

## Legal Liability of Watersport Accommodation Entrepreneurs for Tourism Accidents at Tanjung Benoa Beach

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**ABSTRACT:** This study aims to analyze the forms of legal liability that may be imposed on watersport accommodation operators in the event of tourist accidents at Tanjung Benoa Beach, Bali. The research is motivated by the high risk of accidents in watersport activities and the weak implementation of legal obligations by operators in providing protection for tourists. The study employs empirical legal research methods with statutory, conceptual, and case-based approaches. Data were collected through observation, interviews, and literature review. The findings show that operators' legal obligations have been carried out in accordance with prevailing laws and regulations, supported by the active role of the Tourism Office and GAHAWISRI in supervision and dissemination of licensing information. Three types of legal liability may arise in the event of an accident: administrative (such as written warnings, business restrictions, and temporary suspension), civil (lawsuits for breach of contract or unlawful acts), and criminal (if negligence by the operator can be proven). This study highlights the importance of implementing safety standards, strict government oversight, and legal education for business actors to ensure tourist protection and support the sustainability of the tourism sector.

**KEYWORDS:** legal liability, accommodation operator, watersport, tourism accidents, legal protection

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### I. INTRODUCTION

Tourism has now become a priority development sector in many countries, including Indonesia, due to its important role in supporting the national economy. I Wayan Rideng stated that the development of tourism is increasingly vital in supporting national development (I Wayan Rideng, I Nyoman Putu Budiarta 2020). Tourism is a potential source of foreign exchange to support national and regional development. Therefore, this sector needs to be developed through sustainable innovation to maintain and enhance its competitiveness. Over time, tourism has evolved into a major industry with strategic roles and functions (Made Metu Dhana 2012).

The island of Bali is known as a premier tourist destination for both domestic and international visitors. Its tourism appeal lies in its rich traditions, culture, arts, natural environment, natural resources, and historical heritage (Johanes Ibrahim dkk 2024). This wealth is then developed into a variety of tourism destination products, such as nature tourism, cultural tourism, educational tourism, culinary tourism, religious tourism, and various other types of tourism that visitors can enjoy (I Ketut Kasta Arya Wijaya, Ni Komang Arini Styawati 2022). Based on data from the official website of the Bali Provincial Central Bureau of Statistics, domestic tourist visits throughout 2024 reached 10,120,786, while international tourist visits (WISMAN) totaled 6,333,360.

Beaches are the most popular tourist attractions on the island of Bali due to the variety of activities they offer. Bali's geographical location, surrounded by numerous beaches, gives each beach its own unique charm. For example, Canggu Beach is famous for its high and consistent waves, making it ideal for surfing, similar to Dreamland and Kuta Beaches. In contrast, Tanjung Benoa Beach in Nusa Dua has calm waves and beautiful underwater scenery, making it perfect for watersport tourism. This beach was designated as a water tourism site by the Bali Governor's Decree Number 359 of 1993 and recognized as a tourist attraction under the Badung Regent Regulation Number 7 of 2005. Additionally, according to Bali Provincial Regulation Number 2 of 2023, Tanjung Benoa Beach also serves as an economic activity center in the area.

Watersports are physical activities that also fall under recreational tourism because they are enjoyable, involve personal or competitive challenges, and engage with nature especially water as the main element. Their purposes include having fun, spending leisure time, and relieving stress. Watersports encompass 48 types of activities such as snorkeling, diving, jet skiing, banana

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boating, parasailing, and others. The high interest of tourists in watersports presents a business opportunity, particularly Issue (Month)

at Tanjung Bena Beach, which currently has 25 vendors offering watersport services. According to Article 40, Paragraph (4) of the Bali Governor Regulation Number 28 of 2020 concerning Bali Tourism Governance, every watersport business must join an association. Therefore, these fifteen vendors are members of the Bali Association of Water and Marine Tourism Entrepreneurs (GAHAWISRI).

Although watersports are enjoyable recreational activities, the risk of accidents still exists, ranging from minor injuries to fatalities. Factors causing accidents in watersport tourism include natural conditions, negligence by operators, lack of safety facilities, visitor behavior, and insufficient information provided by operators to tourists (Dian Ridwan Nurdiana 2017). In 2023, a watersport accident occurred at Watersport Bali Coral Tanjung Bena involving Japanese tourists Kikuchi Satoshi (KS) and his son, Kikuchi Haruki (KH). While riding the flying fish attraction on August 18 at 10:00 AM WITA, the first session went smoothly with KS's two children and a guide. However, during the second session, the flying fish carrying KS and KH suddenly tilted and fell from a height of about 3 meters above the water. KS was found unconscious and later passed away, while KH sustained minor injuries. There is no further information regarding the legal responsibility of the watersport operator in this case.

Safety in watersport tourism involves the rights and obligations of both operators and tourists. Tourists have the right to legal protection, safety, and insurance when participating in high-risk activities. Meanwhile, operators are obligated to provide security, safety, and insurance protection in accordance with Article 26 letters d and e of Law Number 10 of 2009 concerning Tourism. High-risk activities include diving, white-water rafting, rock climbing, jet coaster rides, and visiting tourist attractions with potential hazards such as wild animals in their natural habitat.

Watersport accommodation operators have a preventive obligation to protect the safety and security of tourists, given the high risk of accidents in these activities. This protection includes implementing Health, Safety, and Security (K3) procedures as well as emergency response measures, in accordance with the Minister of Manpower's Decree Number 15 of 2024 on the Indonesian National Work Competency Standards in the field of watersport tourism guiding. However, in reality, many accidents still occur because operators focus more on profit and customer satisfaction without adhering to the applicable safety standards. If an accident occurs due to operator negligence, administrative sanctions can be imposed based on Article 63 of the Tourism Law, ranging from written warnings, business activity restrictions, to temporary suspension of the business.

In addition to administrative sanctions, watersport accommodation operators can also be held civilly liable through lawsuits for unlawful acts and breach of contract. If proven that gross negligence (*culpa lata*) caused serious injury or death, the operator may also face criminal charges under Articles 359 and 360 of the Indonesian Criminal Code (KUHP) (R. Soesilo 1996). Legal accountability for watersport accidents remains a serious issue. Many business operators lack official certification or permits, and supervision by authorities is often insufficient. When accidents occur, legal processes are often ineffective because tourists, as consumers, have weak bargaining power, coupled with a general lack of legal awareness among business operators.

Legal accountability issues in the watersport industry are not only a matter of justice but also impact the national tourism image. Unprofessional handling of accidents can diminish tourists' trust and ultimately harm the local economy. Therefore, it is important to thoroughly examine the forms of legal responsibility of watersport operators in the event of accidents. Based on this, the author is interested in researching and discussing the legal accountability of watersport accommodation operators when accidents occur involving tourists, considering their obligations to ensure safety, comfort, and insurance protection for visitors. Based on the background above, it is important to conduct a further study on the Legal Accountability of Watersport Accommodation Operators for Tourism Accidents at Tanjung Bena Beach. The objectives of this research are to analyze the rights and obligations of watersport accommodation operators and tourists in watersport activities, and to identify the legal procedures for resolving watersport tourism accidents at Tanjung Bena Beach.

## II. RESEARCH METHOD

The type of research used in this study is empirical legal research, which relies on field data as the primary source, such as interview and observation results. This approach is employed to analyze law as a form of social behavior structured within everyday interactions and community relationships (Bambang Sunggono 2003). Empirical research was chosen because the author is interested in conducting an empirical study on the legal accountability that can be imposed on watersport accommodation operators, especially in the Tanjung Bena Beach area, in the event of accidents involving tourists during their visit, as well as the procedures for resolving such cases.

### III. RESULT AND DISCUSSION

#### *A. Rights and obligations of watersport accommodation operators and tourists in watersport activities at Tanjung Bena Beach*

Tourism is a temporary journey from one place to another, either alone or with others, with the aim of seeking balance and happiness in social, cultural, natural, and scientific aspects. This activity is supported by facilities and services provided by the community, businesses, and the government. Tourism, in its development, is an industry that has main functions and sectors. Regarding this, Mark Anthony Camilleri stated the following: The tourism industry's major function is to serve travellers. Its success depends on the positive inter-relationships of all sectors. It is hoped that this synergy among tourism service providers will translate to a positive experience to the individual tourist. Basically, tourism comprises four main sectors: Transportation, Accommodation, Ancillary services; and Sales and distribution (Mark Anthony Camilleri 2018).

Protection of the tourism industry is carried out through good governance by establishing a number of regulations in the field of tourism. As stated by Muhamad Rizal and Yul Maulini on a practical level, tourism laws are formed with the aim of providing protection to those who are entitled, not to those who merely have power (Muhamad Rizal dan Yul Maulini 2020). Tourism is considered to provide benefits to the community, so it needs to be regulated with comprehensive and integrated regulations. Tourism management involves the interests of the government, businesses, and the community, all of whom must actively participate in building tourism that is safe, comfortable, and sustainable.

One of the components of tourism is business actors, which is defined in Article 1 point (3) of Law Number 8 of 1999 concerning Consumer Protection as every individual or business entity, whether legal or not, operating within the jurisdiction of Indonesia, alone or together in various economic sectors. These business actors also include the tourism sector. According to Article 1 point (8) of the Tourism Law, a tourism entrepreneur is a person or group that runs a tourism business, namely providing goods and/or services to meet the needs of tourists, such as accommodation and watersport activities.

Watersport accommodation entrepreneurs, like other tourism business actors, have rights that must be respected and obligations that must be fulfilled when running their business. These rights and obligations are regulated in Law Number 8 of 1999 concerning Consumer Protection, specifically in Articles 6 and 7.

Article 6 (Rights of Business Actors):

- a. To receive payment according to the agreement related to the condition and value of goods/services.
- b. To receive legal protection against consumers acting in bad faith.
- c. The right to defend themselves in the resolution of consumer legal disputes.
- d. To obtain rehabilitation of their good name if consumer losses are not caused by the goods/services traded.
- e. Other rights in accordance with the provisions of laws and regulations.

Article 7 (Obligations of Business Actors):

- a. To act in good faith in running the business.
- b. To provide true, clear, and honest information about the condition, guarantee, usage, repair, and maintenance of goods/services.
- c. To serve consumers honestly, correctly, and without discrimination.
- d. To guarantee the quality of goods/services in accordance with applicable standards.
- e. To give consumers the opportunity to test or try goods/services and provide warranties or guarantees.
- f. To provide compensation, restitution, or replacement for losses resulting from the use of goods/services.
- g. To provide compensation, restitution, or replacement if the goods/services do not conform to the agreement.

Here's the English translation of the rights and obligations of tourism entrepreneurs as stated in Articles 22 and 26 of the Tourism Law:

Article 22 Every tourism entrepreneur has the right to:

- a. Obtain equal opportunities in conducting business in the tourism sector;
- b. Form and become a member of tourism associations;
- c. Receive legal protection in conducting business; and
- d. Obtain facilities in accordance with the provisions of laws and regulations.

Article 26 Every tourism entrepreneur has the obligation to:

- a. Maintain and respect religious norms, customs, culture, and values existing in the local community;
- b. Provide accurate and responsible information;
- c. Provide non-discriminatory services;
- d. Ensure the comfort, friendliness, protection, security, and safety of tourists;
- e. Provide insurance protection for tourism businesses with high-risk activities;

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- f. Develop partnerships with local micro, small enterprises, and cooperatives that are mutually needed, strengthening, and beneficial;
- g. Prioritize the use of local community products, domestic products, and provide opportunities for local workers;
- h. Improve workforce competence through training and education;
- i. Actively participate in the development of infrastructure and community empowerment programs;
- j. Participate in preventing all forms of immoral acts and illegal activities in the business environment;
- k. Maintain a healthy, clean, and beautiful environment;
- l. Preserve the sustainability of the natural and cultural environment;
- m. Maintain the image of the country and the Indonesian nation through responsible tourism business activities; and
- n. Implement business standards and competency standards in accordance with the provisions of laws and regulations.

The obligations of water tourism entrepreneurs, including watersport accommodation operators, in addition to being regulated by the Consumer Protection Law and Tourism Law, are also governed by Bali Governor Regulation Number 28 of 2020 concerning Bali Tourism Governance, especially Article 40 paragraphs (1), (3), and (4):

Article 40 paragraph (1): Water Tourism businesses must be established as legal entities and have official permits from the Regional Government according to their authority.

Article 40 paragraph (3): Water Tourism businesses are required to have Standard Operating Procedures and equipment standardization in accordance with laws and regulations. Article 40 paragraph (4): Water Tourism entrepreneurs must: a. Join the water tourism entrepreneurs association;

b. Employ workers who have competency certificates.

Article 40 paragraph (1) of Bali Governor Regulation Number 28 of 2020 concerning Bali Tourism Governance is a continuation of Article 15 paragraph (1) of the Tourism Law, which requires watersport accommodation entrepreneurs to be established as a legal entity, namely a Limited Liability Company (Perseroan Terbatas or PT), and to register their business with the government or regional government. Therefore, prospective watersport accommodation entrepreneurs must first obtain a permit to establish a PT.

The establishment of a PT can be done in two ways: capital partnership and individual. For a capital partnership PT, the establishment is carried out through a notary in accordance with the provisions of Articles 5 to 7 of the Minister of Law and Human Rights Regulation Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Amendments, and Dissolution of Limited Liability Companies, which are as follows:

Article 5: The establishment of a capital partnership PT is carried out by the applicant through a notary by filling out the establishment form electronically via SABH (Legal Entity Administration System).

Article 6 paragraph (1): The completion of the establishment form must be accompanied by supporting documents such as: a. An electronic statement from the applicant confirming that the documents are complete;

b. A copy of the deed of establishment uploaded to SABH;

c. The minutes of the deed of establishment or amendment;

d. The minutes of the deed of merger (if any);

e. Proof of capital deposit in the form of deposit slips, bank statements, capital deposit statements, or other documents depending on the type of capital;

f. A statement of willingness to obtain permits or recommendations from technical agencies related to the business field;

g. A statement of willingness to obtain a Tax Identification Number (NPWP) and tax reports;

h. A copy of the PT's complete address certificate from the building manager or a statement of complete address from the PT management.

Documents from letters c to h are kept by the notary.

Article 7: The Minister issues the legal entity registration certificate electronically, and the applicant prints the certificate independently using white F4/folio-sized paper.

The provisions of Articles 5 to 7 of the Minister of Law and Human Rights Regulation Number 21 of 2021 indicate that the establishment of a capital partnership Limited Liability Company (PT) now uses a digital legal administration system that is transparent and accountable. The establishment is carried out through a notary utilizing the Legal Entity Administration System (SABH), where the applicant must fill out forms and complete supporting documents electronically. Meanwhile, the establishment of an individual PT is regulated in Government Regulation Number 8 of 2021 concerning Authorized Capital of Companies as well as the Registration of Establishment, Amendment, and Dissolution of Companies that meet the criteria for micro and small enterprises, particularly in Articles 6 and 7:

Article 6:

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- a. An individual PT is established by an Indonesian citizen by filling out a Declaration of Establishment in the Indonesian language.
- b. The founder must be at least 17 years old and legally competent.
- c. The individual PT obtains legal entity status after being registered electronically with the Minister and receiving a registration certificate.
- d. The PT that has obtained legal entity status is announced by the Minister on the official website of the Directorate General that handles general legal administration.

### Article 7:

The Declaration of Establishment must be registered electronically with the Minister by filling out the required form. a. The form includes:

- b. Name and address of the individual PT;
- c. The duration of the PT's establishment;
- d. The purpose, objectives, and business activities;
- e. The amount of authorized capital, subscribed capital, and paid-up capital;
- f. The nominal value and number of shares;
- g. The address of the PT;
- h. Data of the founder who also acts as director and shareholder (full name, place/date of birth, occupation, address, National Identification Number (NIK), and Taxpayer Identification Number (NPWP)).

The Declaration of Establishment format is listed in Appendix I, which is an integral part of the Government Regulation.

After completing the legal establishment process of a Limited Liability Company (PT), watersport entrepreneurs must apply for a Business Identification Number (Nomor Induk Berusaha or NIB). The NIB is mandatory for every business actor and serves as an identity and proof of registration/registration to conduct business activities, as stated in Article 176 paragraphs (1) and (4) of Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing. After registering the business and obtaining the NIB, watersport accommodation entrepreneurs need to obtain an operational permit to run their watersport accommodation business. The procedure for applying for this operational permit is regulated in Bali Governor Regulation Number 24 of 2008 concerning Business Licenses for Providing Water Tourism Facilities, with requirements for obtaining the permit stipulated in Articles 3 and 4, which read as follows: Article 3

- 1) Permit applications are submitted to the Governor through the relevant agency (Dinas).
- 2) The permit application referred to in paragraph (1) must be submitted in writing using the prescribed application form.
- 3) The application form referred to in paragraph (2) is determined by the agency (Dinas).
- 4) The permit application must be accompanied by:
  - a. A photocopy of the company's deed of establishment, for businesses that are not in the form of a PT;
  - b. A photocopy of the deed of establishment legalized by the Department of Justice, for businesses in the form of a PT; c. A photocopy of the identity card (KTP) for sole proprietorships;
  - d. Taxpayer Identification Number (NPWP);
  - e. Business plan proposal;
  - f. A photocopy of the building permit;
  - g. A photocopy of disturbance permit and/or business place permit;
  - h. Environmental management efforts/environmental monitoring documents recommended by the environmental agency;
  - i. List of equipment and their feasibility documents;
  - j. List of dive masters and/or instructors; and
  - k. Employment documents.
- 5) The permit application is made in three copies: the first (original) is submitted to the agency (Dinas), the second to the Governor, and the third is kept as the company's archive.
- 6) The permit will be processed after fulfilling the requirements as referred to in paragraphs (1) to (5).

### Article 4

Permit for businesses with investment

- 1) Entrepreneurs who have investment permits must report their business to the Governor through the agency (Dinas).
- 2) The reporting procedure referred to in paragraph (1) must be submitted in writing using the prescribed reporting format.
- 3) The reporting format referred to in paragraph (2) is determined by the agency (Dinas).
- 4) The report is made in two copies: the first (original) is submitted to the agency (Dinas), and the second is kept as an archive.

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The above are various permits and requirements that must be completed by watersport accommodation entrepreneurs in order to conduct their tourism business activities legally.

Watersport accommodation entrepreneurs are required to implement business standards and operational procedures by employing certified personnel in accordance with the provisions of the Tourism Law and the Bali Governor Regulation, which are further regulated in various regulations related to competency certification in the tourism sector. Based on an interview with the General Manager of Basuka Watersport on March 17, 2025, the management demonstrated a strong commitment by fulfilling all necessary business permits to ensure that operations run legally, safely, and sustainably.

Basuka Watersport not only complies with legal requirements but also implements standard operational procedures to ensure the safety and comfort of tourists during watersport activities. Tourists are required to fill out a health form as a preventive measure to identify medical risks, and guides provide explanations about the procedures and potential risks of the activities. All guides are certified in accordance with tourism and maritime regulations, ensuring professionalism in handling water-based recreation. Additionally, staff receive regular first aid training for emergency preparedness, and equipment is inspected periodically to guarantee safety. Basuka Watersport also collaborates with Jasa Raharja insurance, which covers medical protection, compensation, and emergency evacuation as part of the ticket package, demonstrating a commitment to safety and social responsibility.

Based on an interview with Ida Ayu Nyoman Chandrawati, Head of the Tourism Industry and Creative Economy Division as well as Acting Head of the Tourism Destination Division at the Bali Provincial Tourism Office on April 14, 2025, it was explained that central and regional regulations grant the Bali Tourism Office the authority to facilitate, guide, and supervise the licensing of tourism businesses, such as business licenses, operational permits, tourist attraction management permits, and standardization certificates. Once all requirements are met, these permits are verified through the OSS (Online Single Submission) system, which is an integrated electronic business licensing system.

Currently, watersport accommodation entrepreneurs at Tanjung Bena Beach have met all applicable permits and business standards. The informant stated that the Bali Provincial Tourism Office conducts supervision and guidance by providing appeals and socialization regarding the required permits and standards, especially through the water tourism entrepreneurs' organization, GAHAWISRI. Direct inspections are only carried out when necessary to ensure the compliance of entrepreneurs' permits.

Tourists have various definitions, ranging from general to very technical. The United Nations Conference on Travel and Tourism in Rome uses the term 'visitor,' which refers to anyone who visits a country other than their usual place of residence for various purposes, except for seeking work or livelihood. Leiper defines a tourist as a person who travels far from their place of residence for at least one night with the aim of seeking recreational experiences through interaction with the visited place. The law also explains the definition of tourists, such as in the Tourism Law Article 1, paragraph (2), which states that tourists are people who engage in tourism activities. Additionally, the definition of tourists is also regulated in the Bali Provincial Regulation Number 5 of 2020 concerning the Standards for the Implementation of Balinese Cultural Tourism, Article 1, paragraph (16), which states that tourists are individuals or groups who undertake travel for tourism purposes.

Tourists are consumers who use or enjoy the services provided by tourism businesses. Therefore, the definition of tourists can also refer to the definition of consumers in Article 1, paragraph (2) of the Consumer Protection Law, which states: Consumers are every person who uses goods and/or services available in the community, whether for their own interests, family, others, or other living beings, and not for resale (Cokorde Istri Dian Laksmi Dewi 2018). Every person, including tourists, has rights and obligations in tourism activities. The rights and obligations of tourists are regulated in the Tourism Law, namely: Article 20 states that tourists have the right to receive accurate information about tourist attractions, services that meet standards, legal protection and security, health services, protection of personal rights, as well as insurance for high-risk tourism activities.

Article 21 mentions that tourists with physical disabilities, children, and the elderly have the right to receive special facilities according to their needs.

Article 25 regulates the obligations of tourists, which include maintaining and respecting religious, customary, and cultural norms, preserving the environment, maintaining order and security, and preventing actions that violate morality and the law.

Users or consumers of services in the tourism industry, particularly in watersports, are referred to as consumers because they utilize the services of watersport accommodation providers. Therefore, the rights and obligations of tourists/consumers are regulated under the Consumer Protection Law, namely:

Article 4 regulates consumer rights, including the right to comfort, security, and safety when using goods/services; the right to choose and receive goods/services as promised; the right to clear and honest information; the right to have complaints heard; the right to protection and dispute resolution; the right to consumer education; the right to be treated fairly; and the right to receive compensation if goods/services are not in accordance with the agreement.

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Article 5 outlines consumer obligations, such as reading and following usage instructions for safety, acting in good faith during transactions, paying as agreed, and properly following the dispute resolution process.

Based on an interview with Made Padma, General Manager of Basuka Watersport, the company strives to fully uphold tourists' rights by requiring the completion of a health history form before engaging in watersport activities. This form aims to provide protection and a sense of security. If a tourist's health condition is deemed unsuitable, Basuka Watersport will recommend safer alternative attractions; for example, tourists with asthma are prohibited from participating in sea walker or diving activities for their own safety. Additionally, all attractions are covered by insurance protection without exception. This policy is based on the awareness that watersport activities carry risks ranging from minor injuries to death. Therefore, tourists are strongly encouraged to honestly fill out their health data. However, tourists often provide inaccurate information to enjoy all attractions without restrictions. This dishonesty poses dangers to tourists' safety, creates legal risks for business operators, and increases the liability of the tourism providers. Hence, honesty in providing health information is very important.

Legal protection is a guarantee and certainty for legal subjects that their rights are fulfilled and their obligations are carried out in accordance with applicable regulations. According to Satjipto Rahardjo, legal protection means providing recognition, protection, and respect for human rights as well as an individual's legal interests. Muchsin divides legal protection into two parts, namely: (Muchsin 2003).

### **a. Preventive Legal Protection**

Protection provided by the government to prevent violations from occurring. This takes the form of laws and regulations that function to set limits and rules so that obligations are properly carried out.

### **b. Repressive Legal Protection**

Protection in the form of law enforcement through sanctions, such as fines, imprisonment, or additional penalties, which are applied after a violation or dispute has occurred.

The obligations of watersport accommodation operators regarding their rights and duties are not only a form of social responsibility but also a concrete implementation of the principle of preventive legal protection in tourism. Legal protection functions to maintain a balance between the interests of business actors and the rights of consumers, namely tourists. Operators are required to meet service standards and conduct their business in accordance with consumer protection and tourism laws.

Licensing regulations for watersport operators also serve as preventive legal protection for the community, tourists, and the environment. These regulations prevent unauthorized business practices that could endanger safety, while providing legal certainty for operators to conduct their business within a clear framework. The Tourism Law and its implementing regulations, such as Government Regulation No. 5 of 2021 and Bali Governor Regulation No. 28 of 2020, require legal entities, business legality certificates, and Business Identification Numbers (NIB) as forms of preventive legal protection on an administrative.

## ***B. Legal resolution of watersport accident cases at Tanjung Benoa Beach***

Currently, many countries, including Indonesia, strive to provide supporting facilities for tourism. However, optimal results can only be achieved if the country is able to create a sense of safety and comfort for tourists. Insecurity causes tourists to feel that their rights are not protected. Therefore, the government establishes policies related to high-risk tourism to ensure the protection of tourists' rights (Putu Gelgel 2009). One of the purposes of law is to create legal certainty to protect consumers and guarantee their rights. This protection is supported by specific laws to prevent business actors from acting arbitrarily and causing harm to consumers. In tourism, the safety and security of tourists must be ensured, along with clear legal procedures for operators to manage high-risk tourism activities.

Tourism business operators are legally responsible for ensuring safety in high-risk tourism activities. This responsibility arises from their status as legal entities, which are subjects of law under civil law. A legal entity, or *rechtspersoon*, is a group of people officially formed or recognized, with purposes that comply with laws and moral norms (Happy Susanto 2008). Soemitro defines a legal entity (*rechtspersoon*) as a body that possesses assets, rights, and obligations similar to those of an individual person (Salim HS 2012).

As a legal entity, tourism operators are required to comply with applicable regulations. If an accident occurs involving a tourist at their business, the operator must be held accountable. There are three types of legal responsibility for watersport accommodation operators, one of which is administrative sanctions. These sanctions are imposed for violations of administrative regulations based on Article 63 of the Tourism Law, including written warnings, restrictions, and temporary suspension of business activities. If the violation is minor or a first-time offense, the operator will receive a written warning containing a reprimand and an order to make corrections within 7 to 14 days. If the operator fails to follow up or if a serious violation occurs, such as gross negligence resulting in death, then sanctions in the form of business restrictions or temporary suspension will be imposed progressively (Santoso 2018). In addition to the Tourism Law, administrative sanctions are also regulated in Bali Governor Regulation Number 28 of 2020 concerning the Governance of Bali Tourism, Article 56. This article states that violations of various provisions will be subject to

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administrative sanctions in the form of verbal or written warnings, temporary or permanent suspension of activities, temporary or permanent revocation of permits, administrative fines, as well as other sanctions in accordance with applicable regulations.

Civil liability for watersport operators can be based on two main principles: unlawful acts and breach of contract. Unlawful acts, regulated in Article 1365 of the Civil Code, state that actions causing harm to others due to fault must be compensated. If a watersport accident occurs due to the operator's negligence in maintaining safety standards, the visitor or their heirs have the legal right to claim compensation. Legal science categorizes unlawful acts into three types: (Munir Fuady 2002).

- a. Unlawful acts committed intentionally;
- b. Unlawful acts without fault, meaning without elements of intent or negligence;
- c. Unlawful acts resulting from negligence.

For an act to be considered an unlawful act, several elements must be fulfilled: (Salim HS 2006)

- a. The act is contrary to law (onrechtmatig);
- b. The act causes harm to another party;
- c. There is an element of fault or negligence in the act;
- d. There is a causal relationship between the act and the resulting harm.

In practice, lawsuits against tourism operators can be filed not only on the basis of unlawful acts, but also breach of contract, depending on the terms of the agreement between the tourist and the operator. For example, in Denpasar District Court Decision No. 63/Pdt.G/2011/PN.Dps dated July 18, 2011, the judge declared that the defendant, Wayan Adi Sumiran, as Director of PT. Adi Dive & Marine Sport, had committed a breach of contract (wanprestasi). This case arose when the plaintiff's husband, Mr. Kiem Chang Yong, died while diving at the defendant's facility, yet the insurance claim was not paid. The court ordered the defendant to pay a claim of US\$100,000 and court fees, and this decision was upheld by both the High Court and the Supreme Court. The breach of contract occurred because the defendant failed to fulfill obligations outlined in the agreement, which should have protected the rights and benefits of the aggrieved party. Contracts are also considered important because they provide tangible benefits and help maintain the reputation of the parties involved by ensuring compliance with the agreement (Johanes Ibrahim dan Lindawaty Sewu 2003).

Criminal liability is a form of legal responsibility imposed on a person for an unlawful act that meets the elements of a criminal offense. In marine tourism, such as watersports at Tanjung Benoa Beach, operators are obligated to ensure the safety of tourists. If an accident occurs due to negligence in providing safe facilities, the operator may be prosecuted on the basis of an unlawful act. Under Indonesian criminal law, as stipulated in the currently applicable Criminal Code (KUHP), the monistic theory applies this theory holds that unlawfulness (wederrechtelijkheid) and fault (schuld) are elements of a criminal offense (Andi Zainal Abidin Farid 2017). This aligns with the fundamental principle of criminal law, which states that a person can only be punished if there is an element of fault (schuld), whether intentional or due to negligence. This provision is outlined in Articles 359 and 360 of the Indonesian Criminal Code (KUHP). Article 359 stipulates that anyone whose negligence results in another person's death may be sentenced to up to five years' imprisonment or up to one year in detention. Meanwhile, Article 360 states that if the negligence causes serious injury, the offender may receive a similar penalty.

The Indonesian Criminal Code (KUHP) does not explicitly define the meaning of negligence (culpa), so understanding this term must refer to the opinions of criminal law experts. These expert views form the basis for interpreting and limiting the meaning of negligence. Several terms often used as equivalents of negligence include recklessness, negligence, sembrono, and teledor (Tongat 2018). According to Simons, negligence generally consists of two aspects: a lack of carefulness when performing an action, and the ability to foresee its consequences. Even if the action is done carefully, negligence can still occur if the actor knows or suspects that their action might cause legally prohibited consequences. Negligence happens when the actor continues the action despite being aware of the possible consequences. The ability to foresee the consequences beforehand is an absolute requirement; consequences that could not have been foreseen cannot be used as a basis for negligence (Tongat 2018). The explanation of the meaning of "culpa" can be found in the *Memorie van Toelichting* when the Dutch Minister of Justice, Mr. Modderman, submitted the Draft Criminal Code. In that document, negligence is described as:

- a. A lack of necessary thought;
- b. A lack of necessary knowledge or understanding;
- c. A lack of conscious prudence.

Negligence can be concluded as the inner attitude of the actor characterized by a lack of thought, knowledge, or prudence, even though they should have acted with due care to avoid causing harm to others. The actor's lack of thoroughness results in consequences prohibited by criminal law. According to Moeljatno, negligence is a complex concept that encompasses both the outward fault and the actor's mental state. Negligence means a broad form of fault without elements of intent. Unlike intent, which involves the will and consent to commit a forbidden act, negligence does not contain such elements (Moeljatno 2013).

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Based on the understanding of negligence, culpa is the inner condition of an actor who is careless, negligent, or lacking caution, thereby causing acts and consequences prohibited by law. Even though there is no intentional criminal act, the actor can still be held accountable due to their carelessness. This is because social norms require everyone to act with caution to maintain propriety within society (Martiman Prodjohamidjojo 2017). In watersport activities, accidents can occur due to the negligence of the operator, such as failing to check the equipment's safety, absence of life jackets, lack of competent supervising staff, or unclear instructions. If it is proven that the operator ignored the applicable Standard Operating Procedures (SOP), they can be held liable and face criminal sanctions. According to Immanuel Kant's Absolute Theory, punishment is only justifiable based on the offender's fault. Kant argued that a criminal who causes suffering to others must receive an equivalent suffering as a form of just retribution (Roni Wiyanto 2012).

A criminal act is unlawful and harmful to society because it contradicts good and just social order. However, an act is only considered a criminal offense if it is clearly regulated and prohibited by law. In other words, the determination of the criminal nature of an act must refer to the applicable legal provisions (Mahrus Ali 2015). The types of criminal punishments are regulated in Article 10 of the Indonesian Criminal Code (KUHP), namely:

- 1) Principal Punishments, which are divided into:
  - a. Death penalty;
  - b. Imprisonment;
  - c. Detention;
  - d. Fines;
  - e. House arrest.
- 2) Additional Punishments, which are divided into:
  - a. Revocation of certain rights;
  - b. Confiscation of certain goods;
  - c. Public announcement of the court's decision.

For an act to be considered unlawful and subject to criminal sanctions, two elements must be fulfilled: the criminal act itself (*actus reus*) and the intent or fault of the perpetrator (*mens rea*). Fault (*schuld*) is an important element in criminal responsibility, meaning the perpetrator can be held accountable for their actions. If fault cannot be proven, then the criminal act is also considered unproven, because a judge will not establish fault if the criminal act itself does not exist or is not proven to have been committed by the defendant.

Law Number 10 of 2009 on Tourism does not specifically regulate criminal sanctions for tourism operators in the event of accidents. Instead, it only regulates criminal sanctions for tourists who commit offenses, as stated in Article 64. This article explains that anyone who intentionally damages tourist attractions may be sentenced to up to 7 years in prison and fined up to 10 billion rupiah, while those who do so due to negligence may face up to 1 year in prison and/or a fine of up to 5 billion rupiah. Additionally, the Consumer Protection Law also contains criminal provisions but does not explicitly mention sanctions for tourism business operators regarding accidents involving tourists. Articles 61 and 62 state that business actors may be subject to imprisonment and/or fines if they violate certain provisions. Article 63 adds additional penalties such as confiscation of goods, publication of court decisions, compensation payments, cessation of activities, product recalls, or revocation of business licenses.

From this explanation, it can be concluded that criminal liability for negligent watersport accommodation operators causing tourist accidents is regulated under the Criminal Code (KUHP). Such negligence falls under the category of culpable negligence, which is an error due to a lack of caution or vigilance that should have been exercised by the operator in running their business. If the negligence results in an accident, the operator can be held criminally liable for failing to fulfill their obligation to provide legal protection to tourists as stipulated in Article 20 of the Tourism Law. Because the Tourism Law does not regulate specific criminal sanctions for negligent operators, law enforcement still relies on the general criminal provisions in the KUHP. Therefore, the application of criminal sanctions against negligent watersport operators remains fragmented and refers to general criminal law. Based on an interview with Ida Ayu Nyoman Chandrawati, S.H., M.Par., Head of the Tourism Industry and Creative Economy Division as well as Acting Head of the Tourism Destination Division at the Bali Provincial Tourism Office, the procedure for resolving administrative legal matters related to tourist accidents was explained. When an accident is reported by the victim, family, or witnesses to the Tourism Office or Transportation Office, officers conduct field verification to collect data from watersport accommodation operators and witnesses. This verification is important to determine whether there has been any violation of safety standards (Sutantyo 2019).

After that, the Tourism Office examines administrative documents such as permits, insurance, safety certification for boat crew or instructors, and compliance with Standard Operating Procedures (SOP). If any administrative violations or negligence are found, the process continues with the issuance of sanctions. For minor or first-time violations, the sanction is a written warning letter

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containing a reprimand and an order to make improvements within 7-14 days. If the operator fails to follow up or a serious violation occurs, such as fatal negligence resulting in death, progressive administrative sanctions can be imposed, namely:

- a. Suspension of business license
- b. Revocation of business license
- c. Administrative fines
- d. Temporary closure of business activities

After sanctions are enforced, the Tourism Office conducts an evaluation. If improvements have been made, the business license may be reinstated under strict supervision.

In the implementation of administrative sanctions against watersport operators, coordination is carried out between the Tourism Office and the Police if there is an indication of a criminal offense, so that the sanctions can proceed to the criminal or civil realm if necessary. Based on an interview with the General Manager of Basuka Watersport, handling of tourist accidents is done in stages according to the severity level. Minor accidents are handled with first aid by the operator, while severe accidents are immediately evacuated, with support from BASARNAS (National Search and Rescue Agency) in emergencies. The victims are then treated at clinics partnered with the service providers, and serious injuries are referred to hospitals according to insurance provisions.

In resolving legal responsibility for tourist accidents, watersport operators generally prioritize a familial approach through deliberation or mediation with the victims, usually providing compensation according to the agreement. If the accident results in death, the evacuation and handling procedures are carried out quickly and in a coordinated manner, including communication with the victim's family and the consulate for foreign tourists, as well as assistance with insurance claims. Legal resolution tends to be non-litigious. Satjipto Raharjo emphasizes law as a social tool for justice and protection, not merely for punishment.

According to Aristotle's theory of justice, victims should receive fair treatment in the form of compensation and restitution. However, resolution through deliberation is insufficient without clear and transparent legal accountability mechanisms. Therefore, operators are required to fulfill administrative and legal procedures, including proportional sanctions for negligence or violations, to achieve substantive justice.

### IV. CONCLUSIONS

Based on the discussion of the main issues outlined above, the researcher can draw the following conclusions:

- 1) The implementation of legal obligations by watersport operators at Tanjung Benoa Beach has been running well in accordance with applicable regulations. The Tourism Office plays an important role in facilitating, guiding, and supervising licensing through the OSS system, as well as involving GAHAWISRI to disseminate information related to permits and standards. Watersport operators comply with licensing requirements, operational standards, and fulfill legal and moral responsibilities toward tourists, including providing safety information, first aid training, proper equipment, and insurance. Guides are also certified in accordance with regulations. All these efforts demonstrate balanced legal protection between operators' obligations and tourists' rights, ensuring business legality, sustainability, as well as consumer safety and confidence.
- 2) Tourism operators are legally responsible under the law for the risk of tourist accidents at their business locations. There are three types of legal liabilities for watersport operators, namely: 1) administrative, in the form of sanctions such as warnings, restrictions, or suspension of business licenses; 2) civil, through lawsuits for legal violations or breach of contract; and 3) criminal, if the accident is caused by the operator's negligence. Although the Tourism Law does not specifically regulate criminal sanctions for operators, the accident resolution process at Tanjung Benoa Beach is carried out in a structured manner, starting from reporting, verification by the Tourism Office, to the imposition of administrative sanctions if violations are found. Operators also have accident handling procedures, including first aid and evacuation with medical assistance or BASARNAS support. Legal responsibility is usually resolved through mediation and compensation, but if the accident results in death, the handling involves coordination with the victim's family, consulate, and insurance claims.

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