



JUDICAL ANALYSIS OF THE PROTECTION OF ECONOMIC RIGHTS IN THE LAKE TOBA NATIONAL STRATEGIC TOURISM AREA IN OF FROM PRESIDENTIAL REGULATION NO. 81 OF 2014 CONCERNING SPATIAL PLAN FOR THE LAKE TOBA AREA AND LAW NO. 11 OF 2005 CONCERNING THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Kristian Siregar*

ABSTRACT

The ideals of the Indonesian nation as stated in the Preamble of the 1945 Constitution require that the general welfare be realized. To realize these ideals, human rights, in this case economic rights, are one of the indicators used as a basis for implementing a program, decision or regulation. Economic rights are generally described as rights related to the conditions of existence and welfare in terms of owning and utilizing something for their survival. The status of economic rights in the 1945 Constitution and Law No.11 of 2005 places economic rights as rights that must be protected, respected and fulfilled by the state. One of them is in the Tourism sector. Economic Rights play an important role in the creation of a prosperous community life in the area that is the object of Tourism. However, economic rights in reality are often ignored by the government as a consideration in loading policies and regulations, so that in its implementation it creates conflict between the community and the government. The purpose of this research is to find out how the protection and fulfillment of economic rights in the tourism development sector correlates with the level of community welfare.

Keywords: tourism; lake toba; economic rights.

I. INTRODUCTION

National Development is part of the construction of national ideals contained in the fourth paragraph of the 1945 Constitution which is oriented towards welfare, justice and prosperity. The concept of National Development is carried out progressively, gradually and sustainably. This thinking is motivated by the conditions and great opportunities that the Indonesian nation has, especially in the public sector. The acceleration of national development as the realization of the 1945 Constitution will encourage increased diversification, economic stability and expand community employment. For this reason, development based on strengthening the leading commodity sector is currently being increasingly socialized and developed by the government to all regional elements in order to welcome the era of modernization and globalization. One of them is development in the field of tourism. The tourism sector is one of a number of sectors that have great opportunities in accelerating national economic development through foreign exchange earnings.

Based on Tourism ranking data released by the World Economic Forum in May 2022 that Indonesia's tourism ranking is ranked 32nd, while in the Asia Pacific region, Indonesia's own tourism sector managed to rank eighth (Ministry of Tourism and Creative Economy, 2022¹). The high tourism

* Faculty of Law Universitas Padjadjaran, Jl. Dipati Ukur 35 Bandung, email: kristian16001@mail.unpad.ac.id

potential that Indonesia has requires the government to accommodate, manage and supervise so that it runs well. For this reason, the government tries to measure and assess based on the qualifications and opportunities of a tourism potential as made in the National Tourism Strategic Area (KSPN) program that is currently underway. The presence of National Tourism Strategic Areas as a national agenda basically uses a development scheme that is polarized into the design of a sustainable tourism area management structure to achieve world-class travel. In addition to the large foreign exchange potential, the tourism sector also contributes to absorbing 13 million workers or 10.2% of the total national workforce. The existence of the KSPN zone in the world of Tourism is certainly expected to go hand in hand with improving the economy and community resources. This is reflected in Article 4 of Law No. 10 of 2009 concerning Tourism which implies the goal of tourism that is competitive, sustainable, and able to encourage regional development and people's welfare. The position of the community in the framework of tourism development can be stated as part of the subject and object of development. One of the current KSPN areas of concern is Lake Toba tourism or better known as Indonesia's New Bali. This status is based on Presidential Regulation No.58 of 2017 which categorizes Lake Toba as included in the national strategy project for 10 National Tourism Strategic Areas (KSPN).

In the development of KSPN Lake Toba, the government pays special attention to both regulations and policies that support the development of this region. The contents of the ITMP provide conceptualized directions and objectives for development oriented towards improving the economy and welfare of the community as mandated by the Tourism Law and the 1945 Constitution. The diction of welfare here is normatively seen as a condition of people who feel the positive benefits of a development. In relation to the economic democracy adopted by Indonesia, the condition of a prosperous society must be felt as a whole, not the welfare of a handful of people, so that the community is placed in a central-substantial position and is not reduced to a residual marginal position². Social welfare basically involves organized efforts and has the main objective of improving living standards based on a social context that includes elements of services and sectoral policies³.

Furthermore, in measuring the actualization of community welfare, it can be seen from the extent to which the government fulfills and protects the economic rights inherent in society. This welfare is certainly inseparable from indicators such as economic rights that exist in it. Basically, economic rights are part of human rights in accordance with the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). Given that the awareness of the international community, including Indonesia, of the importance of the elaboration of the rights and basic freedoms stated in the ICESCR, the government provided legal reinforcement through the ratification of the convention of economic, social and cultural rights into Law No. 11 of 2005. The presence of economic rights in the legal order in Indonesia requires the government to provide a guarantee of fulfillment and protection of economic rights in a program, policy or regulation. Economic rights are positioned as an indicator in achieving the expected development goals. Likewise with the Lake Toba KSPN tourism development program. With various aspects and components such as existing economic rights, in the process, the development of Lake Toba will lead to an increase in the community's economy, improving the quality of human resources and realizing an inclusive tourism ecosystem.

¹ Ministry of Tourism and Creative Economy, "Indonesia's Tourism Ranking Rises Rapidly" ,2022, <https://indonesia.go.id/kategori/editorial/5975/peringkat-pariwisata-indonesia-naik-pesat?lang=1>, downloaded on 28th of September 2022

² Ruslina Elin, *Makna Pasal 33 UUD 1945 dalam Pembangunan Ekonomi Indonesia*, Jurnal Konstitusi Vol 9 Nomor 1, 2012, p 51

³ Hartono Sunaryati, *Ekonomi Pembangunan Indonesia*”, Bandung: Badan Pembinaan Hukum Nasional Depertemen Kehakiman, Bina Cipta, 1988, p 51

In line with that, through Presidential Regulation No. 49 of 2016 concerning the Lake Toba Regional Management Authority Agency (hereinafter BPODT) dated June 1, 2016, this agency was officially appointed by the President as the manager of the development of the Lake Toba area with the aim of being able to organize every development of facilities and infrastructure in this tourism area. The importance of the Authority which has the authority to regulate the acceleration of development is the implementation of the Tourism Law which contains all support for the development of tourism which is multidimensional and multidisciplinary in nature which arises as a form of the needs of every person and country as well as the interaction of tourists and local communities, central and local governments and entrepreneurs which is very necessary. In accordance with the Tourism Concept contained in Article 2 of Government Regulation No. 50 of 2011 concerning the National Tourism Development Master Plan for 2010-2025 (hereinafter referred to as RIPPARNAS) that national tourism development must be carried out in accordance with the principles of sustainable development and oriented towards efforts to increase growth, increase employment opportunities, reduce poverty, and preserve the environment. That with this legal basis, BPODT is the party responsible for managing the Lake Toba Region both in terms of planning, implementation and accountability for the management of the Lake Toba Region.

As for achieving these goals, what needs to be highlighted is the spatial order and the pattern of implementing welfare improvement programs in the Lake Toba tourism area. To avoid conflicts in spatial planning and society, it is necessary to have the right strategy and policy direction in the implementation of spatial planning which includes: policies and strategies for developing equitable spatial structures, patterns and supporting aspects (socio-economic activities). Spatial planning is actually used as an operationalization tool and coordination tool for the implementation of development in tourist areas in order to improve the quality of the environment, socio-culture and community welfare. Infrastructure development will be more quickly achieved with the design of Spatial Plans both on a sectoral and macro scale. Attention to spatial management cannot be separated from its relationship to the sustainability and continuity of tourism in the future. In addition, the development will greatly impact the economic conditions of the community as stakeholders in the management of tourism areas⁴. The influence of infrastructure in supporting the acceleration of goods and services transactions in order to accelerate changes in the global conditions of society will certainly have an impact both directly and indirectly on the level of community welfare.

As an example, it can be seen in the Sigapiton area which will be built various road infrastructure and other infrastructure in supporting the development of The Nomadic Kaldera Toba Escape located in Ajibata District, Toba Samosir Regency, North Sumatra. In 2019 a vertical conflict occurred between the government and the community in which both parties disputed the management of land and land built in the construction of the project. From the community's perspective, they rejected their land for infrastructure projects because the object was used as a place to live (house) to the fields where they make a living. On the other hand, the government is based on the tourism development program that is being carried out. This condition implies two different interests and requires a middle way to resolve the conflict. The conflict is prone to intersect with the status of economic rights owned by the community.

When glancing at other tourism cases, Bali Tourism is one that can be used as one of the thoughts related to the fulfillment of economic rights in tourism development. Bali tourism, especially on the west coast of the Bukit Badung Peninsula, shows a decrease in the management of the area previously by the community shifting to private management. The restriction of rights received by the community

⁴ Nyoman Dini, *Pengelolaan Wisata Konvensi*, Yogyakarta: Graha Ilmu, 2014, p. 19

occurs directly, namely eviction or displacement of places to make a living and occurs indirectly in the form of an increase in the selling value of tax objects in the tourism area which causes people's income to be unable to meet or pay taxes, this has an impact on the necessity for the community to transfer their land to other parties, and or transfer jobs that have previously been carried out to other jobs⁵.

Indonesia's participation in the recognition of ICESCR is a manifestation of the state's obligation to fulfill every right of the people described specifically in the 1945 Constitution, namely Article 27 paragraph (2) and Article 28 guaranteeing that everyone has the right to defend his life and reside under his authority. Given that the land managed by the Sigapiton Area community is a hereditary legacy and is an area where they survive as well as a source of livelihood for the local community. This respect is a form of recognition and acceptance of cultural identity as part of the value of life that lives in the midst of Indonesian society. The protection and fulfillment of the right to life of the Sigapiton community is a serious case, given that the state constitution clearly provides guarantees, protection and certainty for all people, especially regarding their economic rights. Formal and material accountability is an absolute obligation of the Government in terms of managing the development of the Lake Toba Region, especially the Sigapiton area based on the principles of justice, expediency and legal certainty.

II. RESEARCH METHODS

The lack of sources to identify clarity and how issues related to the protection of economic rights in relation to the development of national tourism strategy areas, this paper seeks answers by conducting normative juridical methods. Where the object of research studied by researchers focuses on legal norms and norms that live in the midst of society. This research uses descriptive analytical research specifications that focus on the applicable laws and regulations associated with theories and implementation of positive law or current law (⁶Sorejono,1986). According to Soerjono Soekanto, descriptive research is research aimed at providing data to examine humans, circumstances, or other symptoms, and explaining the state of the object of the problem without the intention of drawing general conclusions⁷. The methods used in collecting this data are document studies and interviews. Document study is a data collection technique by examining and reviewing documents to obtain data or information related to the problem being studied, while interviews are a data collection technique if the researcher will conduct a preliminary study to find the problem under study which is carried out in a structured or unstructured manner and can be done by face-to-face or directly or by using social media networks⁸. The type of interview used is a semi-structured interview, namely conducting interviews starting from the issues covered in the interview guide notes which ensure that the interviewer will get the same type of data from each participant. Interviews here will be conducted with communities in the Toba Caldera region, especially Sigapiton.

This paper also identifies a number of regulations in Indonesia relating to the protection and fulfillment of economic rights, namely the 1945 Constitution, Law No. 11 of 2005 concerning the International Covenant on Economic, Social and Cultural Rights, Government Regulation No. 50 of 2011 concerning the National Tourism Development Master Plan 2010-2025 and other related regulations.

⁵ IB Erwin Ranawiajya, *Perlindungan Hukum terhadap Hak-hak Ekonomi Masyarakat dalam Pembangunan Kepariwisata di Bali*, Fakultas Hukum Udayana, 2019, p. 4

⁶ Soekanto Soerjono, *Pengantar Penelitian Hukum*, Jakarta: UI-Press, 1986, p 52.

⁷ *Ibid*

⁸ Yusnita Ahdiani, *Model Pembinaan Akhlak di SMAN 20 Bandung*, Bandung: Universitas Pendidikan Indonesia, 2017, p .52

III. DISCUSSION AND RESULT

A. KSPN Lake Toba as Tourism Practice in Indonesia

The Tourism Super Priority Area is the government's agenda in managing areas that have a high level of tourism potential to support the national economy and implies the development of a tourist base that has a high selling value. Based on data from the Ministry of Tourism and Creative Economy, in 2022 foreign exchange earnings from Indonesia's tourism sector reached US\$ 1.84 billion and are targeted to increase in 2024 to reach US\$ 21.5-22.9 billion⁹. The amount of income shows that the tourism sector is one of the variables that can stimulate the country's economic growth through its contribution to increasing GDP. Referring to Article 4 letters a, b, c of Law No.10 of 2009 concerning Tourism, the community is a determining indicator in the achievement of tourism development which is characterized by economic growth, poverty reduction and improvement of people's welfare. The principle of community welfare should be translated into national tourism development policies to the regional level¹⁰.

One of the tourism programs currently being developed is Lake Toba Tourism. Lake Toba Tourism is one of the tourist attractions that has its own uniqueness and attractiveness. The combination of natural beauty, agriculture and cultural values that melt into iconic Lake Toba tourism. Related to the development of tourism here, of the 147 hamlets / villages scattered around Lake Toba, some of them are used as business economic support areas. In addition, the potential of Lake Toba has direct and indirect benefits to the seven districts. Broadly speaking, the development of Lake Toba tourism will have an impact on several aspects, namely:

1. Revenue aspect through state foreign exchange
2. Aspects of regional community income
3. Aspects to the expansion of employment opportunities
4. Aspects of the value and price of goods and services (economic value)
5. Aspects of the quality of human resources and ownership
6. Aspects of regional development and income

The six aspects above are indicators that can be used by the government in measuring the achievement of tourism development on Lake Toba. As for managing each of these aspects, mapping and zoning are needed which will hopefully make the distribution of the potential of each region around Lake Toba clear and measurable.

In the Lake Toba KSPN, the pattern of tourism development coexists closely with the value of Batak tribal customs to be an added value of tourism for the people of Indonesia and especially for the people in the North Sumatra region. In addition, the potential of the Lake Toba Region according to the Regional Infrastructure Development Agency of the Ministry of Public Works and Public Housing contained in the "Integrated Tourism Masterplan for Lake Toba" is¹¹:

⁹ Maria Alexandria, *Menparekraf Sandiagra Sebut Target Nilai Devisa dari Pariwisata US\$21,5 Miliar di 2024*, 14 Desember 2022, <https://www.theeconomics.com/accelerated-growth/menparekraf-sandiagra-sebut-target-nilai-devisa-dari-pariwisata-us215-miliar-di-2024/>

¹⁰ Dewa Gede Rudy, "*Prinsip-Prinsip Kepariwisataan dan Hak Prioritas Masyarakat dalam Pengelolaan Pariwisata berdasarkan Undang-Undang Nomor 10 Tahun 2009 Tentang Kepariwisataan*", Kertha Wicaksana, Volume 13 Nomor 2, 2019, p. 77

¹¹ Badan Pengembangan Infrastruktur Wilayah Kementerian Pekerjaan Umum dan Perumahan Rakyat, *Integrated Tourism Development Program Lake Toba*, https://bpiw.pu.go.id/uploads/itmp/Konsep_Pengembangan_Wilayah_dan_Infrastruktur_KSPN_Danau_Toba.pdf, 2019, p. 38-43

1. Natural tourist attractions in the form of Scenic view of mountains and abundant water tourism such as beaches, waterfalls etc.
2. Socio-Cultural Tourism such as traditional villages and Batak cultural rite
3. Agro-tourism in the form of agricultural tourism such as chocolate agro-tourism, shallots, etc.
4. Culinary Tourism in the form of food or snacks typical of Lake Toba
5. Educational Fishery Tourism in the form of utilization of water resources in the form of fisheries.

Development planning in tourism areas not only creates tourism benefits but also causes distortions to the sustainability of local communities and the disappearance of community values or entities. Therefore, to reduce the various problems caused by the development of tourism in the region as well as optimizing benefits, good development planning and good tourism management are needed¹². Tourism must also contribute to sustainable development and be integrated with the natural, cultural and human environment. The government, non-governmental organizations, and local communities as stakeholders must take reactive action to integrate tourism planning into sustainable development.

The great potential of Lake Toba is a great opportunity for tourism, which is useful for developing investment and sources of foreign exchange. For this reason, the main capital that must be owned is by implementing spatial planning and improving supporting facilities. Spatial Planning in terms of infrastructure development will certainly be realized more quickly if accompanied by a Spatial Plan design. The spatial plan for the Lake Toba area and its surroundings is contained in Presidential Regulation No.81 of 2014 concerning the Spatial Plan for the Lake Toba Area and Its Surroundings. The legal instrument that accommodates the development of Lake Toba tourism reflected in the regulation is an operational tool for the general spatial plan.

Thus, in line with spatial planning and implementation of tourism programs, it requires a reaction from the community in the Lake Toba Region to provide direction, rejection and input if the spatial arrangement of tourism development has a negative or positive impact on their rights, including rights related to their survival¹³. This authority is a representation of the protection of community rights that have been mandated in the 1945 Constitution. Furthermore, the community, which is both the subject and object of development, is one of the orientations of the objectives of the tourism development program. The purpose of tourism development programmed by the Government through regulations or policies is none other than a step to improve the standard of living of the community. The standard of living of the community will have an impact on improving welfare on both a regional and national scale. For this reason, it is necessary to assess the policies and rules made so that the planned targets can be implemented.

B. Protection and Fulfillment of Economic Rights in Lake Toba KSPN

Spatial management that cannot be separated from its relationship with the sustainability and continuity of tourism in the future, of course, the development of the area will greatly impact the economic conditions of the community as a stakeholder in the management of the tourism area¹⁴. The community is described as a subject as well as an object that actively participates in the development and implementation of the spatial planning of the Lake Toba area. Of course, the ultimate goal of the

¹²Mohamad Ridwan, *Perencanaan Pengembangan Daerah Tujuan Pariwisata*, Yogyakarta: Deepublish, 2019, p. 16.

¹³Nurul Wulandari, Dede Sri, Neneg Yani, "Akselerasi Pengembangan Destinasi Wisata Danau Toba (Realisasi Prinsip Good Governance Pada Badan Pelaksanaan Otoritas Danau Toba)", *Jurnal Moderat*: Volume 7, Nomor 3, 2021, p. 521

¹⁴Crouch G.I & Ritchie J.R, *Tourism*, Crouch G.I & Ritchie J.R, *Tourism, Competitiveness and Societal Prosperity, Journal of Business Research*; Irdas Fitri dkk., *Analisis Faktor-Faktor Yang Mempengaruhi Produktivitas Tenaga Kerja dan Pertumbuhan Ekonomi, Jurnal Kajian Ekonomi*, 2016, p.137.

development of the Lake Toba area is to improve the quality of the environment and the welfare of the community as stated in Presidential Regulation No. 81 of 2014 concerning the Spatial Plan for the Lake Toba Surrounding Area.

When analyzed in conjunction, this regulation also regulates the form and pattern of matters relating to strategic directions in the centralized and controlled development of Lake Toba tourism including the community among them. Tourism development is closely related to the existence of the community and the rights born and owned by each community, including economic rights. Supervision and fulfillment of economic rights for the community is one of the responsibilities of the government, both from the central government, local governments and even stakeholders who interact directly with tourism development.

The government's efforts in promoting investment in the development of the Lake Toba area into tourism actually need to be re-examined in relation to the original purpose of regulating the Lake Toba area and the status of community land that intersects with their rights. First, if referring to Presidential Regulation No. 81 of 2014, the initial spirit of spatial planning is for the preservation of the Lake Toba area which supports this area as the living water (Aek Natio) of the community, ecosystems, and areas that contain cultural values of the Batak indigenous people. Second, the development of a world-scale tourism area that is integrated with the control of cultivation areas in accordance with the carrying capacity and capacity of the environment and adaptive to natural disasters¹⁵.

The Institute for Community Studies and Advocacy of the Directorate General of Human Rights found field facts that the involvement of communities and business groups, especially in the Lake Toba Region, has not fully influenced equitable development policies. Especially in the context of community involvement, where the aspirations of these community groups were not fully facilitated after Lake Toba was designated as a national tourism area. Minimal public knowledge about the presence of the National Tourism Strategic Area, including the Lake Toba Area as a National Strategic Area, has led to community confusion over the status of the area they control. This situation was confirmed by a group of residents on behalf of the Chairperson of the Ompu Butar-butur Descendant Indigenous Community in the Sigapiton Village area, which is one of the parties affected by Lake Toba tourism development¹⁶. This long road of vertical conflict has caused great friction between the government and the community. The government has conducted deliberations and the results still do not find common ground. The government is considered to hold deliberations not in accordance with the provisions of the legal process of indigenous peoples that they have been using¹⁷. The results of the case had a long tail until the rejection expressed by the community to the government.

In addition, from 2019 the government executed residents' land / fields that had been planted with rice, corn and coffee where the results of their fields were the main source of livelihood for the community and received a land eviction letter so that they were considered illegal residents who occupied state-owned land. The eviction was rejected by the local community because the government in this case did not provide a solution to the problem of land eviction that they experienced. The establishment of KSPN in the Lake Toba area presents problems that are rooted in the status of forestry areas in tourism areas, this conflict over land is caused by the absence of complete information about the status of land including the involvement of the community as landowners. In the Sigapiton case,

¹⁵Ditjen HAM, Kemenkumham RI, "Ringkasan Eksekutif: Hak Asasi Manusia Dalam Sektor Bisnis Pariwisata di Indonesia, Studi Kasus di Danau Toba, Sumatera Utara", Lembaga Studi dan Advokasi Masyarakat, p. 34

¹⁶Mangatas Togi Butar-butur dan Ondol Butar-butur, oleh Penulis, Desember 2022, Sigapiton, Kabupaten Toba Sumatera Utara

¹⁷Ditjen HAM, Kemenkumham, Opcit p. 35.

the community heard information that part of their area is included in the State Forest Area and has been included in the Protected Forest Area with SK 579 / MenHut-II / 2014. This status points to the extent of the state's obligation to respect and protect community rights and the government's partiality. In fact, this friction does not reflect the realization of equitable tourism jargon aimed at improving regional conditions and the economic existence of the community with the objectives contained in articles 57 and 60 of Presidential Regulation No. 81 of 2014 concerning the Spatial Plan for the Lake Toba Surrounding Area. Of course, this event is also motivated by the community's non-participation in the planning, implementation and supervision of tourism development. The resulting implication is that the community feels that they have been distanced from their living space and economic resources.

The constellation formed in the midst of the conflict gives thought to the condition of the economic rights of the community which is still on the verge of obscurity. The state's responsibility for community rights is an absolute thing and takes a role in its fulfillment because it is a positive right. Based on article 129, it is explained that the community should take a role in the spatial planning of the Lake Toba area which is carried out at the stages of; 1) spatial planning; 2) spatial utilization; and 3) control of spatial utilization and further when looking at Article 132 of Presidential Regulation No. 81 of 2014 which also describes the concrete form of the community's role in the spatial utilization of the Lake Toba area in the form of providing input related to direction, participation in supervising and monitoring and submitting objections related to development that is not in accordance with the development plan¹⁸.

The legal instruments contained in Presidential Regulation No. 81 of 2014 concerning the Spatial Plan for the Lake Toba Surrounding Area do not explicitly describe how the form of protection and fulfillment of economic rights, but the substance of this regulation provides space or opportunities for community involvement in every policy and development planning that is in close contact with the status and rights they have. The spatial development of Lake Toba here certainly correlates with the existence of economic rights attached to the community. The economic rights clause that is not clearly mentioned in this regulation does not mean that it negates the economic rights component contained in it, but comprehensively from several articles in this presidential regulation it contains the same meaning that the community has the right to act actively to receive the fulfillment and protection of the economic rights they receive from the state for the development of the Lake Toba region.

If the community is involved in formulating and planning the development, it is certain that the community prioritizes and defends the rights they have in this context in the form of land where they earn their livelihood and where they live. The underlying thing indicates that the government's lack of attention to the condition of the community and the weak influence and contribution of the community to the development of the Sigapiton area. Furthermore, in the Minister of Creative Tourism Economy Regulation No. 9 of 2021 concerning Guidelines for Sustainable Tourism Destinations, Chapter II section (A) also emphasizes that tourism development must involve stakeholders, one of which is involvement and feedback for local residents. The existence of community engagement and public participation is used to absorb aspirations related to the concerns and satisfaction of local communities with tourism sustainability¹⁹

¹⁸ *Ibid*

¹⁹ Kementerian Pariwisata dan Ekonomi Kreatif, *Berkenalan dengan 5 Destinasi Super Prioritas Indonesia*, diakses dari <https://info5dsp.kemendparekraf.go.id/2019>

The fulfillment of the economic rights of the Lake Toba Region community when referring to Law Number 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights Article 6 paragraph (1) which explains that:

"The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right"

This article implicitly explains that the existence of the state must maintain and protect people's interests in sources of livelihood including where they earn a living/work. In addition, article 11 of the Convention explains that the state also recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and the continuous improvement of living conditions. Reflecting on the above article implies that the right to an adequate standard of living for himself and his family is one of the most important indicators in the realization of economic rights. Indonesia's participation in the recognition of ICESCR is a manifestation of the obligation of the state in fulfilling every right of the people described specifically in the 1945 Constitution, namely Article 27 paragraph (2) and Article 28 guaranteeing that everyone has the right to defend his life and reside under his authority.

As for the presence of the Lake Toba area development, the surrounding community is worried that they will lose their livelihoods due to the loss of land that has been occupied for generations due to land grabbing by the state, of course the state in this case has also not implemented the arrangements as stated in the ICESCR, it should be here that the tourism system contained in the rules must have a technical reference so that the fulfillment of economic rights in the community can be carried out in accordance with the objectives of tourism area development. Legal instruments and policies related to the development of Lake Toba which still do not accommodate the interests of community rights require special formulations so that the ideals of realizing an ideal society can be implemented. This must also be explored, given the vulnerability of conflicts that will arise.

As expressed by the United Nations Development Programme (hereinafter referred to as UNDP) there are several criteria for state responsibility in protecting, promoting, fulfilling and respecting economic rights which is a summary of the state's responsibility in fulfilling the economic rights of a country, namely²⁰:

a. Respect-bound obligation

The state's obligation to respect - accompanied by a prohibition for the state to interfere with the rights and freedoms of citizens that have been recognized.

b. Protection-bound obligation

The obligation of the state to take steps in such a way that no violation of recognized human rights and freedoms occurs.

c. Fullfillment-bound obligation

The obligation of the state to actively create conditions aimed at the fulfillment of economic rights.

d. Obligation to take steps

Obligation of the state to take concrete steps towards the fulfillment of economic rights through legislation, jurisprudence or action.

²⁰Mimin Rukimin, *Pengantar Memahami Hak Ekosob*, Jakarta, Pusat Telaah dan Informasi regional (Pattrio), 2006, p. 92.

e. Obligation towards progressive obligation

The obligation of the state to act towards the realization of economic rights. economic rights

f. Obligation to establish benchmarks

The obligation to set clear benchmarks and targets to assess the steps that have been taken.

The six points above are the points that become the common thread in the fulfillment of economic rights which are currently used as guidelines for countries in the world. Including in this case Indonesia includes the achievement of tourism development goals that depend on the implementation of the six state obligations above. For this reason, in its implementation, economic rights are placed as a *conditio sine qua non* which means an absolute and must. Given that Indonesia is a state of law, the fulfillment of economic rights by the state is one form of the state in ensuring legal protection.

If we look back at the points of state obligations put forward by the UNDP which represent the obligations of economic rights, then above that the state cannot protect and fulfill the economic rights of the community and has not provided solutions related to steps for the fulfillment of this right. The above fact is proven by confirmation from Ompu Butar-butar's descendants, namely Mangatas Togi Butar-butar and Ondol Butar-butar, who are stakeholders as well as administrators of the Sigapiton indigenous community as described above, who explained their lack of involvement in formulating and planning development, especially in the Sigapiton area, which has a relevant impact on their economic rights. If the community is involved in formulating and planning the development, it is certain that the community prioritizes and defends the rights they have in this context in the form of land where they earn their livelihoods and where they live. The underlying matter indicates that the government's lack of attention to the condition of the community and the weak influence and contribution of the community to the development of the Sigapiton area. The balance that must be made by the Sigapiton community through community responsibility for tourism development through obligations that support the development of tourism areas. Indigenous peoples also need to open themselves up to change and are required to be able to actively contribute to it. The existence of Presidential Regulation No.81 of 2014 and Law No.11 of 2005 in its implementation requires support from legal subjects so that its implementation is in accordance with the wishes and ideals of tourism development.

C. Government efforts to ensure the protection and fulfillment of each community's economic rights

The relationship between economic development and the benefit and prosperity of the people is the main thing that must be realized in the welfare state adopted by Indonesia. Economic rights are basically an obligation that must be fulfilled for every country. The state must be able to realize and fulfill the rights of individuals who are subjects within its jurisdiction. The state has an obligation to be able to respect individual rights, the obligation to help the general welfare, allowing the state to assist and provide ways that allow everyone to enjoy their economic rights.

In line with what is described in Law of the Republic of Indonesia Number 39 of 1999 on Human Rights, in Article 71 and Article 72 concerning the obligations and responsibilities of the government, in the article the fulfillment of economic, social and cultural rights is also a responsibility that must be carried out by the state. The scope of economic rights plays a central and objective role in guaranteeing increased welfare. The guarantee of improving economic welfare is carried out by ensuring the recognition and guarantee of economic rights in the constitution. The content of economic rights in the value of the formation of laws and regulations gives the community a position on individual guarantees

while determining restrictions on freedom, so that it contributes to the formation of the economic system as a whole²¹.

The provisions governing economic rights within the framework of human rights contained in Law No. 11 of 2005 on the Ratification of the International Covenant on Economic, Social and Cultural Rights are expected to accommodate all interests related to the economic, social and cultural rights of the community.

The norms and values in the convention are one of the bases for formulating policies related to social, economic and cultural conditions. Policy implementation that does not give a role to the community is considered as an attitude that only benefits the government and corporations. The importance of participation encourages all citizens to exercise directly or indirectly the right to express suggestions and opinions in the decision-making process. Especially to provide freedom to the community to gather, organize and actively participate in determining the future by focusing on aspects of transparency (openness), accountability (responsibility), and participation in the development of Lake Toba destinations²².

Apart from that, it is necessary to apply the Cost and Benefit Analysis method which aims to analyze or evaluate the policies contained in Presidential Regulation No. 81 of 2014. Which means that it needs to be reviewed whether the laws and regulations are still relevant or need to be changed. Furthermore, Cost and Benefit is described as a way to assess whether the solution given to the problem being analyzed is more costly or comparable to the benefits that will later be obtained. Similar to Economic Analysis of Law, this approach in general does not only focus on legal approaches, but requires an interdisciplinary scientific approach, such as economic, social, etc²³. aspects. The presence of Presidential Regulation No. 81 of 2014 must previously be able to identify in various ways that may occur on the impacts that arise from policy choices or regulations that will be made, changed and determined. This method is a useful tool for making a decision that is public in nature by considering welfare both directly (direct impact) and indirectly (indirect impact). Therefore, with consideration of the facts and assessments in the development of the Lake Toba area, the government can evaluate the implementation of tourism development, especially those concerning economic rights in the community. The elaboration of these two methods is expected to facilitate the government in measuring the quality and efficiency of the law used in the development of Lake Toba tourism.

The active role of stakeholders (including the community) in the development process to evaluation is very necessary, in fact the community is an essential resource for the development of Lake Toba tourism. The effectiveness of the implementation of these rules must be relevant to the Theory of Legal Effectiveness or the view of Economic Analysis of Law. This theory explains that the formation of laws and regulations is not only viewed from a legal perspective but requires other considerations such as economic aspects or simplified as a legal analysis that uses the help of economics. With an economic approach, it will certainly show efficiency that can make policy an ideal tool that can guide all legal activities, but this has not been realized in the formation of policies in the Lake Toba Region. This means that the role of Economics Analysis of Law from the point of view of positivism is to explain legal rules and their goals for better change. The presence of this thought provides direction to the government to consider aspects of the content contained in the tourism legal framework. With the

²¹ Mohamad Ridwan, *Perencanaan Pengembangan Daerah Tujuan Pariwisata*, Yogyakarta: Deepublish, 2019, p. 16.

²² Supriaji, Peranan Negara dalam Pemenuhan Hak Ekonomi, Sosial, Budaya bagi Masyarakat Desa Melalui BUMDES, Seminar Nasional FH Muhammadiyah, 2018, p.9

²³ Aula Ahmad, *Cost and benefit analysis*, Pendidikan Ekonomi Universitas Negeri Yogyakarta, 2010, p 3-4

economic approach, efficiency is an ideal tool that can guide all legal activities and provide the greatest utility to society²⁴.

Apart from that, it is necessary to apply the Cost and Benefit Analysis method which aims to analyze or evaluate the policies contained in Presidential Regulation No. 81 of 2014. Which means that it needs to be reviewed whether the laws and regulations are still relevant or need to be changed. Furthermore, Cost and Benefit is described as a way to assess whether the solution given to the problem being analyzed is more costly or comparable to the benefits that will later be obtained. Similar to Economic Analysis of Law, this approach in general does not only focus on legal approaches, but requires an interdisciplinary scientific approach, such as economic, social, etc. aspects. The presence of Presidential Regulation No. 81 of 2014 must previously be able to identify in various ways that may occur on the impacts that arise from policy choices or regulations that will be made, changed and determined. This method is a useful tool for making a decision that is public in nature by considering welfare both directly (direct impact) and indirectly (indirect impact). Therefore, with consideration of the facts and assessments in the development of the Lake Toba area, the government can evaluate the implementation of tourism development, especially those concerning economic rights in the community. The elaboration of these two methods is expected to facilitate the government in measuring the quality and efficiency of the law used in the development of Lake Toba tourism.

In the context of managing the Lake Toba Region, the government's effort to protect the economic rights of the community is to conduct supervision by the central government and local governments in accordance with their authority. Supervision is certainly organized through monitoring, evaluation, and reporting activities on the performance of regulation, guidance, and implementation of spatial planning in the Lake Toba Region. Supervision can be carried out by involving the role of the community as described in Article 127 and Article 135 of Presidential Regulation No. 81 of 2014 which also emphasizes that in order to increase the role of the community, local governments in the Lake Toba Region can build a spatial planning information and documentation system that can be easily accessed by the public. With this open access to information, the government directly provides space for community involvement in the preparation, planning and supervision of tourism development projects.

Regarding social disparities and legal polemics in the community, the government is expected to mediate in finding solutions to create community conduciveness. Given the importance of the existence of indigenous peoples as valuable assets for the existence of Batak culture in the Lake Toba region, in addition to indigenous peoples are the main elements for the concept of eco-tourism promoted by the government as stipulated in Presidential Regulation No. 81 of 2014. Therefore, the government should try to build good relations by trying to involve indigenous peoples who until now are still volatile and have not reached a solid agreement, to provide alternatives and solutions to the protection of economic rights that the Government will provide. Of course, the government's efforts in realizing the protection and fulfillment of economic rights will be passed by increasing community involvement and conducting hearings or mediation in the spatial planning of the Lake Toba Region. This also goes hand in hand with the realization of ideal economic rights as stipulated in Law No. 11 of 2005 concerning the International Covenant on Economic, Social and Cultural Rights if the government succeeds in fulfilling people's rights to the opportunity to earn a living (right to work) by not eliminating land used by the community as a source of livelihood and actively participating in the continuous improvement of people's living conditions.

²⁴Richard Posner, *Economic Analysis of Law*, London, Brown and Company, 1992, p.13

Regarding social disparities and legal polemics in the community, the government is expected to mediate in finding solutions to create community conduciveness. Given the importance of the existence of indigenous peoples as valuable assets for the existence of Batak culture in the Lake Toba region, in addition to indigenous peoples are the main elements for the concept of eco-tourism promoted by the government as stipulated in Presidential Regulation No. 81 of 2014. Therefore, the government should try to build good relations by trying to involve indigenous peoples who are currently still volatile and have not reached a solid agreement, to provide alternatives and solutions to the protection of economic rights that the Government will provide. Of course, the government's efforts in realizing the protection and fulfillment of economic rights will be passed by increasing community involvement and conducting hearings or mediation in the spatial planning of the Lake Toba Region. This also goes hand in hand with the realization of ideal economic rights as stipulated in Law No. 11 of 2005 concerning the International Covenant on Economic, Social and Cultural Rights if the government succeeds in fulfilling people's rights to the opportunity to earn a living (right to work) by not eliminating land used by the community as a source of livelihood and actively participating in the continuous improvement of people's living conditions²⁵.

IV. CONCLUSIONS

The protection of economic rights in the Lake Toba Region has basically not been realized, due to the lack of involvement and information received by the community on the development of the area. In addition, there is a change in the status of community-owned land without the knowledge and mutual consent of the community and the Government, which in fact is land that is the source of life and livelihood of the Lake Toba Region community, resulting in conflicts between the government and the community that intersect with the status of economic rights protection. Although economic rights are not explicitly explained in Presidential Regulation No. 81 of 2014, it implicitly describes the relationship between economic rights and the role of the community through input, monitoring, reporting and filing objections in the Lake Toba tourism development process as referred to in the provisions of article 128 and article 132. In addition, economic rights described in article 6 paragraph (1) and article 11 (a) of Law No. 11 of 2005 concerning the International Covenant on Economic, Social and Cultural Rights which provides an overview of the non-realization of the right to do work that is freely chosen or accepted by the community and the state is responsible for taking appropriate measures to improve economic conditions. The efforts to protect economic rights can be carried out by the government by supervising in the form of monitoring, evaluating and reporting on the effectiveness of the performance of regulation, guidance, and implementation of spatial planning and development in the Lake Toba Region as stipulated in Presidential Regulation No. 81 of 2014.

The government and related agencies can harmonize policies and implementation of protection and fulfillment of economic rights in the Lake Toba Region and make policy products that can accommodate any interests related to the sovereignty of the economic rights of the community with various considerations such as economic aspects, social aspects etc. In the development planning process, the Government and related Agencies must also begin to increase the active involvement of the community in the implementation of the development of the Lake Toba Region as stated in article 132 of Presidential Regulation No. 81 of 2014 which includes openness and provision of access to information to the public, providing a master plan for the Lake Toba Region development policy and conducting hearings to listen to the aspirations of the community. In addition, the government also

²⁵Mimin Rukimin, *Pengantar Memahami Hak Ekosob*, Jakarta, Pusat Telaah dan Informasi regional (Patrio), 2006, hlm 92

guarantees and pays attention to the right to employment opportunities and the right to a decent life as stated in article 6 paragraph (1) and article 11 (a) of Law No. 11 of 2005 concerning the International Covenant on Economic, Social and Cultural Rights of the Lake Toba Region as an effort to fulfill the objectives of the establishment of Presidential Regulation No. 81 of 2014.

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