



Legal analysis of the government regulation number 1 of 2022 regarding the use of the Borobudur temple based on the principles of justice

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Abstract

His research aims to examine the legal problems and challenges faced in regard to the use of Borobudur Temple, a historical and cultural heritage site in Indonesia based on Government Regulation Number 1 of 2022, and to propose a legal reconstruction based on the principles of justice. The research adopts the Pancasila Justice Theory as the grand theory, the Legal System Theory as the middle theory, and the State Responsibility Theory and the Progressive Legal Theory as the applied theories. The research methods include a post-positivist and constructivist research paradigm, a legal/historical and sociological juridical approach, a descriptive analysis, and data collection techniques through literature review and interviews. The research findings reveal that the existing legal framework, namely Law Number 11 of 2010, Presidential Decree Number 1 of 1992, and Government Regulation Number 1 of 2022, does not adequately protect the rights and interests of the Buddhist worshippers at the Borobudur Temple, as it imposes unjust and unreasonable restrictions on the licensing and financing of their religious activities. Therefore, the research suggests a legal reconstruction by reforming the relevant articles in the aforementioned laws and regulations, and by eliminating the unnecessary and discriminatory barriers for the Buddhist worshippers at the Borobudur Temple.

Keywords: Legal reconstruction, *Borobudur Temple*, worship, justice value

Introduction

In Presidential Decree Number 1 of 1992, it was explained that the management of the Borobudur Temple tourist park and the Prambanan Temple tourist park and all its facilities which were built following the master plan for the development of the national ancient park determined by the government was carried out by the company (Persero) PT. Borobudur and Prambanan Temple Tourist Parks. The minister who is responsible for tourism is mentioned and also based on the considerations of other ministers. In this case, management is regulated by a Presidential Regulation. Borobudur Temple was built based on Buddhist religious beliefs at that time. Of course, strengthening Buddhist religious beliefs with activities and practices of Buddhist teachings can be carried out at Borobudur Temple, such as worship services, meditation, and learning to create a religious atmosphere and the majesty of the temple. It is necessary to establish regulations regarding the implementation of various activities. Buddhist activities or practices.

Utilization for religion includes special prayers (Vesak, Asadha, and the like) carried out regularly every year and organized through Buddhist religious organizations/institutions/ assemblies which are attended by thousands of Buddhists throughout Indonesia and even abroad, through the implementation of this activity, they contribute to preserving and foster a spirit of unity and community pride in the culture of the Indonesian nation,

Over time, the structure of the Borobudur temple building has been damaged, as stated by the Head of the Borobudur Conservation Center, Wiwit Kasiyati (Kompas.com, 2022)^[4], who said that the authenticity of the Borobudur Temple as part of a world heritage site must be maintained. According to him, the threat of damage is not only from the burden of the number of visitors who climb the temple

building every day, but also comes from natural factors in the form of heat and rain affecting the rocks and reliefs where the level of damage to the stones of the stairs and floors experiences an increase in wear and tear reaching 0.175 cm per year, an accumulation of 3.95 cm so the accumulated wear value from 1984 is almost 4 cm.

On the other hand, visitor behavior is also a factor that causes damage to temple buildings by violating visitor regulations. Based on research results from Aan Wahyuni Lestari (2018)^[1], the most frequent violation was climbing the stupa (19.1%), while the most frequent violation was climbing the stupa (19.1%). least common was lion riding (3.8%). Visitor regulations are prohibited from sitting or standing on the stupa and balustrades, inserting hands into the stupa, and climbing is prohibited. Violations that occurred were 11.3% sitting on a stupa, 8.2% sitting on a balustrade, 7.2% standing on a stupa, 7.8% standing on a balustrade, 9.6% putting hands in a stupa, and holding a Buddha statue. in a stupa 8.2%, holding a Buddha statue in an open stupa 18.4%, climbing a stupa 19.1%, climbing a balustrade 6.5%, and climbing a lion 3.8%.

In terms of the use of Borobudur Temple for Buddhist worship, it is stated in Law Number 11 of 2010 concerning Cultural Heritage, Government Regulation Number 1 of 2022 concerning the National Register and Preservation of Cultural Heritage, Presidential Regulation Number 46 of 2017 concerning the Borobudur Tourism Area Management Authority, Presidential Decree Number 1 of 1992 concerning Management of the Borobudur Temple Tourist Park and Prambanan Temple Tourist Park and Environmental Control of the Area and Memorandum of Agreement between the Ministry of Religion, the Ministry of Education, Culture, Research and Technology, the Ministry of State-Owned Enterprises, the Ministry of Tourism and Creative Economy, DIY Yogyakarta Regional

Government, Central Java Provincial Government Number: 5 of 2022 Number: 03/II/NK/2022 Number: MoU-3/MBU/02/2022 Number: NK/3/HK.07/MK/2022 Number: 119/ 1959 Number 450/006/2022 Concerning the Utilization of Prambanan Temple, Borobudur Temple, Mendut Temple, and Pawon Temple for the Religious Benefits of Hindus and Buddhists in Indonesia and the World.

Researchers see a gap between the desired legal rules (*Das Sollen*) and the reality that occurs (*Das Sein*). Law Number 11 of 2010 concerning Cultural Heritage aims to preserve cultural heritage objects but on the other hand it actually excludes the guarantee of freedom to carry out worship based on Pancasila and the 1945 Constitution in terms of obtaining permits to carry out worship (Widodo, 2018) ^[8]. Borobudur Temple is a historical site inherited from the ancient Mataram kingdom which was built as a form of respect and preservation of Buddhist teachings. Apart from that, Presidential Decree Number 1 of 1992 designated the Borobudur Temple Area as a tourism site so that its use for religious activities is subject to financing rates.

The use of Borobudur temple is more likely to be used as a tourist attraction, which can be seen from the fact that there are no regulations issued specifically for the use of Borobudur temple as a place of worship for Buddhists, so efforts are needed to further optimize the function of using Borobudur temple as a place of worship for Buddhists so that the sacredness of Borobudur temple can be maintained. Therefore, it needs to be studied further and organized into research with the following main problem:

1. What are the weaknesses of The Use of The Borobudur Temple based on Government Regulation Number 1 of 2022 in Indonesia currently?
2. How Is the Legal Reconstruction of The Use of The Borobudur Temple based on Government Regulation Number 1 of 2022 Of Law Based on The Value of Justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) ^[3]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.

2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses of the Use of the Borobudur Temple Based on Government Regulation Number 1 of 2022 in Indonesia Currently

Contradictions of Regulations in Law Number 10 of 2011 concerning Cultural Heritage and Government Regulation Number 1 of 2022 concerning the National Register and Preservation of Cultural Heritage with Presidential Decree Number 1 of 1992 concerning Management of the Borobudur Temple Tourist Park and Prambanan Temple Tourist Park and Environmental Control of the Area. seen in Part Four Utilization Article 85 (1) The Government, Regional Government, and every person can utilize Cultural Heritage for religious, social, educational, scientific, technological, cultural, and tourism purposes. (2) The Government and Regional Governments facilitate the use and promotion of Cultural Heritage by everyone.

(3) Facilitation as referred to in paragraph (2) takes the form of a Utilization permit, support from Conservation Experts, financial support, and/or training. (4) Promotion as intended in paragraph (2) is carried out to strengthen cultural identity and improve the quality of life and income of the community.

Based on Law Number 11 of 2010 concerning Cultural Heritage and Government Regulation Number 1 of 2022 concerning the National Register and Preservation of Cultural Heritage, it is mandated to provide facilitation for the use of Borobudur Temple in the form of permits for use in the religious sector, but in Presidential Decree Number 1 of 1992 concerning Park Management Borobudur Temple Tourism and Prambanan Temple Tourism Park as well as Regional Environmental Control mandates other levies for the use of facilities available in the tourist park. This is of course contrary to the mandate of the law (Toebagus, 2022). The law was made based on Pancasila, especially belief in the Almighty God. Currently, the function of the Borobudur temple as a tourism site for religious/worship activities has made certain regulations including permits which are currently less appropriate. The law was made according to the development of community needs, currently the attention of the community, especially Buddhists, requires spiritual places, so the law should emphasize cultural heritage with spiritual value, and protection of spiritual places with the main function of the Borobudur Temple as a religious spiritual center, then it can be used for other functions. others with certain rules (Widodo, 2019) ^[9].

Spiritual teachings are manifested in culture, belief in religious teachings in the past created culture, namely the result of human creation/habits that emerged from the manifestation of belief in religious teachings. Religious and cultural teachings merge into one whole, culture cannot

stand alone without religion, otherwise, religion will develop with culture.

Furthermore, there are inconsistencies/ weaknesses in the implementation of the Memorandum of Understanding between the Ministry of Religion of the Republic of Indonesia, the Ministry of Education, Culture, Research and Technology of the Republic of Indonesia, the Ministry of State-Owned Enterprises of the Republic of Indonesia, the Ministry of Tourism and Creative Economy/Tourism and Creative Economy Agency of the Republic of Indonesia, Regional Government of the Special Region of Yogyakarta, and Central Java Provincial Government Number: 5 of 2022 Number: 03/II/NK/2022 Number: MOU-3/MBU/02/2022 Number: NK/3/HK.07/MK/2022 Number: 119/1959 Number: 450/006/2022 Concerning the Utilization of Prambanan Temple, Borobudur Temple, Mendut Temple, and Pawon Temple for the Religious Benefits of Hindus and Buddhists in Indonesia and the World

In the letter, it is written that b. grant permission to utilize Prambanan Temple, Borobudur Temple, Mendut Temple, and Pawon Temple for 1 (one) year, and can be extended every year, for the religious interests of Hindus and Buddhists in Indonesia and the world by standard operational procedures for the use of cultural heritage. applies.

Through this memorandum of understanding, licensing has been facilitated by the Ministry of Religion for Buddhist worship activities, but in its implementation, Buddhist communities/ organizations/ religious institutions still submit applications for permits to the Ministry of Education and Culture along with processing recommendations from the Ministry of Religion with a period for issuing permits from Ministry of Education and Culture H-1 to D-3 implementation of activities (Ayu, 2021)^[2].

2. Legal Reconstruction of The Use of The Borobudur Temple based on government Regulation Number 1 of 2022 of Law Based on The Value of Justice

To be able to overcome the weaknesses above, legal reconstruction is needed because the allocation of balanced funds for tourism development and Buddhist worship development is balanced and integrated so that worship activities become an attraction for national and international tourism (Rahayu, 2023)^[5]. So far funding for tourism has been unfair. The substance or regulation has many weaknesses. There must be a regulation regarding the prohibition of damage to moving places because the government often suddenly moves places of worship in the name of national/regional opinion and then structures funding for smaller religious services for larger tourism.

So regarding permits, restrictions on participants, land and ticket rentals, zoning, supporting facilities, and governance that need to be determined in the form of restrictions on participants for religious use activities under the Physical Carrying Capacity with a total of 1200 people for the Borobudur temple grounds, 150 participants/congregants to go up to the structure of the Borobudur temple, 50 people on the Jaten hill for religious holiday celebration activities were considered still very far from expectations (limited to one day). Standardization of entrance ticket prices for committees and participants for activities as stated in the Memorandum of Agreement does not yet refer to normal rates or discounts. Standardization of land rental in each

zone for activities as stated in the Memorandum of Agreement does not yet refer to normal rates or discounts.

In the area outside the temple's structural fence, there are two zoning areas which are the responsibility of two institutions, namely BKB and PT TWC, which only border the road, so carrying out activities must require permits from both institutions (Wahyuni, 2023)^[10]. The additional burden of electric power for which there is no standardization of costs and procedures between central and local PLN. Access to enter and exit the temple area at night, restrictions on uploading photos/videos of activities at the Borobudur temple structure, currently the Ministry of BUMN has formed a large holding called Injourney for the management coordinator of Borobudur Temple.

Thus, the reconstruction of regulations on the use of the Borobudur temple for Buddhist worship based on the value of justice as intended by the author needs to be changed to become as follows:

- a. Amendments to Law Number 11 of 2010 concerning Cultural Heritage in Part Four Utilization Article 85 Paragraph (3) Facilitation as referred to in paragraph (2) in the form of Determining Various Utilization Sectors (Educational, Religious, Social, Cultural, Tourism), support from experts conservation, financial support, and/or training.
- b. Amendment to Government Regulation Number 1 of 2022 concerning the National Register and Preservation of Cultural Heritage and/or the Issuance of a Government Regulation concerning the Utilization of Cultural Heritage for Religious Purposes which includes reporting and/or notification of the Implementation of Religious Activities (regarding the type of activity, time of implementation, zone/region, organizer etc.).
- c. Amendment to Presidential Decree Number 1 of 1992 concerning Management of the Borobudur Temple Tourist Park and Prambanan Temple Tourist Park and Environmental Control of the Area Chapter I General Provisions Article 4. Management is and Collection of Results from Tourist Parks and/or Other Facilities. Not applicable/Removal for Religious Use (Non-Commercial).

The reconstruction as above was carried out based on the 1945 State Constitution and Pancasila which upholds the value of the Almighty God, to utilize Borobudur Temple as a place of worship for the implementation of Buddhist religious activities as a priority, so it is necessary to establish regulations that can cover all Buddhist worship activities. at Borobudur Temple (abolition of permits, exemption from entrance ticket fees, exemption from land use fees, etc.) as well as to prevent the removal of Buddhist places of worship outside Borobudur Temple.

Conclusion

1. The Weaknesses in regulations on the use of Borobudur Temple for Buddhist worship currently in the Presidential Decree Number 1 of the Year 1992 that makes the function of using Borobudur Temple as a place of worship for Buddhist religious activities guided by these regulations regarding land use fees and temple entrance fees and In connection with the status of Borobudur Temple as a Cultural Heritage and the Law Number 11 of 2010 where the use of Borobudur

- Temple as a place of worship for Buddhists requires a special permit issued by the Ministry of Education and Culture following the established Standard Operating Procedures that has not yet been fully implemented, especially regarding licensing for the implementation of Buddhist religious activities for 1 year in the Memorandum of Agreement between the Ministry of Religion, Ministry of Education, Culture, Research and Technology, Ministry of State-Owned Enterprises, Ministry of Tourism and Creative Economy, DIY Yogyakarta Regional Government, Central Java Provincial Government Number: 5 of 2022 Number: 03/II/NK/2022 Number: MoU-3/MBU/02/2022 Number: NK/3/HK.07/MK/2022 Number: 119/1959 Number 450/006/2022 concerning Utilization Prambanan Temple, Boiobudur Temple, Mendut Temple, and Pawon Temple for the Religious Interests of Hindus and Indonesian and World Buddhists as Licensing is still carried out for every religious activity.
- The legal reconstruction of the use of the Borobudur temple for Buddhist worship based on the value of justice based on the 1945 State Constitution and Pancasila which upholds the value of the Almighty God, is that the use of Borobudur Temple as a place of worship for the implementation of Buddhist religious activities must be set as a priority, so it is necessary to establish regulations that can cover all Buddhist worship activities at Borobudur Temple (elimination of permits, exemption from entrance ticket fees, exemption from land use fees, etc.) as well as to prevent the removal of Buddhist places of worship outside Borobudur Temple.

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