

# Reformation on Local Tourism Permit Practice in Indonesia: A Case in Semarang Regency

Tity Wahyu Setiawati<sup>1</sup>, Marjo<sup>2</sup>, Tutut Ferdiana Mahita Paksi<sup>3</sup>

<sup>1,2,3</sup>Faculty of Law, Universitas Diponegoro, Semarang 50275, Indonesia  
Email: tity.ws@gmail.com

**Abstract:** Tourism was programmed to increase national income by improving an effective and valuable tourist object. Nowadays, tourism was being organized by both national and local government through incorporation with the third party. Tourism is a wide part of tourist object, tourist, tourism policy, and supporting tourism facilities that all of them should be integrated to build of that effective and valuable Indonesian tourism. Tourism development area should be stipulated on government regulation in their regional urban land use planning. That could be the government guidelines to setting and mapping the tourism policy based on the land use planning. But, tourism development area in Semarang Regency was contradicted to the urban land use planning regulation where happened of a rejection of tourist resort's location permit submission because of unclear and un-related regulation substance. That resort was classified as cultural heritage-based resort according to national Indonesian cultural protection regulation hence it was concluded as tourism supporting facility. The result of the research was public permit issuance at Semarang government had bad public service because of carpe diem problem. The resort had been accused to establish above Semarang urban green space and destructing river bank next to the resort land. According to Semarang Regional Government the resort break the rule of urban land use planning for agriculture land. Besides, there is indication of corrupt mentality among the government apparatus to let the permit by asking any beneficial feedbacks. The way to reform Semarang government was by moral reformation depend on Van Peurseun cultural theory.

**Keyword:** Tourism, Location Permit, Tourist Resort, Semarang Government

## 1. Introduction

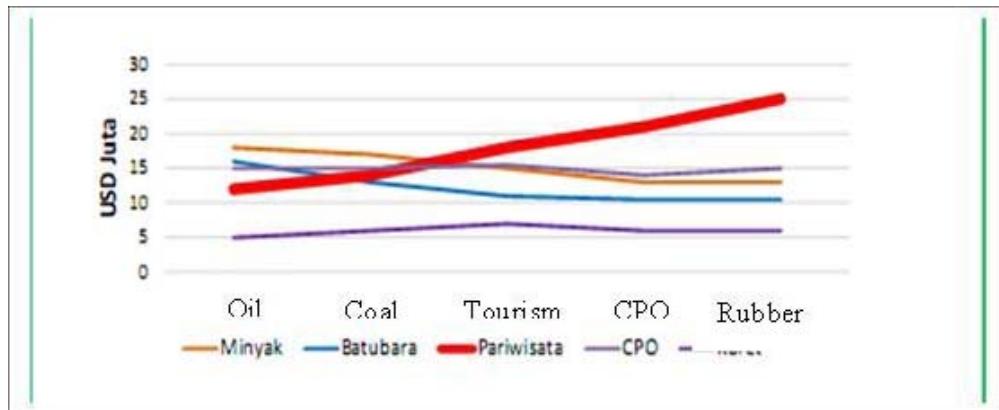
“Over the past two decades, significant research attention about the tourism industry has been directed towards addressing the issue of how stakeholders of the tourism industry throughout the tourism supply chain should be engaged in order to effectively utilize the respective government economic policies and thus to influence the development and maintenance of economically viable tourism.” (Wattanukuljarus & Coxhead, 2008). Tourism could be one alternative way to increase national income because of the high interest from tourist both domestic and international to visit any tourist object as part of their leisure needed. Based on Indonesia Statistic Centre, the total amount of international tourist who visited Indonesia tourist object reach the number of 9.435.411 people at 2014 and increasing into 12.023.971 at 2016. Besides, the total amount of ASEAN visitors also grow up into 9,7% from Thailand, 7,9% from Singapore, and 4,4% from Malaysia.

It supports Indonesian financial income as we earned 1.200\$ according to Indonesia Investment at 2016. It's predicted the income will be increased against of coal and mineral sector as follow:



**Figure 1**

Foreign exchange Acceptance Projection from Economical Main Sectors in Indonesia



Tourism is predicted to be the highest foreign exchange approximately supports USD 24 Billion at 2019 as it increases every year. It donates 10% of national Gross Domestic Product (GDP) and be the highest Gross Domestic National receiver at ASEAN (Indonesia Tourism Ministry Report 2016). Beside of the high foreign exchange, tourism sector could be one way to increase any job fields opened as it predicted to grow 30% around the next 5 years. One of the job fields that may open is any business related to tourism development for example profitable tourist object and tourist supporting facilities such as hotel, motel, tour and travel, resort, and restaurant.

But, government finds some problems hampering tourism development strategy. *Firstly*, unprepared tourism destination on some local areas. The unprepared tourism destination means there are some tourism destinations around Indonesia which is interested enough to visit but not ready to be visited due to limited access of management and accessibility to support the amenity. It can be shown by the low number of tourism service infrastructure index at 101, and ground and part infrastructure at 77, and ICT preparation at 85. *Second*, the society around of the tourism destination isn't ready to optimize the destination management. This means, somehow society feels annoyed by the visitor and not support government program to build new tourist business around of the area. *Third*, un-optimal tourism supply chain industry synergy which influence the differences of tourist object's competitiveness and lack awareness in environmental responsibility (Ministry of Tourism of Republic Indonesia Report 2016).

According to problems mentioned above, one of tourism development problems in Indonesia especially in Semarang Regency comes from difficult tourism permit's access to build and develop tourism supporting facilities which is caused by urban land use planning deviation and bad public service among government. That problem had occurred on spatial land of a resort allotment whether was built above green space or settlement land. The land on where the resort established is green space land for agricultural purpose and at the same time is directed to be nature-based tourism area development.

Besides, Semarang government banned the resort for being built next to Provincial River under supervision of Ministry of Public Work and Housing Republic Indonesia which means it should get permission to build any building that un-related to irrigation purpose around of river bank. Semarang government declared if the reason of urban planning green space determination depends on the existence of the river for farm irrigation.

The resort has been fulfilled the regulation for having environmental permit and building permit but their location permit submission was being rejected by Semarang government by those reason. The unsynchronized regulation substance between tourism planning and urban land use planning makes the society especially tourism entrepreneur become the victim.

## **2. Methodology**

This research is included in doctrinal legal research which was developed by socio legal approach. It combines doctrinal legal in different perspective especially to learn real facts about “the legal and social norms which are developed by people in association with each other” (Eugen Erlich, 1936). People association here means Semarang Government and Semarang Society. It also developed by constructivism paradigm where law be seen as various realities. “Law is stipulated on different mental construction among individual and social included researcher and informants and make law has various interpretation” (Guba & Lincoln, 1989). The data is collected from primary and secondary data. The research method was mainly discussed about literature studies and permit procedure at Semarang government.

## **3. Literature Review**

Government responsibility reforms always identically shows the past Indonesian bureaucracy condition where corruption, collusion, and nepotism are coloring apparatus working in both national and regional area due to willingness to gain power and money. The importance task of government is giving public service to the society in order to gain society welfare. “The service given by Government means that thing which when added to a product, it increases its utility or value to the customer” (Davidow, 2005). A difficulty of permit submission to government is an old issue that happened continuously. The main problem of the corruption, collusion, and nepotism practice is coming from government apparatus mentality of their unprofessional working although they hold good governance principles as their guideline while providing the service. But till today, the reformation gives nothing.

Other research which is related to tourism permits, talks about investment permit where tourism permits are part of investment. Tourism could give multiplier effect for increasing financial income where multiplier effect only can be planted on several majority sectors in which could increasing the number of National Gross Domestic Product. But, the spirit of gaining any higher national income through tourism sector isn’t accompanied by good management to improve viable tourism chain. Beside, most of tourism research analyzed only in one point of view which makes the research has limited analysis point.

## **4. Finding**

### *4.1 Local Tourism Permit Practice at Semarang Regency*

Semarang Regency has lot of potential tourism destinations that can be developed to be tourism recreation objects. It is kind of natural based, cultural heritage and agricultural tourism. The treasure of Semarang traditional culture can be the icon so that the visitor can enjoy the cultural based tourism through some legendary places and stories, for example The legend of Rawapening, the story of Ungaran Mount, Gedong Songo temple and so on. Those tourist attractions somehow need any supporting facilities to serve comfort for visitors who want to stay longer at Semarang. It is because, “three things what visitors need during their visit are loading, food and beverage, and support industries” (Mill and Morison, 1985). According to Republic Indonesia law of national tourism development those supporting facilities are hotel, motel, villa, resort, tour and travel, and restaurant which are built in either modern or traditional style depending to the business concept.

Most of tourism destination development is displaced. It is caused by the lack of government attention in developing tourism sectors whether on how the government regulates the regional tourism policy planning or in implementing the rules. There are two major rules which have been used to manage tourism development in Semarang Regency i.e. Semarang urban land use planning and Semarang Tourism Development Planning. On the contrary, according to the case mentioned on the first line, the problem occurs due to unsynchronized of permit related to tourism development. Urban land use planning policy is being used to regulate the urban land uses for “exhibiting inefficient patterns that are of a major concern for sustainable development” (Leccese et al, 2000; Silberstein and Maser, 2000; Ward et al, 2003; Williams et al, 2000). “Low residential densities, sprawl and leapfrog fragmentation of urbanization, rapid open space development on the edge outweighing redevelopment of the declined inner city and patches of single land uses, all dominate in current urban form reality” (Galster et al, 2001; Grimshaw, 2000; Silberstein and Maser, 2000; Williams, 2000). Urban land use planning will divide the land pattern to be used as residential area, agricultural area, tourism development area, restricted and protected area, and so on. Then, tourism development planning is being used to be Government guideline in deciding on which the side of tourism sector will be developed.

Permit is used to give access for something unpermitted to be permitted. Especially for tourism, permit is given to built any building in the form of building permit it showed that the building is legal. Then tourism supporting facilities like hotel, motel, resort, villa, and restaurant should have operational business permit, location permit, environmental permit. One case we find related to this is a resort whose its location permit submission being rejected by government because of the resort land status is an urban green space which its functions is as agricultural land. According to Regional Tourism Development Planning, the land on where the resort established is concluded as tourism cultural heritage-based land.

The permit was being rejected due to different nomenclature of both regional regulation when urban land use planning forbid the resort to build then the tourism development planning support the resort to build. This condition happened because government doesn't involve society while making the policy. Besides compared to other hotel location permits, the hotel permit submission was accepted by government although the land on where the hotel established is above of protected area due to the land is next to Provincial River. Both of the cases have the same background on how they are forbidden to build or to operate any business in green space land but the resort's submitted permit is being declined but the hotel is accepted. It shows that government policy tends to support big business scope that could give them more benefit. Therefore, the step and regulation to submit the location permit as the resort case mentioned above has written as follow:

*First*, depend to Article 4 paragraph 1 Regulation of Minister for Agrarian Affairs/ Head of the National Land Agency No. 5/2015 of Location Permit regulates of a land can be registered to submit location permit if the land area isn't more than 200 Ha in a province and not more than 4000 Ha in Indonesia. According to the land area stated on the proprietary land certificate, the total area is 3,4 Ha. So, it's necessary to register the location permit. It means, there are limited area that can be registered to build any tourism supporting facilities to make sure it don't give negative impact to environment.

*Second*, the land has fulfilled the clausal of tourism development sector depend on Article 4 paragraph 2 letter a of Semarang Regional Regulation No.6/2011 of Semarang Regency Urban Land Use Planning on 2011 – 2031. The land must fulfill to Article 5 Paragraph 1 letter which West Ungaran District is directed to be cultural tourism based, nature, and agro tourism. A traditional cultural resort is mainly built from hundred years traditional wooden house which according to article 5 Law No.11/2010 of Concerning Cultural Conservation a cultural conservation should be a nation cultural richness as the materialization of thought and behavior of the human being having important meaning for the historical, science, and cultural understanding having at age of 50 (fifty) years or more, representing special

meaning for history, science, education, religion, and culture and having culture value for the strengthening of national identity.

*Third*, the resort has their environmental legality by holding the environmental permit as the signed that the resort has been surveyed for their environmental impact around. The document will show that the building resort is safe for environment and be one of the conditions to submit the location permit based on Law No.32/2009 of Environmental Management and Protection jo. Article 14 of Government Regulation No.22/2012 of Location Permit. Every activity that has environmental impact should hold environmental permit given by regional government as the sign that the business or activities are licensed to operate.

*Fourth*, the resort land is next to Provincial river bank. According to Article 9 letter a Government Regulation No.38/2011 of River shows that a building is permitted to build on the river bank approximately 10 m away from the river with the water flowing depth for maximum 3m in a city. The resort has been built up in 15m away from the river bank so it won't influence the river stream. Beside the water flowing depth around the resort is only  $\pm 30$ cm, it can't be used for farming irrigation purpose.

*Fifth*, depend to Law No. 10/2009 of Tourism jo. Government Regulation No.50/2011 of National Tourism Plan 2010-2025, Indonesian government is on their way to increase national income through tourism market. Based on article 14 paragraph 1 letter f Law No.10/2009 of Tourism, every municipal governments are being instructed to arrange their regional tourism plan and to develop any small-medium tourism businessman and tourism regional cooperative by making tourism policy to support those enterprises and cooperative growing up. Besides, government is also responsible to facilitate them by giving big scale of tourism access scope.

Tourism development plan isn't only local and municipal government responsibility but included as national tourism strategy where at the national scope determining the main development aspect while the local and municipal government can follow the strategy. President of Republic Indonesia has declared if up to 2019 the major strategy to increase national income is by increasing the number of investment. Hence, President asks to every government to not hampering any investment as long the investment following the procedure given by government.

#### 4.2 Factors Influencing Semarang Local Tourism Permit Practice at Semarang Regency

According to Chambliss and Seidman's theory, the case of the unprofessional implementation of tourism permit practice happened because of two reasons. *Firstly*, the tourism policy is made without involving society and businessman thoughts. Then the policy is born without defining the good governance principles because it reflects to the own government perspective. *Second*, Some factors which influence tourism permit implementation are the lack of capability and professionalism work. Beside, morality among Semarang bureaucrats is the most influenced trouble to the government. The phenomenon of sharing information and permit's implementation is going far away from the regulation. It makes society the victims because they hold the loss of the un-professional public service specially on defining the status of the land functioned plan due to the information of urban land use planning isn't transparently be shared to public.

Semarang Government bureaucracy also can be analyzed according to Nonet and Selznick's type of bureaucracy. Depend on three types of bureaucracy by Nonet and Selznick, Semarang Regency include in pra-bureaucracy. It is a kind of a bureaucracy which can't operate transparently, discipline, dedicated, and having good working capability. The under standard human resource makes the bureaucracy system can't bring the wisdom and welfare for the society like what J.M. Keynes said about country should let it's society live in welfare. To create a welfare country, government must be actively fair while deciding policy to gain welfare for their society. Therefore, welfare is the indicator whether government success or fail to regulate themselves in managing the country.

According to the problem of local tourism permit at Semarang Regency, the tourism policy making isn't following the complete step. There are three steps for making policy they are input, throughput, and output. Without society control the input of the policy won't be as complex as the facts happened in society. "Parson told that the output of a policy is another impact of the un-democratic and reflect to politic interest policy implementation. A policy output is giving back to domestic and international scope" (Parson, 2005). This means, parties who are getting involved in policy making process will think and act depends to their regional politic system. As the result, without society control the policy tends to support some parties interest.

Parsons emphasizes if the important steps on the role policy making is the last steps or the policy output which can be called as juridical steps. This step focuses on arranging and organizing problems into written law. The aspects which we need to pay attention while coming to this process are consistency, sound arrangement, and norm usage. The process isn't free from social value, but always covered by non-judicial sub system like social, culture, economic, politic, and so on. Finally, the problem of tourism permit practice at Semarang Regency isn't working in proper way because there's un-completed process on the policy making process where social value and norm usage aren't being followed to write down the solution of the problems happened in society to form judicial step.

Those judicial step shows that a democratic policy making process will be coloured by different society opinions, politic system among legislator and government apparatus, and the norm usage of the region. Finding of the best democratic policy making only can be created if legal and political aspirations integrated, access enlarged by integration of legal and social advocacy. Besides, a democratic policy making should involve society participation, problem centered, and wide delegation scope.

Moreover, tourism permit implementation reforms at Semarang Regency is constructed from bureaucracy working improvement, transparently and democratically policy making process, and embed the value of justice in every action toward tourism policy implementation. B.Arief Shidarta told that legal problem is begun from carpe diem problem. Carpe diem is moral crisis that affected custom and moral value. It shows relation between law and human morality because when we talk about law in forms of regulation we also talking about the policy maker morality. Ronald Dworkin affirmed that reading a law means reading law maker morality. It seems we see morality of the law maker in form of regulation. That scheme explains how law maker's logic and morality influence the law product. It means morality is the key to make a qualified law based on moral and social culture. Moral problems among Semarang government apparatus and bureaucracy affected the law making process of Semarang Urban Land Use Planning. It makes gap happened for some regional Semarang Government institutions to society specially tourism entrepreneur who want to develop tourism object and supporting tourism facilities.

That problem can be called as carpe diem problem where moral problem be the biggest problem for permit service at Semarang Regency. We should analyze it by using cultural relativism approach. According to cultural relativism approach, every groups and individual have the sense of believe toward their social morality essential that happened in all scope around the world. James Rachels affirmed that people's demand to this theory is variety. Basically, the variety demand happened because of cultural and moral code differences which make the people have different parameter in defining the truth in universal understanding. Then, that reality can be found by the differences interpretation among Semarang government apparatus, enterprises, and Semarang society while conducting the duty on giving permit as part of Semarang government public service. The worst thing could be happened is corruption practice among the apparatus to help the entrepreneur gaining permit as the signed of enterprise legalization.

By the explanation above, the policy making process should be made in complete step by involving society and entrepreneur thought of tourism development. Wayne Parsons told that public policy making process is one of politic agenda where it has to pass three steps. They are input, throughput, and output. Those policy making process explains the complexity in making of a policy according to Chambliss and Seidman susceptible to be influenced by personal factor and society power in every steps on its making process. The quality of the human source (read: policy maker) is be staked by those steps.

Then Peursen saw that every individual, group, and society has their own fundamental norm long away before an individual or group is born in a society. Those norms, is found by the old generation which has been conceived and has been examined through the different era as the society always move dynamically. Those value and norms are born from every facts happened in society, hence Peurseun affirmed that fact will never run away from value. Fact is literally a border which limited the access between reality and value where value begin from facts.

The method to strengthen the tourism policy making process is by implementing progressive law in form of good governance principles. The characteristic of good governance implementation is to share the information on policy making process transparently. Beside, according to Van Peursen the way to reform apparatus moral can be in the form of :

1) Religious Value

Religious value according to Van Peurseun is value born from the interaction of society in religion context which has no limited space and moment. Religion is value on what human believe to God that created prayer is the symbol of human obedience on God's order.

2) Humanity Value

Humanity is the value which is developed from truth about socio cultural knowledge which officially born from cultural realistic. Culture shows human life and the nature around.

3) People's Sociality Value

Social life shows that every human is born for others. It means no one could life by themselves. It shows that every human need to interact to others. In wider concept, the strong interaction between human will make a solidarity what a nation need to move forward.

4) Brotherhood Value

Brotherhood value is value which formed from the feeling to share, helping, and caring each others. This kind of feeling will eliminate the primordialism value which make the people separated in some ways.

5) Harmony Value

The harmony value is a value which directed people to live in harmony both having harmony with others people or nature.

"Van Peursen also told that if individual customs, group, and society do following those values so the individual morality in every society level will well achieved" (Jane Alexander, 2005). Besides there will be no un-professional work of apparatus while serving their society. Another technical way to reform Semarang apparatus public service is by asking public response towards public service given by Semarang Government to measure how well the service is. The Urban Governance Index (UGI) probably can be the answer to these needs (UN Habitat, 2003). It has been created early at America by UN Habitat to measure principles of good governance among national, local, and municipal government, therefore we can compare the effectiveness of public service among the government level.

"In practice, the UGI embraces 16 indicators, which are based on factual data provided by municipalities and local government, and grouped into the first four sub-indices (the security index was dropped for statistical reason). This indicator measures "good governance principles" they are effectiveness (efficiency, subsidiarity, strategic vision), equity (sustainability, gender quality,

intergenerational equity), accountability (transparency, rule of law, responsiveness), participation (citizenship, consensus, orientation, civic engagement), and security (conflict resolution, human security, environmental security)” (UN Habitat, 2003). Those good governance principles are being indicated to know the correlation between the quality of urban governance and urban poverty reduction, city competitiveness, and inclusiveness.

The data can measure how well the society can control the government public service through transparency of any information related to tourism and other administration aspect and efficiency of cost spent to get the public service. When it comes to the clean procedure, the administration will give transparent and efficient cost. The last, is involving society participation whereas legitimacy holder, society's thought will coloring decision making at regional and local level as what Indonesian constitution regulate that society is the highest legitimacy holder over the government itself.

## 5. Conclusion

- a. Indonesia needs to carry out law protection approach *sui generis*, which is expected to be in accordance with the characteristic of TK and TCEs protection based on local wisdom in order to prevent the cultural heritage in general and TCEs in particular from being lost or extinct.
- b. The government should support the protection of TCEs by doing identification and documentation all of TK and TCEs in Indonesia and its every step taken requires government support to create a comprehensive database, supported by systematic TCEs/ Intangible Cultural Heritage and sustainable efforts by Identification and Recording the Domain(s) based on UNESCO Convention Year of 2003.

## 6. References

- [1] Budi Agus Riswandi 2010 Direktorat Pusat HKI FH UII Jogjakarta dalam Arif Lutfiansori, 2010, *Hak Cipta Dan Perlindungan Folklore Di Indonesia* (Yogyakarta: Graha Ilmu)
- [2] Afrillyanna Purba, dkk. 2005 *TRIPs-WTO Dan Hukum HKI Di Indonesia Kajian Perlindungan Hak Cipta Seni Batik Tradisional Indonesia* (Jakarta: Asdi Mahasatya)
- [3] da Silva 1994 Article 8(j) CDB 1994 *The Protection of Intellectual Property*
- [4] Direktorat Warisan dan Diplomasi Budaya, Dirjen Kebudayaan Kemendikbud 2015 *Pencatatan Kekayaan Budaya Takbenda Indonesia* (Jakarta: Dirjen Kebudayaan Kemendikbud)
- [5] Direktorat Warisan dan Diplomasi Budaya Dirjen Kebudayaan Kemendikbud 2013 *Penetapan Warisan Budaya Tak Benda Indonesia, 2013-2116* (Jakarta: Direktorat Warisan dan Diplomasi Budaya Dirjen Kebudayaan Kemendikbud)
- [6] Arif Lutfiansori 2010 *Hak Cipta Dan Perlindungan Folklore Di Indonesia* (Yogyakarta: Graha Ilmu)
- [7] Document Code WIPO/GRTKF Number TK/IC/18/5 Annex, page 3, January, 10, 2011. *The Protection of Traditional Knowledge: Revised Objectives and Principles*.
- [8] *Convention on Biological Diversity* 1994 (CBD) 5 Juni 1992 telah diratifikasi oleh Indonesia dengan Undang-Undang Nomor 5 Tahun 1994 tentang Pengesahan *United Nations Convention on Biological Diversity* (Konvensi Perserikatan Bangsa-Bangsa mengenai Keanekaragaman Hayati) (LN.1994-41, TLN No.3556).
- [9] Kholis Roisah et al, *Intellectual Property Law Based On Local Wisdom*, Vol 8, Issue 9, September 2017, pp.183-190.