

Regulatory Policy Model for Ecotourism-Based Heritage Tourism Development in the Old Banten Region

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ABSTRACT

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This study aims to address the following research questions: how is the regulatory policy in the development of heritage tourism (ecotourism-based) in Banten Lama area? and What is the role of the government, tourism managers, and tourist in this case? This study employed empirical legal method involving a juridical approach to analyze primary data, the interviews and questionnaires. In addition, this study also included secondary data derived from primary legal materials, such as the 1945 Constitution, laws, and other regulations in legal studies. The study revealed that heritage tourism development (ecotourism-based) in Banten Lama is in accordance with the cultural conservation law, citing the Decree of the Governor of Banten No. 437/Kep.160-Huk/2018, zoning determination of Cultural Heritage in Banten Sultanate (Banten Lama). Based on Article 73 paragraph (3) of Law No.11 of 2010, the Cultural Conservation, the utilization of this area must nurture its maintenance, so zoning principle must be applied to reach a sustainable tourism goal.

Introduction

According to historical records in 1678, Banten was the largest city in the world based on population. As a result, Banten Sultanate's heritage was designated as a potential cultural heritage for tourism¹. The existence of heritage tourism in Banten Lama was due to cultural heritage dominated in the area, such as the Kaibon Palace, Spelwijk Fort, Surosowan Palace, Grand Mosque Banten, Sultanate Tomb, Cannon ki Amuk, and Avalokitesvara Vihara. They are located in the Kasemen Serang district² and were the glory legacy of Banten Sultanate, Abu Fath Abdul Fatah's reign, also known as Sultan Ageng Tirtayasa. He made Banten famous in the world by converting the port into international port³.

Heritage tourism utilizes historical heritage as a tourist attraction. It is a legally protected cultural heritage that must have specificity from general tourism. Based on Article 1 paragraph (1) of Law Number 11 of 2010, Cultural Conservation, cultural heritage are cultural heritage material. It manifest itself as cultural heritage objects, buildings, structures, sites and areas on land or in water. Their survival is necessary because they contain significant historical, scientific, educational, religious, and/or cultural values.

This special treatment warrants further investigation because the utilization of cultural heritage as tourist attractions is part of a creative economy business. For sustainable environmental development, It needs regulatory policies employing ecotourism principle. The University of Sultan Ageng Tirtayasa (Untirta) participates in sustainable development in

¹ Dispar.bantenprov.go.id. Revitalisasi Banten Lama Tahap II Fokus Penataan Objek Wisata, 22 april 2019, was accessed 24 November 2020, Pukul 19.35. WIB.

² Travel.tempo.co., Enam Objek Wisata Yang Disinggahi Saat Napak Tilas Banten Lama, 11 November 2018, was accessed 24 November 2020, Pukul 19.50, WIB.

³ Republika.co.id., Inilah Puncak Kejayaan Banten Kesultanan Banten, 29 November 2012, was accessed 24 November 2020, Pukul 19.57. WIB.

line with the Green University vision. Thus, environmental issues (tourism development) in Banten will be studied further to follow-up the research in 2020, The tourism development in Banten Lama based on community groups. The Banten Lama featured tour is a historical site, the civilization glory of Banten Sultanate which involved community participation in its development. Thus, it needs further study, particularly on regulatory policy to support ecotourism and realize sustainable tourism principles for the government and community.

Ecotourism is an environmentally friendly tourism activity that emphasizes the aspect of nature conservation, socio-cultural economic empowerment in local communities, as well as education and learning. Its purpose is to promote a sustainable environment while preserving nature and cultural heritage. It is important to develop tourism heritage with conservation principle in Banten Lama to preserve the cultural heritage in that area. Accordingly, this study focuses on the role of the government, tourism managers, tourist, and the community in preserving it. Referring to the above-mentioned background, the researchers formulated the following research questions: How is Banten Lama's regulatory policy for the development of ecotourism-based heritage tourism? In this case, what is the role of the government, tourism managers, and tourists?

Research Methods

This study used empirical legal methods to analyze primary data (interviews and questionnaires) as well as secondary data derived from primary legal materials (the 1945 Constitution, laws, and other regulations in legal studies).⁴

Based on the discipline of law, the following factors influence the formation of law and affect the hypothesis in this study: the substance of law (legislation), the structure of law (government and community), and legal culture (community and government behavior in enforcing the law). A hypothesis is a temporary assumption and possibility on something for which reasons are estimated⁵. According to the above description, the hypothesis was an empirical study involving ecotourism-based tourism in the development of heritage tourism in Banten Lama. Empirical legal studies investigate the law in the community, the primary data related to Cultural Conservation Tourism, and the community's unwritten social behavior⁶.

Results and Discussion

1. The Regulation of Heritage Tourism Development, Ecotourism-Based In Banten Lama Area

It is very potential to develop a cultural heritage tourism in Banten Lama because it has numerous cultural heritage objects that are closely located. Based on inventory data of cultural heritage in Serang City, it has existed since 1552⁷. A Cultural Conservation Area, according to Article 1 number (6) of Law Number 11 of 2010, is a geographical unit that contains two or more cultural heritage sites that are close together and exhibit spatial characteristics. The following cultural heritage objects can be found in Banten Lama, which is located in Kasemen District: Kaibon Palace, Surosowan Palace, Spelwijk Fort,

⁴ Zainudin Ali, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, 2016, p. 106.

⁵ Hadari Nawawi, *Metode Penelitian Bidang Sosial*, Gajah Mada University Press, Yogyakarta, 2012, p.48.

⁶ Ishaq, *Metode Penelitian Hukum*, Alfabeta, Bandung, 2017, p.70.

⁷ Kementerian Pendidikan dan Kebudayaan Direktorat Jendral Kebudayaan, <https://kebudayaan.kemdikbud.go.id/bpcbbanten/daftar-inventaris-cagar-budaya-di-kota-serang-provinsi-banten>, was accessed on Monday, August 2, 2021, at 19.50 WIB.

Banten Great Mosque, Great Mosque Tower Banten, Karangantu Harbor, and Banten Girang. These cultural treasures draw the public's attention to gain knowledge and learn about the exotic value.

Through regulatory policies, the government becomes a regulator, a regulation maker or law enforcement (*politieke daad*), and state authority or state administrator in carrying out development (*materiele daad*)⁸. Essentially, development is a change in which the law must play a role. Law can not be seen as static element driving behind the change. In fact, the law must be at the forefront to ensure that it is not only intended for the follower but also for the prime mover of development⁹. The Decree of the Governor of Banten Province No. 437/Kep.160-Huk/2018, Zoning area of the Cultural Conservation in Banten Sultanate (Banten Lama), is part of the government's actions. Government legal actions are divided into two categories under state administrative law¹⁰:

- a. Government actions in public law are one-sided and two-sided actions
- b. The government's actions in private law are legal action relationship based on private law regulated in the Civil Code.

This is consistent with the role of government regulation in the development of community-based tourism, which emphasizes participation to provide welfare while maintaining environmental quality and preserving socio-cultural heritage. Community-based tourism contributes to the development of a sustainable tourism destination¹¹. Through the Governor's Decree, the government has a significant impact in changing tourism development. Its goal is to achieve sustainable tourism by exercising authority in its changes based on legality. Essentially, development is a change in which the law must play a role. Law can not be seen as static element driving behind the change. In fact, the law must be at the forefront to ensure that it is not only intended for the follower but also for the prime mover of development¹².

Cultural heritage tourism in Indonesia is rapidly expanding due to the country's rich and diverse history and culture. Each region has a distinct cultural object that draws tourists' attention. Its application is governed by Article 85 of Law No.11 of 2010, which states that the government, regional governments, and everyone can use Cultural Conservation for the purposes of religion, social, education, science, technology, culture, and tourism, with the goal of strengthening cultural identity and improving community life and income. The utilization is accompanied by the government's authority to grant permits. Thus, it must be subjected to conservation experts requirement, financial support, and sustainability efforts with training.

The development of tourism in the cultural heritage area is a special conditions. There must be permission from the government and a study involving conservation experts. Therefore, the tourism development, Cultural heritage area in Banten Lama must adhere to the provisions of the Cultural Conservation Law. Based on Article 73 paragraph (3) of Law No.11 of 2010 concerning Cultural Conservation, the use of cultural

⁸ Nur Asyh, *Eksistensi Perlindungan Hukum Warga Negara Terhadap Tindakan Pemerintah Dalam Membuat Keputusan Administrasi Negara*, Jurnal Hukum Dinamika, Jurnal Hukum Universitas Samudra Aceh, Vol.2 No.1 year 2016, p.2.

⁹ Atip Latipulhayat, *Khasanah : Mochtar Kusumaatmadja*, Padjadjaran Jurnal Ilmu Hukum, Unpad, Bandung, Vol.1 No.3, year 2014, p. 629.

¹⁰ A'an Efendi Dan Feddy Poernomo, *Hukum Administrasi*, Sinar Grafika, Jakarta, 2017, p.186.

¹¹ Widyarini S. Ira, Muhamad, *Partisipasi Masyarakat Pada Penerapan Pembangunan Pariwisata Berkelanjutan*, Jurnal Pariwisata Terapan, UGM, Yogyakarta, Vol.3.No.2 Tahun 20019, p. 126.

¹² Atip Latipulhayat, *Khasanah : Mochtar Kusumaatmadja*, Padjadjaran Jurnal Ilmu Hukum, Unpad, Bandung, Vol.1 No.3, Tahun 2014, p. 629.

heritage areas as tourism areas must consider the efforts to protect cultural heritage areas. Accordingly, it must refer to the zoning principle contained in the explanation of Article 73 paragraph (3) as follows;

- a. Core zone, the main protection area, is to safeguard the most important part of the Cultural Heritage
- b. Buffer zone is an area that protects the core zone
- c. Development zone is an area designated for the development of potential cultural heritage for recreational purposes, natural environment conservation areas, cultural landscapes, traditional cultural life, religion, and tourism.
- d. Support zone is an area designated for supporting facilities and infrastructure, as well as general commercial and recreational activities.

Based on these provisions, the model for developing heritage tourism areas (Banten Lama) must be grounded in the zoning provisions stipulated in Law No. 11 of 2010, Cultural Conservation. Based on the Decree of the Governor of Banten No. 437/Kep.160 -Huk/2018, the zoning of the Banten Sultanate Cultural Heritage Area (Banten Lama), Banten Lama is a Cultural Conservation

2. Sustainable Tourism Development, The Ecotourism Principle (Banten Lama Region).

Ecotourism is a principle-based tourism in which the community participates in environmental protection (via local wisdom) or environmental support (socio-cultural sustainability in tourism development). According to the International Ecotourism Society (TIES) cited in Emma Hijriati's quote, natural tourism travel must be environmentally responsible and improve the welfare of local communities¹³ Ecotourism is currently being developed as part of the government's strategic plan to increase the country's foreign exchange in every region. The tourism industry is currently being developed to attract tourists. According to the provisions of Tourism Law No. 10 of 2009, tourism aims to improve the welfare of the community by eliminating poverty through economic growth, overcoming unemployment, preserving nature and the environment, and improving the nation's image. These can be accomplished by promoting culture to foster a love of one's homeland. Tourism development is thus an effort to improve tourism quality based on three principles: ecological sustainability, socio-cultural sustainability, and economic sustainability. It means that tourism development can be ecologically sustainable, economically viable, ethically fair, and socially beneficial to the community.¹⁴

Banten Lama is a principle-based tourism, a cultural heritage, according to Banten Governor's Decree No.437/Kep.160-Huk/2018 concerning the zoning area of the Cultural Heritage in Banten Sultanate (Banten Lama). To ensure its long-term viability, they must incorporate ecotourism principles as a development support, such as sustaining and protecting the cultural heritage area's ecosystem. The ecotourism principle is a concept that combines environmental components, nature conservation, and community participation in the context of tourism objects. They are in charge of

¹³ Emma Hjriati, *Pengaruh Ekowisata Berbasis Masyarakat Terhadap Perubahan Kondisi Ekologi, Sosial, Dan Ekonomi Di Kampung Batusuhunan Sukabumi*, IPB, Jurnal Sosiologi Pedesaan, 2014, p.147.

¹⁴ Dadan Mukhsin, *Strategi Pengembangan Kawasan Pariwisata Gunung Galunggung*, Jurnal Perencanaan Wilayah dan Kota Unisba, Vol.14 No.1 Tahun 2014, p.2.

tourism activities to keep the environment's carrying capacity intact. Cultural and historical ecotourism is the term used to describe tourism activities in the Cultural Heritage area (Banten Lama). It includes cultural heritage objects as a tourist attraction. The creation of a Cultural Conservation Area in Banten Lama serves as the legal foundation for cultural and historical ecotourism activities.

Ecotourism-based tourism development is a process that involves community participation to maintain the environment's ecological integrity and it includes tourism resources, tourism facilities and tourism environment that supports the creation of sustainable tourism. Community support is an important part of cultural tourism, particularly in preserving cultural heritage objects—contributing to tourism development implementation. The forms of community participation are the participation of ideas, physical energy, skills and abilities, and property¹⁵. Community participation will encourage tourism development because they are the closest to tourism and are the government's resources that have the authority to manage tourist areas. The government's authority, particularly in tourism management, must realize sustainable tourism-based people development. Therefore, they must diversify tourist attractions that aim to improve community welfare, preserve cultural arts and promote environmentally friendly tourism¹⁶.

The community has a very important role in supporting tourism development. It will be difficult to realize if the local community feels neglected. The local community is the first to learn about the area's condition. As a result, they feel a sense of ownership and responsibility in developing a tourist attraction¹⁷. Ecotourism-based tourism has a very important role, Its development helps the government to improve this sector. Ecotourism is part of a tourism awareness program for tourism activists who are concerned about tourism environment. This is based on an understanding of tourism—a tourism system comprised of many interconnected subsystems. Tourism is comprised of three major components: the community, the private sector, and the government. In general, the term "community" refers to the people who live in the tourism area, as well as the rightful owners of tourism capital such as arts and culture, such as community leaders, intellectuals, non-governmental organizations, and the mass media¹⁸. In tourism development, Ecotourism is something that supports government programs, particularly in realizing sustainable tourism in the carrying capacity of the community, local wisdom, and educational culture. It is a form of government responsibility in fostering a caring personality in environmental management and economic value through creative efforts that do not harm the environment.

Banten Lama is a cultural heritage site with historic structures and relics. It takes the form of the Kaibon Palace, which was built in 1809, the Surosowan Palace in 1522 - 1570, the Great Banten mosque in 1560 - 1570, the Grand Mosque Tower Banten 1560 - 1570 and the Spelwijk Fort In 1685 - 1686. This justifies the need to protect and preserve

¹⁵ Yusuf Adam Hilman, Muhamad Saeful Abdul Aziz, *Partisipasi Masyarakat terhadap Pengembangan Desa Wisata Watu Rumpuk, Desa Mendak Kecamatan Dagangan Kabupaten Madiun*, Jurnal Kepariwisata: Destinasi, Hospitalitas dan Perjalanan, STP Bandung, Vol. 3. No.2, Tahun 2019, p.55.

¹⁶ Ibid. p. 58.

¹⁷ Ni Luh Gede Ratnaningsih, I Gst. Agung Oka M., *Partisipasi Masyarakat Lokal Dalam Upaya Pariwisata (Studi Kasus Di Desa Wisata Belimbing, Tabanan, Bali)*, Jurnal Destinasi Pariwisata, Udayana, Bali, Vol.3. No.1 tahun 2015, p.48.

¹⁸ Binahayati Rusyidi, Muhamad Ferdryansah, *Pengembangan Pariwisata Berbasis Masyarakat*, Jurnal Pekerjaan Sosial, Unpad, Bandung, Vol.1 No.3 Tahun 2018. p.157.

these historical relics for the sake of historical heritage sustainability and the pride of Banten culture. Ecotourism principle is sustainability effort in maintaining the condition of cultural heritage objects so that they are not damaged and extinct. In the community, ecotourism is commonly associated with general conservation, such as forests, rivers, and the sea. It appears to be based on Article 3 of Minister of Home Affairs Regulation No.33 of 2009, which addresses ecotourism development in the region. The ecotourism principle is concerned not only with nature conservation, but also with educational elements. Its goal is to change people's perceptions so that they care about, are responsible for, and are committed to environmental and cultural preservation.

The educational principle provides a solid foundation for developing cultural heritage tourism, such as maintaining the cultural heritage in Banten Lama as a form of tourist responsibility, expanding the concept of ecotourism as a source of energy, promoting tourism sustainability, and preserving cultural heritage objects. In this contextm the tourist refers to the government, the community, and tourism industry. Ecotourism principles aim to build tourism character as well as nature conservation. As a result, they will be able to keep tourism resources in the community. This activity is expected to have an economic impact as well as improve community responsiveness in the maintenance of tourism objects. The growth of ecotourism-based tourism is concerned with the environment and changes in the community's character. This done to adapt and create sustainable elements in the tourism ecosystem.

The preservation of cultural heritage objects in Banten Lama area employ ecotourism principle. The government and the community uphold this principle in which the government acts as a facilitator. It is to create a conducive tourism which is based on Article 22 of the Minister of Home Affairs No.33 of 2009, the development of ecotourism in the region. It includes guidance, supervision, consultation, education, training, monitoring, and evaluation. The Regent/Mayor guides the implementation of ecotourism development in the Regency/City using regional principles. Meanwhile, the Governor provides leadership in the Province and works with the Regent/Mayor to promote and implement ecotourism development in the Regency/City.

3. The Role of the Government, Tourism Managers and Tourisstin the Development of Ecotourism-Based Heritage Tourism in Banten Lama

Heritage tourism development in the Banten Lama area is a strategic issue. It is based on the Governor of Banten's Decree No. 437/Kep.160-Huk/2018, Zoning of the Banten Sultanate Cultural Heritage Area (Banten Lama). According to the decree, the Banten Lama tourism area can be designated as tourism heritage, which is a packaged tour that visits the city's historical sites and turns them into tourist attractions. The decree has altered the course of tourism development in Banten Lama. According to Article 7 of Tourism Law No. 10 of 2009, tourism development includes four components: the tourism industry, tourism destinations, marketing, and tourism institutions.

Since 2018 (after zoning), Banten Provincial Government has been working to revitalize Banten Lama as a leading tourist destination. It is based on the provisions of Article 97 paragraph (1) of Law No. 11 of 2010, Cultural Conservation, which states that the government and local governments facilitate the management of cultural heritage

areas established by the government, local governments, and/or customary law communities. The role of the Banten Provincial Government is to provide a budget of 220 billion gradually over three years. Beginning in 2018, 100 billion budget are given to the Banten Province APBD to revitalize the Old Banten area as a Cultural Conservation Area. The Banten Provincial Government is currently concentrating its efforts on the development of tourism destinations. Its goal is to create an integrated area known as the Banten Sultanate Region (KKB) which favors religious tourism.

The revitalization of the Old Banten area is one of the strategic programs proposed by the Banten Provincial Government as it known as cultural heritage area and a leading tourist area. Accordingly, zoning arrangements are important because cultural heritage sites in the core area must be protected under the provisions of Article 73 paragraph (3) of Law No. 11 of 2009, Cultural Conservation. It is important to protect cultural heritage sites in the Banten Lama area. The study identifies several flaws, particularly in its management, as well as core area activities that may endanger the cultural heritage site, such as soccer games in the Spelwijk Fort area. The community was sitting on the fort, which is illegal because it can harm cultural heritage sites.

The local government has implemented a preventive measure by stationing special police officers around cultural heritage sites. This is done to deal with legal events that violate cultural heritage provisions. The custodians are determined by the Head of the Banten Cultural Conservation Preservation Center's Decree Number 0004/E7.5/KP/2020. It is about the appointment of cultural heritage custodians. This caretaker is in charge of cleaning, caring for, and maintaining security, as well as receiving and guiding visitors, recording visitors, carrying out emergency response to protect cultural heritage, and reporting on duty execution to relevant officials. The Banten Provincial Government has made innumerable efforts to develop heritage tourism in the Banten Lama tourist area, but there are still countless violations in the area, including violations committed in the core area of cultural heritage. According to previous studies, despite the government's efforts, such as issuing a maintenance interpreter's decree, management and maintenance in the cultural heritage tourism area (Banten Lama) have not been maximized in the long run. It has been established that there are violations that cause damage to cultural heritage sites. As a result, the government must exercise more disciplined oversight to provide maximum protection to the cultural heritage object. They can work with tourism-aware groups to raise tourism awareness through activities such as community responsibility and involvement in upholding tourism ethics in the cultural heritage sector.

Tourism management in Banten Lama (cultural heritage area) is currently handled by the local community individually. Even though the government is playing a role in revitalizing the area, they are still working to establish a tourism management agency. The establishment of this special agency is required because the public's interest in visiting the old Banten area is increasing, causing problems for environmental responsibility such as parking issues, garbage, and control of tourism actors. Because this area is a cultural heritage area, special treatment is required to protect the preservation of cultural heritage objects. In ecotourism principle, tourism actors have a very important role such as tourists and tourism managers. Meanwhile, the local community plays an

integral role in forming an integrated tourism ecosystem and is responsible for developing sustainable tourism.

Conclusion

Based on the Decree of the Governor of Banten No.437/Kep.160-Huk/2018, Zoning in the Cultural Conservation Area (Banten Sultanate or Banten Lama), the regulatory model for developing ecotourism in Banten Lama refers to the provisions of the Cultural Conservation Law. Based on Article 73 paragraph (3) of Law No.11 of 2010 concerning Cultural Conservation, utilizing cultural heritage areas as tourism areas must pay attention to efforts to protect cultural heritage areas. As a result, its use must adhere to the zoning principle outlined in the explanation of Article 73 paragraph (3), with the core zone serving as the primary protection zone for the most important part of the Cultural Heritage. In the meantime, a buffer zone is a zone that protects the core zone. A development zone is an area designated for the development of cultural heritage for purposes such as recreation, natural environment conservation, cultural landscape, traditional cultural life, religion, and tourism. The supporting zone is an area set aside for facilities and infrastructure, as well as general commercial and recreational activities.

The government's role began in 2018 (after zoning), when they revitalized the Banten Lama area, making it a leading tourist destination in Banten. It is based on Article 97 paragraph (1) of Cultural Conservation Law No. 11 of 2010, which states that the government and local governments facilitate the management of cultural heritage areas established by the government, local governments, and/or indigenous peoples. Over the course of three years, the Banten Provincial Government gradually issued a budget of 220 billion. It begins in 2018 with a budget of 100 billion delivered through the Banten Provincial APBD. The budget is for re-designating Banten Lama as a Cultural Conservation Area and issuing a Decree of the Head of the Banten Cultural Heritage Preservation Center Number 0004/E7.5/ KP/2020 regarding the designation/appointment of cultural heritage custodians.

Suggestion

Even though the government made efforts by issuing a caretaker decree, management and maintenance in the Banten Lama area did not run optimally. There were violations, which resulted in the destruction of cultural heritage sites. As a result, it is necessary to have integrated management efforts to improve supervision in the cultural heritage area.

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