonesia as a country that has diversity should be proud to have the island of Bali. As a world tourist destination, tourism actors, as well as their communities should maintain, the resources possessed in the form of harmony between natural beauty and the diversity of Bali's adi-luhung Tri Hita Karana philosophy is used to create culture.

The terms Tri, Hita, and Karana are combined to form Karana Tri Hita Tri Hita Karana Karana Karana Karana "Tri" means three, "Hita" means wealthy, good, happy, and long-lasting, and "Karana" means prosperous, good, happy, and long-lasting implies reason As a result, Tri Hita Karana refers to three components that cause kindness and well-being to grow. Thus, Parahyangan, Weakening, and Pawongan make up the Tri Hita Karana notion of welfare in the lives of the people of the Island of the Gods / Bali - Indonesia. This vision is not only unique, but it also includes universal life principles that apply not only to the inhabitants of Bali, Indonesia, but to every person on the world [1].

For example, the inhabitants of Bali, Indonesia, who are mostly in the tourism industry, have adopted the TRI HITA KARANA mentality in their commercial activities. this can be seen from the palemahan element, where tourist areas that rely on Ecotourism and its infrastructure have been maintained sustainably for generations to come. Likewise, the relationship between humans and humans is one as the application of the Pawongan conception, where Bali-Indonesia tourism players have framed their business in good faith; Where balinese who note-bena adhere to the majority of Hinduism in everyday life have carried out their business by implementing a trust relationship based on good faith. Do not like to hurt and strongly believe in the existence of the "Karmapala Law".

The local wisdom of the Balinese people who are Hindus, is an element of culture that takes many different forms. The diversity of local forms of wisdom includes values, rituals, folklore, ethics, aesthetics, orders, and prohibitions. [2] Local wisdom in many forms is still alive and well of the behavior of the Balinese people in general, because in belief the Balinese Community still believes in the existence of karmapala law, where if we do good, then we will get good results and vice versa, if we do evil or have bad Even the principles of local knowledge represented in hindu teachings such as Tri Kaya Parisuda [3], Catur Purusa Artha[4], and the teachings of Tat Twam Asi, will not produce a positive result, are reflected in the realm of tourist binis,[5] are very dominant in influencing their business world. Including in carrying out tourism business contracts.

Involved with tourism-related business contracts carried out by business people, it is certain that these business contracts will be in a different legal system such as the relationship of agreements between tourist business actors in Bali and foreign tourists. Tourism business people who provide tourism support facilities such as hotels; Travel agent; tourists, as well as visits to

the intended tourist attractions will certainly begin with a contract or agreement. In Law of Treaties There is an open system and the concept of consensualism, which means that the law of the covenant allows the community to enter into agreements that include anything they desire as long as they do not violate the law, public order, or decency. The articles of treaty law are referred to as "optimal laws," implying that they can be improved repealed by the parties if they so wish to the agreement. [6]

In the Civil Code, the Open System, which includes a principle of freedom to create treaties, is commonly summarized in Article 1338 paragraph (1), "All agreements formed lawfully apply as laws to people who make them," it says. By emphasizing the "all" alliance, the article seems to contain the public's statement that we are free to make agreements in any form and regarding anything, and that the agreement will bind those who make it as if it were a law. Or, to put it another way, we have the authority to establish our own covenants. The law's provisions of the covenant only apply, if or only we do not establish our own rules in the agreements we hold.

Along with the freedom of competition, those who enter the world of Tourism businesses are permitted to enter into deals with tourists (consumers) by agreeing on what is honestly manufactured or by handshake agreements, and even verbal agreements are frequently made simply on the basis of confidence, regardless of the future consequences if one of the parties fails who made the default.

In this regard, considering that the parties who are It is not even closed that there may be parties who adhere to different legal systems because of , where the parties do not meet each other, and transactions are conducted out through internet media of the parties commits a default, or commits an act against the law, it will be vulnerable to losses, so that disputes / lawsuits Humans, as members of society, normally want to maintain their existence in order to live lives that are sustainable, prosperous, and sustainable. That is the reason why every time you do something you do something you will definitely take into account profit and loss as its measure. When profit and loss is employed as a guideline while doing acts; in reality, it is at the heart of all commercial activities, including tourism services, and it It is not necessary to count in millions or billions of rupiah. Considering the acquisition of any amount of profit, large, medium, or small, is without a doubt a business activity.

Both parties must organize their transactions in good faith, in accordance with the law, in order for these business operations to take place in an orderly and safe manner human figure of homo economicus, when the activity is carried out. Even though the parties have framed the contracts they hold in good faith, there are parties that deny what has been agreed (default) or even do activities outside the law in this era of the Covid19 pandemic.

#### **Formulation of a Problem.**

Based on the background of the concerns mentioned above, then in this paper will be discussed several legal issues as follows:

- a. Is the agreement based only on the principle of trustworthiness During the field of tourism, it is safe to transact business during the Covid19 pandemic era?
- b. Considering that each A party doing business in the tourism industry is subject to a different set of rules set of laws system, and is also currently still in the era of the Covid19 pandemic, how is the resolution of business disputes in the field of tourism?

## 2 Results and Discussions

### **Principle of Good Faith as a Frame for Tourism Business Transactions.**

Indeed, in every agreement it is natural to be made in good faith. In covenant law in addition to the principle of good faith, There's also something known as the "principle of consensualism." The word "consensus" is derived from the Latin word "consensus," which means "agreement." Consensualism as a principle does not mean that an agreement is required. This should be an agreement also called an agreement, meaning that two parties have agreed or agreed on something and this The idea of good faith must underpin any agreement.

The basic meaning of consensualism is, in essence, the agreement and alliance that results from it, which has existed since the moment of agreement. In other words, the agreement is valid after the essential points have been agreed upon things and no formality is needed. It also said that the treaties were generally "consensual". The law may demand that an agreement be held in writing (agreement "peace") or by a Notary Deed (a fixed goods grant agreement), however this is an exception. In most cases, the agreement is legal in the sense that it is binding if the essential points of the agreement have been agreed upon. Buying and selling, exchanging, renting are consensual agreements. If I want to buy an item, then if between me and the owner of the goods has reached an agreement regarding the goods and their price, the sale and purchase agreement has been born with all the legal consequences. The principle of consensualism is usually concluded from The Civil Code's article 1320 establishes:

" Four conditions must be met for a treaty to be valid: 1. Agree on those who commit themselves; 2. Covenant-making abilities; 3. A certain thing; 4 is a legal justification."

Because in the provisions of the article there is no mention of In addition to the If an agreement on the major elements of the agreement is established, it is concluded that the agreement is legal (in the sense of "binding"). On the principle of consensualism, there is an exception, which is that specific formalities for some types of agreements are required by law, with the threat of cancellation if the agreement does not correspond with the form in issue, such as grant agreements, which must be done by notary deed. Peace treaties must be in writing, and so forth. Formil agreements are agreements in which a specific level of formality is established.

When looking at the world of tourism business and the interactions that take place It is apparent that the engagements that take place in the sector of tourism services are the consequence of an agreement or contract, some of which are done authentically, under the hands, and others which are done orally. Some are carried out by people who are bound by the same legal system, while others are carried out by people who are bound by different legal systems due to variations in citizenship. This is consistent with Article 1313 BW's definition of a covenant, According to this definition, a covenant is an act performed by one or more people to bind themselves to one or more other people.

This demonstrates how, whether small, medium, or large in scale, every member of society's economic actions are always framed by agreements or linkages based on the principle of good faith. For the time being, this gatra is more enlivened by the image of a commercial entity, which is becoming more common in the Many countries have a modern business sector. It is evident from this that the contract plays such a significant role in both the legal and business worlds and the economic system of a country. "Contract's major significance in our legal and economic systems is not by chance." [7] That's a quote from Jill Poole about the significance of contracts in community life has a sense of business, both done by natuurlijke persons and by recht persons.

Apabala is carefully studied, in society, alliances born of agreements or contracts dominate Social life is important. The law's subjects are linked to the opposing party, much of which is

done deliberately as planned, and this is then assembled in mutual promises. Indeed, at first there is one party who makes an offer (offerte) if then there is another party who accepts it (acceptatie), then there will be an agreement that consequently gives birth to an agreement or contract. The promises exchanged of course contain the calculation of the desired profit, but on the other hand the pledge must be fulfilled according to the "principle of pacta sunt servanda".

The obligation as an If achieved, the other party will have the right to it, so "vice versa." However, if the achievement is not carried out as an obligation that must be met, the rights of his conrak teammates are immediately denied, and this is unquestionably a loss, according to Moch Isnaeni said that human rights as homo economicus, this loss is not expected, so it is natural to want to be recovered, namely by suing to the court through the legal basis of default. [8]

It is good for every business contract carried out framed by making a contract that meets the legal requirements of a contract in order to realize safe, orderly, and smooth transactions in the field of tourism business, and to avoid the act of suing each other in court in the event of a default, it is good for every business contract carried out framed by making a contract that meets the legal requirements of a contract.

In order for a contract or tourism business agreement to be made can be considered valid by law so that it is binding on the parties, then the contract or agreement must meet the valid conditions of a contract, namely:

- 1) Legal conditions in general, consisting of:
  - a. General legal conditions under article 1320 BW. Which consists of:
    - Agreement of will;
    - Wenang does;
    - Certain matters;
    - Legal jerseys.
  - b. Outside of articles 1338 and 1339 BW, there are general legal conditions that are listed on:
    - Good faith conditions;
    - Conditions in accordance with habits;
    - Conditions in keeping with propriety;
    - The It is in the public interest to use these terminology.
- 2) Sayarat is valid specifically, consisting of:
  - a. Written terms of certain contracts;
  - b. Notary deed conditions for certain contracts;
  - c. Terms of certain official deed (which is notary for some contracts);
  - d. The terms of the authorities' consent. [9]

Which is a legal consequence of not meeting Depending on whatever conditions are violated, one or more of the contract's legal terms may change. The following are the legal ramifications:

- a. If the objective conditions in article 1320 B.W. are violated, it is both void and null. The objective circumstances are "certain matters" and "legal sanctions."
- b. Revocable; in the event that the subjective conditions in article 1320 BW are not met. The subjective requirements are "parties' agreement" and "doing prowess."
- c. The contract cannot be carried out; a contract that cannot be carried out is not just void, but also unimplementable. However, the contract retains some legal standing. The difference between an unenforceable contract and a A null and void contract is one that can be turned into a valid contract even though it is unenforceable. A contract that cannot be

- implemented, for example, is one that should be made in writing but is done orally. The parties, on the other hand, drafted the contract.
- d. Administrative sanctions; contractual obligations may also result in administrative sanctions against one or both contracting parties if they are not met. For instance, if a contract necessitates authorisation or reporting to specific agencies, such as an offshore loan arrangement requiring permission and reporting to an Indonesian bank. [10]

In addition to the aforementioned factors, a contract's validity is required to ensure that it does not breach the elements of good faith, propriety, public interest, or custom. The agreement must be carried out honestly. According to the standards of article 1338 paragraph (3) BW, an agreement must be carried out in good faith (*goeder trouw, bona fide*). The phrasing of Article 1338 paragraph (3) demonstrates that good faith is not a valid condition of an agreement, as the terms of Article 1320 BW demonstrate. The element of good faith is only necessary during the execution of an agreement, not during its formation. Because the component of "legal power" in article 1320 BW can already cover the element of good faith when it comes to forming a role / contract.

In the Balinese customary law community, this The good faith principle is illustrated in the concept of *Tri Hita Karana*, which means there are three ways to be happy: maintain a bad relationship with God, maintain a terrible relationship with nature, and maintain a bad relationship with other humans. When the Balinese Hindu philosophy of life is linked, community into tourism business contracts, it can be seen from various practices of implementing tourism service contracts, especially to tourists both domestically and abroad, it is clear that Bali tourism business actors prioritize harmonious relations in accordance with the philosophy of *Tri Hita Karana*; so that fair contracts show the agreement that is done impartially, does not favor its interpretation of either party, only favors the truth, fulfills propriety, and is not arbitrary. *Tri Hita Karana's* philosophy became the basis for framing the business through an agreement / a contract in good faith.

The Covid-19 pandemic has tempted the implementation of tourism business contracts, because this pandemic situation has created a lot of multi-interpretation among contract actors. Some view this pandemic as an *overmacht* situation, but some consider it not a condition that can negate responsibility for the emergence of losses. Whereas a contract both multilateral and bilateral must be based on a number of legal principles and clauses such as the principle of emergency. Although a business contract has been made legally, it is because of the difference in understanding of the Covid-19 pandemic that triggers the emergence of contract disputes when it is not framed with the principle of good faith.

The contract will be carried out properly if it has fulfilled the legal requirements of the agreement (among other things, in accordance with article 1320 BW., and therefore the contract is made in good faith, but *jusru* in its implementation for example deflected towards harming one of the parties or harming a third party under the pretext of the Covid19 pandemic. In this instance, it is possible to say that an agreement/contract was carried out in bad faith. As an example, a booking agreement for 100 Hotel Rooms for foreign tourist stays for 7 days whose payment has been repaid in front of the booking acc, but because it is still in the process of recovering from the Covid19 pandemic, the Indonesian government issued quarantine rules for every foreign national to be able to enter Indonesian territory must follow the quarantine rules for 7 days.

Therefore, tourists must be subject to quarantine rules, so they cannot use hotel facilities in accordance with the initial contract; in this case tourists look like they have defaulted when in fact tourists are subject to the rules that have been set by the government in accordance with the

health law. Meanwhile, on the other hand, the hotel management party cannot accept the withdrawal of the hotel entry schedule, and still enforces the implementation of the contract as when signing the agreed contract. The hotel management has scorching the hotel rent under the pretext that Covid 19 is not something that can cancel the agreement. In this case, the hotel management actually has enough free time to reschedule hotel entry to the tourists because quarantine rules arise after the initial agreement. In this case, the hotel management has forced the implementation of the agreement with bad intentions. Therefore, It is in violation of BW Article 1338 paragraph (3).

### **Settlement of Tourism Industry Disputes.**

In today's world of globalization, accompanied by the Covid-19 pandemic, where relations between countries seem borderless, because everything is carried out through online media. Everyone can try and work anywhere without any hindrance including doing business in the field of tourism, which is important to be able to connect with each other competitively. Similarly, legal developments in Indonesia continue to progress rapidly in response to the government and the increasing a variety of community activities or events, particularly in the economic and business domains

A thing that often happens in this kind of situation is a different or wrong perception of various problems so that disputes or disputes arise. Disputes have become an inevitable component of human connection. As a result, conflicts are inextricably linked to human life. Furthermore, disagreements in the tourism industry, where each of the parties involved is governed by a different legal system. On the one hand, there are individuals who are subject to the Indonesian legal system, which includes regional customary laws (including balinese customary law); and on the other hand, there are others who are not there are those who are subject to the foreign legal system in accordance with the nationality adopted.

With regard to the emergence of disputes in the field of tourism law, the dispute needs to be resolved. The problem is how to resolve tourism business disputes in this era of the Covid-19 pandemic, and considering that Which rules apply if each party is governed by a separate legal system? Similarly, what is the most effective method for resolving this issue?

Speaking of tourism business in the era of the Covid-19 pandemic, there are indeed many disputes, both disputes that begin with defaults and because of illegal conflicts. Resolving disputes in the easiest, simplest and low cost way is for the parties to the dispute to resolve the dispute by consensus. Moreover, in the balinese indigenous people who nuance Hindu religion knows the "Karmapala Law" so that honesty and obedience are two things that are very important in terms of the implementation of the agreement. And if It is quite difficult to implement this method of deliberation, hence it should be done through a forum with authority to solve the problem, namely through the court so that the parties avoid vigilante actions (eigenrechting).

Business dispute resolution in general and including tourism business is a procedure for how business people can resolve disputes or disputes that occur among business people. Disputes are logical consequences of the parties binding themselves in a business agreement, therefore it is strongly recommended that there is a dispute resolution clause in every business agreement they make.

That because each party involved in the world of tourism business is certainly involving foreigners, so that those who carry out business transactions Due to their distinct nationalities, they are each subject to a different legal system. As a result, it will be critical that the agreement include a dispute resolution section because this dispute resolution agreement will determine how the resolution of the dispute will be carried out by the parties, against disputes It will also

establish which forum is permitted to address the business disagreement, allowing the parties to resolve each conflict appropriately, accurately, and correctly. Furthermore, so that existing issues can be resolved promptly, cheaply, and easily This will support the prevailing business principle that time is money, because resolving disputes through court lines will cost time and not a small amount of money. Although there is a simple judicial principle, fast and light cost, the principle is still far from fire in practice, because litigants believe "win so charcoal, Losing must be ashes." It is, however, preferable to litigate through the courts rather than vigilante.

Contracts play a crucial part in the tourism industry since contract law is a weird topic of law that generates the most dispute. The key issue in this area, however, is determining "the right law of contract" (the law that must be enforced to regulate the problems contained in a contract).

It can be used as a reference for determining the By reference to what has become the foundation of International Civil Law, namely:

- a. The oldest assumption based on the concept of locus regit actum is the principle of Lex Loci Contractus. According to this theory, the "relevant law of contract" is the law of the place where the deal was made.
- b. The Lex Loci principle solutionis is a version of the lex The locus Contractus principle assumes that the "proper law of contract" is the law of the location where the contract is made carried out, rather than the place where the agreement was made.
- c. Principle of Parties' Freedom; this idea is a development of the key principle in treaty law, namely, that everyone has the fundamental freedom to bind themselves to the treaty (the principle of freedom of contract, Contracting freedom or party autonomy). [13]
- d. The principle of lex rai sitae, or "law of the land," which is the law that governs the location of the promised object or the material in the event of a difference in citizenship, can also be applied to the principle of lex rai sitae, which is the law that governs the location of the promised object or the material in the event of a difference in citizenship adopted in a contract. [14].

### 3 Conclusion

Some of the issues can be deduced based on the previous description. following things:

- a. Tourism businesspeople should frame their transactions in good faith; Because the tourism industry sometimes involves parties that are each subject to a separate legal system due to differences in nationality, this should be done with the purpose of keeping the business functioning orderly, smoothly, and safely, which can lead to disputes.
- b. Considering because each party dealing in the tourism industry is bound by a separate legal system, business conflicts in the tourism industry can be resolved using the international civil law principles, namely:
  - Contractual Principles;
  - The Lex Loci Solutionis principle; and
  - The Freedom of the Parties Principl.
  - Lex Rai Sitae Principles

### References

- [1] Bayu Seto, 1994, Basics of International Civil Law, First Book, PT. Aditya Baki Image, Bandung;

- [2] Endang Purwaningsih, 2015, *Business Law*, Ghalia Indonesia, Ciawi-Bogor
- [3] Gelgel I Putu in Sri Redjeki Hartono, 2017, *Bunga Rampai Kebaharuan Civil Law And Indonesian Business Law*.
- [4] Jill Poole, 2001, *Textbook on Contract Law*, Blackstone Press, London;
- [5] Moch Isnaeni, 2016, "Implications of Contract Pouring As A Business Frame Into Notariil Deed", Study Paper Generale Competency Test of Notary Candidates and PPAT, organized by the Postgraduate Secretarial Master Study Program of Warmadewa University, on Saturday, November 26, 2016 in the Sri Kesari Warmadewa Denpasar-Bali Room.
- [6] Munir Fuady, 2015, *Contract Law, First Book*, PT. Citra Aditya Bakti, Bandung;
- [7] RH. Wiwoho, 2017, *Contracted Justice*, Penaku, Jakarta, p.354.
- [8] Subekti, 2005, *Law of Agreement*, PT. Intermasa, Jakarta;
- [9] -----, *the Civil Code*, PT. Intermasa, Jakarta;
- [10] Sudargo Gautama, 1981, *Hukum Perdata Internasional Indonesia*, Jilid III, bagian 1, Alumni, Bandung;