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Tourism Law Enforcement in Regional Spatial Planning and Licensing Perspectives

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ABSTRACT

The increasing development of the tourism sector in Kuningan Regency reflects the progress and development of the area. By looking at the licensing and spatial planning perspectives, a study on the development of the tourism sector in Kuningan Regency is needed. Hence, this study aims to analyze tourism licensing mechanism and tourism law enforcement concerning spatial planning and licensing in Kuningan Regency. This study applied an empirical juridical research method in which the primary and secondary data used were collected through interviews, observation, and literature study. As result, it was found that the licensing mechanism for tourism development in Kuningan Regency is divided into two categories, namely licensing carried out at the Investment Agency and One-Stop Integrated Service and the Gunung Ciremai National Park Office. It is because Kuningan Regency has an area included in the National Park zone, so the licensing process should directly go to the Ministry of Environment and Forestry. Preventive law enforcement efforts have been carried out by law enforcement officers, including drafting legal opinions, holding meetings, as well as avoiding violations during the licensing process. Thus, it can be concluded that the policy and the implementation of law enforcement in the licensing and spatial planning for tourism development in Kuningan Regency are carried out well by the Regional Government and law enforcement officers. Yet, a renewal on Kuningan Regency Regional Regulation on a Detailed Spatial Planning as a basis for determining licenses is needed.

Keywords: Law Enforcement, Tourism, Licensing, Spatial Planning

INTRODUCTION

16 Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the territorial space of the Unitary State of the Republic of Indonesia, both the land, the water as well as the natural resources therein, is a gift from God to the Indonesian nation that needs to be protected and managed in a sustainable manner for the optimal welfare of the people.

One of the ways for a country to be known internationally is by improving the quality of life. It is in line with one of the development goals in Indonesia which is to improve the quality of human life. An acceleration in tourism development is needed to introduce Indonesia to the international world. Tourism has a strategic role in Indonesia's development, especially as a source of foreign exchange in addition to the oil and gas sector. As a source of foreign exchange, tourism has enormous potential. It is what drives the government to promote development in the tourism sector.¹

19 Tourism will provide a lot of income for regions that are aware of their potential. The development of tourism is currently very fast. Many flight routes, new tourist destinations, and

¹⁴ Dadan Mukhsin, *Strategi Pengembangan Kawasan Pariwisata Gunung Galunggung (Studi Kasus Kecamatan Sukaratu Kabupaten Tasikmalaya)*, Jurnal Perencanaan Wilayah dan Kota, Vol.14 No.1, Universitas Islam Bandung, Bandung, 2014 p. 2

accommodations prove that tourism has the potential to improve a country's economy.² Development planning is not only about hard infrastructure (physical infrastructure) but also about soft infrastructure, especially in the form of institutional development. In Indonesia, decentralization has been implemented to support regional development policies. As public infrastructure manager, the government is required to have good institutions, including management.

Kuningan Regency is known for its tourist destinations. Therefore, there is a lot of tourism potential that can be generated. These potentials are supported by the existence of a government policy establishing Kuningan as a conservation regency that always focuses on preserving the environment and natural balance and rejecting all forms of industrial development that destroy the nature balance so that Kuningan Regency makes tourism development one of its development priorities.³ Development to attract tourists, as well as investors in the industrial and tourism sectors, is being carried out intensively. Hence, it requires extra services from the government in the field of licensing to create efficient, effective, and on-target services and licenses.

Spatial planning is a means to realize sustainable development. The concept of sustainable development accommodates the goals of economic growth, alleviating poverty, and natural resources management to meet long-term needs.⁴ The increased development in the tourism sector in Kuningan Regency has indirectly led to an increase in licensing applications expecting to get excellent services dynamically, responsively, quickly, and on-target.

Control of spatial use in each region needs to be properly implemented. Development in the tourism sector can improve the economy. However, developments which are not accompanied by clear licenses and supervision can give various negative impacts. The control and utilization of spatial planning in Kuningan Regency is guided by Regional Regulation Number 26 of 2011 on the Kuningan Regency Regional Spatial Plan for 2011-2031. This spatial plan serves as a guide in establishing the Kuningan Regency Long-Term Development Plan and Medium-Term Development Plan.⁵

Kuningan Regency is one of the regencies in Indonesia that does not yet have a Detailed Spatial Plan. Based on data, there are only fifty-five regencies or cities having Detailed Spatial Plans. This issue needs to be discussed in terms of licensing that uses Detailed Spatial Plans as the basis for its determination. Thus, this study aims to analyze tourism licensing mechanism and tourism law enforcement concerning spatial planning and licensing in Kuningan Regency. Based on the background previously described, the formulated research questions are: 1) how are the tourism licensing mechanism in Kuningan Regency? and 2) how tourism law enforcement concerning spatial planning and licensing is carried out in Kuningan Regency?

¹⁸ Akhmad Bories Yasin Abdillah, Djahur Hamid, dan Topowijono, *Dampak Pengembangan Pariwisata Terhadap Kehidupan Masyarakat Lokal Di Kawasan Wisata*, Jurnal Administrasi Bisnis (JAB), Universitas Brawijaya, Malang, Vol. 30 No. 1, 2016, p. 75

¹⁷ Lina Masruroh dan Neni Nurhayati, "Strategi Pembangunan Pariwisata Dalam Rangka Peningkatan Pendapatan Asli Daerah di Kabupaten Kuningan", Universitas Kuningan, 2016 p.125

⁴ Yunus Wahid, *Pengantar Hukum Tata Ruang*, Prenadamedia Group, Jakarta, 2016, p. 11

⁵ Haris Budiman, *Kebijakan Tata Ruang Dalam Penerapan Pusat Kegiatan Lokal di Kabupaten Kuningan Untuk Peningkatan Pendapatan Asli Daerah*, Jurnal Unifikasi, Fakultas Hukum Universitas Kuningan, Kuningan, Vol.2 No.2, Juli 2015, p. 3

METHOD

This study applied a juridical-empirical approach with descriptive-analytical legal research. This empirical-juridical study used library research and field studies to collect the data.⁶

RESULTS AND DISCUSSION

A. Tourism Licensing Mechanism in Kuningan Regency

Tourism license is needed to run a tourism business and the principles of good tourism governance. The tourism license is then realized in the form of a Tourism Business Registration Certificate issued by the Regional Government, in this case the Governor, Regent or Mayor, and the Central Government, in this case the Minister of Tourism and Creative Economy. The Tourism Business Registration Certificate is issued by the Government based on administrative area considerations and investment from foreign investors.

The obligation of tourism business owners to register their business licenses is regulated in Article 15 of Law Number 10 of 2009 on Tourism and Article 5 of Regulation of the Minister of Tourism Number 10 of 2018 on Electronically Integrated Business Licensing Services in the Tourism Sector. For tourism business owners, licensing has an important meaning including⁷: as a means to prove that the tourism business does not violate the law; as a business promotion facility; as a requirement to support business development; and as ease of getting business partners.

The aim of establishing a Tourism Business Registration Certificate after the issuance of a Business Identification Number for tourism business owners in business licensing is to guarantee legal certainty for business owners, in the sense that it provides protection and valid evidence under the provisions of the legislation. Besides, the Tourism Business Registration Certificate functions as a source of information on business licensing in the tourism sector so that the owner's data can become a reference for the government in observing developments in the local and national tourism sector.

Tourism business licenses can be processed through the Online Single Submission system. With the Online Single Submission system, applications for tourism business licenses for individual, micro, small, medium, and large companies, local and foreign companies, or business and legal entities, are now submitted through the Online Single Submission portal. The basis for the application of the Online Single Submission is Government Regulation Number 24 of 2018 on Electronically Integrated Business Licensing Services which has been in force since August 2018. The application for tourism business licenses in Kuningan Regency refers to the Regulation of the Minister of Tourism Number 10 of 2018 on Electronically Integrated Business Licensing Services in the Tourism Sector. Meanwhile, the application of tourism business licenses for the tourism sector under the auspices of Mount Ciremai National Park refers to the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.8/Menlhk/Setjen/Kum.1/3/2019

⁶ Fakultas Hukum Universitas Kuningan, Buku Panduan Penulisan Karya Ilmiah, Fakultas Hukum Universitas Kuningan, 2019, p.16

⁷ Michael Agustin, *Aspek Hukum Perizinan Dibidang Pariwisata*, Artikel, Managing Partner Manp Lawyers Litigation & Corporate, 2020

1 on Nature Tourism Concession in Game Reserves, National Parks, Forest Parks, and Nature Tourism Parks.

7 With the stipulation of Government Regulation Number 24 of 2018 on Electronically Integrated Business Licensing Services, then referring to Article 1 Paragraph (5), 4 Electronically Integrated Business Licensing or Online Single Submission, hereinafter abbreviated as OSS, is business licensing issued by Online Single Submission agencies 4 for and on behalf of the minister, head of institutions, governor, or regent/mayor to business owners through an integrated electronic system. Kuningan Regency uses an online single submission system in implementing business licensing in the tourism sector for both tourism under the Gunung Ciremai National Park Office and the Kuningan Regency Regional Government.

1. **Electronically Integrated Business Licensing Services or Online Single Submission 24 in the Tourism Sector based on the Regulation of the Minister of Tourism Number 10 of 2018**

Licensing management has been decentralized to regional governments following 9 the delegation of authority from the Central Government to the Regions with the hope that regional governments can regulate and manage their government affairs. Government affairs 9 under the authority of regional governments consist of mandatory and optional affairs. Mandatory affairs mean that the government administration is 6 guided by minimum service standards, carried out in stages, and determined by the government. Meanwhile, optional affairs, both for regency/city regional governments, include government affairs that have the potential to improve people's welfare under 32 the conditions, peculiarities, and superior potential of the region concerned.⁸ In general, licensing applications must follow certain procedures determined by the government and the licensing applicant must meet certain requirements determined unilaterally by the government. Licensing 27 procedures and requirements vary depending on the licensing type, purpose, and agency.

Types of tourism business licenses consist of Tourism Business Registration Certificate and Commercial or Operational Licenses in the form of Tourism Business Certificate. It is in line with the provisions of Article 6 of 3 Regulation of the Minister of Tourism Number 10 of 2018 on Electronically Integrated Business Licensing Services in the Tourism Sector. Based on the analysis, there have been differences in the number of Tourism Business Registration Certificates in Kuningan Regency in the last three years. 2019 had a decrease compared to 2018 but experienced an increase in 2020.⁹

Tabel 1.1

Number of Tourism Business Registration Certificates

No	Year	Number of Tourism Business Registration Certificates
1	2018	27
2	2019	8
3	2020	37

30 Swanto Sunarno, *Hukum Pemerintahan Daerah di Indonesia*, Jakarta, 2006, p. 35

⁹ Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu Kabupaten Kuningan

2. Tourism Licensing Mechanism Based on the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.8/Menlhk/Setjen/Kum.1/3/2019

The tourism business activities in the Mount Ciremai National Park area in Kuningan Regency refer to the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.8/Menlhk/Setjen/Kum.1/3/2019 on Nature Tourism Concession in Game Reserves, National Parks, Forest Parks, and Nature Tourism Parks. The regulation explains tourism licenses in national parks, game reserves, forest parks, and nature tourism parks. The development of the tourism business consists of two types, namely the business providing natural tourism services and the business providing natural tourism facilities. Based on Article 4 Paragraph (2) of Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.8/Menlhk/Setjen/Kum.1/3/2019 on Nature Tourism Concession in Game Reserves, National Parks, Forest Parks, and Nature Tourism Parks, the development of a business providing nature tourism services can be carried out in the following zones or blocks: Game Reserves, National Parks except for the core zone, forest Parks, and Nature Tourism Parks. Meanwhile, the development of a business providing natural tourism facilities can be carried out in utilization zones or blocks as regulated in Article 4 paragraph (3) of Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.8/Menlhk/Setjen/Kum.1/3/2019 on Nature Tourism Concession in Game Reserves, National Parks, Forest Parks, and Nature Tourism Parks.

The nature tourism business as referred to in Article 4 paragraph (1) is carried out based on business licenses for the nature tourism service provider and business licenses for the nature tourism facility provider. Nature Tourism Concession License is a business license granted to undertake nature tourism activities in areas of game reserves, national parks, forest parks, and nature tourism parks. As regulated in Government Regulation Number 36 of 2010 and Regulation of the Minister of Forestry Number 48/Menhut-II/2010 on Nature Tourism Concession in Game Reserves, National Parks, Forest Parks, and Nature Tourism Parks, as well as Regulation of the Minister of Forestry No. 4/Menhhut-II/2012 on Amendment to Regulation of the Minister of Forestry Number 48/Menhut-II/2010 on Nature Tourism Concession in Game Reserves, National Parks, Forest Parks, and Nature Tourism Parks, Nature Tourism Concession License is divided into two types, namely Business Licenses for the Nature Tourism Service Provider (IUPJWA) and Business Licenses for the Nature Tourism Facility Provider (IUPSWA).

B. Tourism Law Enforcement Concerning Spatial Planning and Licensing in Kuningan Regency

1. Tourism and Spatial Planning Sector

Tourism is a complex social phenomenon involving the whole person and having various important aspects, including sociological, psychological, economic, and ecological aspects. Development in the tourism sector will work well if the wider community can actively participate. The community needs to understand the meaning as well as the benefit of tourism to be more able

to have an impact on tourism development. Besides, the community should also know the detrimental impacts caused by tourism.¹⁰

The current impacts of tourism include: 1) the economic impact – as a source of foreign exchange; 2) the social impact – as job creation; and 3) the cultural impact – as a means to introduce culture and art. Referring to the legal system theory of Lawrence M. Friedman, namely legal structure, legal substance, and legal culture, the three points previously mentioned can be described as follows.¹¹

a. Legal Structure

Structurally, the tourism management in Kuningan Regency is divided into five, namely Kuningan Regency Regional Government, Kuningan Regency Regional Public Company, Individuals, Villages, and Groups. Table 1.2 presents sample data on tourism management in Kuningan Regency.¹²

Tabel 1.2
List of Kuningan Regency Tourism Managers

No	Tourism Name	Location	Manager	Note
1	Woodland	Cilimus Sub-District	Individual	-
2	Pondok Pinus	Cigugur Sub-District	Individual	-
3	Pendakian Linggarjati	Cilimus Sub-District	Group	Tourism Driving Group
4	Bumi Perkemahan Cibunar	Cilimus Sub-District	Group	Tourism Driving Group
5	Bumi Perkemahan Palutungan	Cigugur Sub-District	Group	Alam Citra Mandiri Cooperative
6	Objek Wisata Linggarjati	Cilimus Sub-District	Group	PT. Linggar Djati Wigena
7	Sangkanurip Indah	Cigandamekar Sub-District	Kuningan Regency Regional Government	-
8	Situs Taman Purbakala	Cigugur Sub-District	Kuningan Regency Regional Government	-

¹⁰ Tika, Rifa, *Analisis Dampak Kegiatan Taman Wisata Terhadap Peningkatan Ekonomi Masyarakat Perspektif Ekonomi Islam (Studi Pada Taman Wisata Poeng Wisata Tabek Indah Indah)*, Tesis, Repository, UIN Raden Intan Lampung, 2017, p.21

¹¹ Muljadi A.J, *Kepariwisata dan Perjalanan*, Jakarta : PT. Raja Grafindo Persada, 2009, p. 111

¹² An interview with Tourism Managers at Kuningan Regency

9	Waduk Darma	Darma Sub-District	Kuningan Regency Regional Public Companies and Various Businesses	-
10	Balong Dewa	Cigugur Sub-District	Kuningan Regency Regional Public Companies and Various Businesses	-
11	Sukageuri View	Cigugur Sub-District	Village	Cisantana Village Owned Enterprises
12	Sawah Lope	Kramatmulya Sub-District	Village	Cikaso Village Owned Enterprises

Structurally, it provides economic impacts, namely increasing the income of the community and the government as well as expanding business and job opportunities. The increased income of the community and the government comes from expenditures and costs incurred by tourists during their trips, such as for hotels, food and drink, souvenirs, transportation, etc. Besides, it also encourages improvement and growth in the development of other sectors. One characteristic of tourism is that it is dependent on and related to the development of other sectors. Thus, the development of tourism will encourage improvement and growth in the development of other sectors. Meanwhile, these business and job opportunities were born due to tourists' demand. Hence, the arrival of tourists to an area will open opportunities for people to become hoteliers, guest house owners, homestay owners, restaurant owners, stall owners, transportation owners, etc. This business opportunity will provide opportunities for local people to work and increase their income to be able to support their life.

In addition to economic impact, there is also social impact, namely the wider employment opportunities. Facilities and infrastructure, such as hotels, restaurants, and nature attractions, are "labor-intensive" businesses. Running this business requires manpower. Hence, the more tourists who visit, the more jobs are created.

b. Legal Substance

Substantially, the Kuningan Regency Regional Regulation Number 26 of 2011 on the Kuningan Regency Regional Spatial Plan for 2011-2031 and the Kuningan Regency Regional

Regulation Number 2 of 2013 on the Implementation of Tourism are related to one another. This is indicated by the creation of regional regulations on the implementation of tourism made after the regional regulation on the regional spatial plan. The regional regulation on the implementation of tourism is made by referring to regional regulation on the regional spatial plan so that the implementation of tourism and regional spatial plan in Kuningan Regency are not overlaps.

Yet, the regional regulation on the implementation of tourism and the regional regulation on the regional spatial plan has little linkage with the regional regulation on licensing in Kuningan Regency as the regional regulation on licensing services was made in 2009 with reference to the old regulations. Thus, it is necessary to renew the regional regulations.

c. Legal Culture

Legal culture has impacts, namely encouraging the preservation of culture and historical heritage, encouraging the maintenance of the environment, and ensuring tourists enjoy unique and original experiences.

2. Tourism Law Enforcement in Kuningan Regency

Law enforcement efforts carried out against the implementation of tourism in Kuningan Regency are preventive law enforcement. Preventive law enforcement efforts are efforts to prevent crime which is part of criminal politics. Administrative law enforcement is a type of law enforcement mostly carried out in the licensing sector. This is understandable as for relatively light violations, administrative sanctions can be applied. Administrative law enforcement is relatively easy to implement, apart from the fact that the procedures are not too complicated, the violations committed are also relatively easy to ascertain. In addition to supervision, another means of law enforcement is sanctions. Sanctions play an important role in law and regulation. Sanctions are the core of state administrative law enforcement. Sanctions are needed to guarantee state administrative law enforcement.¹³

Article 45 paragraph (3) of Government Regulation Number 24 of 2018 on Electronically Integrated Business Licensing Services explains that regency or city spatial plans are the basis for determining the location of a business and/or activity in issuing a location license. In addition, Article 44 of Government Regulation Number 24 of 2018 on Electronically Integrated Business Licensing Services describes that regional governments that do not yet have a Detailed Spatial Plan are given six months from the enactment of the Government Regulation. The results of interviews with the Head of the Planning and Spatial Utilization Section at the Public Works and Spatial Planning Office of Kuningan Regency proved that Kuningan Regency does not yet have a Detailed Spatial Plan. It happened due to budget constraints in rearranging the Detailed Spatial Plan for Kuningan Regency. In 2016, Kuningan Regency made a Regional Regulation Draft on a Detailed Spatial Plan and Zoning

¹³ Monalisa Tjhoengi , H Moch Ardiz , Rosdiana, *Penegakan Hukum Terhadap Ahli Waris Yang Tidak Melaporkan Pengangkutan Jenazah Yang Dilakukan Dengan Cara Iring-Irangan Di Kota Balikpapan*, Jurnal *Lex Suprema*, Fakultas Hukum Universitas Balikpapan, Balikpapan Selatan, Volume 1 Nomor II, 2019, p. 9

Regulation for the Urban Areas of Kuningan, Cilimus, Kadugede, Ciawigebang, and Luragung. However, due to the renewal of a Government Regulation in which its position is higher, the Regional Regulation Draft needs to be reviewed and adjusted to the existing regulations. Thus, a large budget is needed to rearrange the substance of the Regional Regulation Draft on a Detailed Spatial Plan and Zoning Regulation for the Urban Areas of Kuningan, Cilimus, Kadugede, Ciawigebang, and Luragung.¹⁴

Determining the location license in Kuningan Regency, as long as the Kuningan Regency Regional Regulation on a Detailed Spatial Plan does not yet exist, is based on the Kuningan Regency Spatial and Regional Plan. It is adjusted to the Online Single Submission system which determines using the Spatial and Regional Plan for areas that do not have a Detailed Spatial Plan. The Kuningan Regency Spatial and Regional Plan is stipulated in the Kuningan Regency Regional Regulation Number 26 of 2011 on the Kuningan Regency Regional Spatial Plan for 2011-2031. Based on the analysis of tourism law enforcement related to licensing and spatial planning in Kuningan Regency, there is no case reaching the court. It happened due to preventive law enforcement carried out by law enforcement officers in Kuningan Regency in coordination with related agencies. Some of the efforts made by law enforcement officers in carrying out preventive law enforcement are as follows:

1. Making a legal opinion – carried out by law enforcement officers in expressing their opinion on the formulation of regional regulation in Kuningan Regency. Kuningan Regency is currently updating regional regulations on tourism management.
2. Holding a meeting – held by law enforcement officers and several related agencies to discuss the tourism development in Kuningan Regency.
3. Licensing Process – based on the analysis, the tourism licensing process in Kuningan Regency was carried out well. It is because the applicants need to fulfill various requirements along with a recommendation letter from the Youth, Sports, and Tourism Office, and Public Works and Spatial Planning Office of Kuningan Regency before receiving license to organize a tourism business in Kuningan Regency. In applying for this recommendation letter, strict consideration of the feasibility of tourism development in Kuningan Regency is made. If it is not considered feasible, the applicants cannot obtain a license in tourism administration.¹⁵

CONCLUSION

The licensing tourism arrangements for organizing tourism in Kuningan Regency refer to Government Regulation Number 24 of 2018 on Electronically Integrated Business Licensing Services where all licenses already use the Online Single Submission system. Considering that Kuningan Regency is also a conservation area, the licensing mechanism for tourism development in Kuningan Regency is divided into two categories, namely based on the Regulation of the Minister of Tourism Number 10 of 2018 on Electronically Integrated Business Licensing Services in the Tourism Sector which is sheltered by the Investment Agency and One-Stop Integrated Services, and the Regulation

¹⁴ An interview with Doni Handono, on June 11, 2021 at Kantor Dinas Pekerjaan Umum dan Penataan Ruang Kabupaten Kuningan.

¹⁵ An interview with Andi Manapang timbul Jonathan, on April 14 2021, at Kantor Kejaksaan Negeri Kuningan

2 of the Minister of Environment and Forestry of the Republic of Indonesia Number P.8/Menlhk/Setjen/Kum.1/3/2019 on Nature Tourism Concession in Game Reserves, National Parks, Forest Parks, and Nature Tourism Parks which is sheltered by the Gunung Ciremai National Park Office. Law enforcement officers in coordination with related agencies have made various preventive law enforcement efforts. Preventive law enforcement efforts include the preparation of legal opinions, meetings, and the licensing process.

SUGGESTION

Considering various problems previously stated, it is suggested that the Regional Government of Kuningan Regency should coordinate with the relevant National Agencies in preparing the licensing mechanism to see the spatial planning policy according to their designation so that land conversion does not occur in tourism development in Kuningan Regency. Besides, for tourism law enforcement in Kuningan Regency to run effectively, the Regional Government of Kuningan Regency should immediately complete the formulation of the Regional Regulation Draft on a Detailed Spatial Plan which provides a detailed explanation of Kuningan Regency Regional Regulation Number 26 of 2011 on the Kuningan Regency Regional Spatial Plan for 2011-2031.

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