

Application of Sanctions for Damaging Valuable Attractions Religious by Foreign Tourists



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ABSTRACT: Tourism is an important resource for the area that is a tourist destination. As a resource, tourism needs to be managed appropriately, so that its development does not become a source of damage or a source of disaster. Although in Bali there has been a Regional Regulation that regulates tourism, namely Bali Regional Regulation Number 5 of 2020 concerning Bali Cultural Tourism Implementation Standards, in reality there is often destruction (non-physical) of Tourism Destination Destinations carried out by Foreign Tourists. The purpose of the study was to find a model of the imposition of sanctions aimed at tourists who visit tourist destinations of religious value which is dominant in Bali. This research is an empirical legal research, with the approach used in this study being the statutory approach and sociology of law (Monoarfa, 2021). There are two types of data used in this study, namely primary data and secondary data. Primary data were collected by interviewing informants, while secondary data with document studies used recording techniques. After the data is collected, it is then analyzed with qualitative techniques and presented in an analytical descriptive manner. The results showed that Foreign Tourists who commit "non-physical destruction" on Tourist Destinations of religious value are caused by the absence of information about it. Against perpetrators there are two models of sanctions, namely: (1) sanctions given by the Immigration Office in the form of Deportation, if there are reports / complaints from the community or from other agencies; and (2) sanctions (customary reactions) by indigenous peoples in the form of the obligation to carry out certain rituals (*prayascita*, *pecaruan*, *guru piduka*) and apologize before local indigenous people.

KEYWORDS: tourist destinations, non-physical destruction, foreigners, deportation, customary sanctions.

INTRODUCTION

The natural characteristics of Bali, the life of the Balinese people, and Balinese culture have been integrated into a unified system of community life based on the values of traditional customs, art and culture as well as local wisdom. Bali as a small island, but metaksu in the eyes of the world, has a combination of natural beauty and unique cultural arts. The development of Bali as a major national and world destination, not only has a positive impact, but also a negative impact.

Tourism is an important resource for the area that is a tourist destination. Tourism can be a source of money from all regions with little environmental impact. Tourism can be a resource to carry out efforts to preserve various cultural results of the past. As a resource, tourism needs to be managed appropriately, so that its development does not even become a source of damage or a source of disaster

Tourism is a dynamic activity that involves many people and revives various fields of business. In national development, tourism is one of the fields that contributes a lot of state foreign exchange apart from the oil and gas sector, plays a role in expanding employment, encouraging and equalizing regional development, improving community welfare and prosperity (Setiawati et al., 2021). (Ismayanti, 2010: 1-3) The importance of the role of tourism in economic development in various countries is no doubt and tourism is one of the development sectors currently being promoted by the government. The tourism sector is an important sector in efforts to receive potential local original income. Tourism has become an industry that is able to bring in state foreign exchange and local revenues which have implications for the welfare of people in various economic sectors. In this regard, Law Number 10 of 2009 concerning Tourism, in Article 1 number 5 is determined what is meant by Tourism Attraction, namely: "everything that has unique beauty, (Sanusi, 2017) and value in the form of diversity of natural wealth, culture, and man-made products that are the target or destination of tourist visits".

Indonesia is a country rich in culture and tourism. This is evident from the many tourist visit areas that are almost spread across all provinces in Indonesia, today people expect to be able to enjoy a good and healthy environment not just free from environmental pollution that can endanger their health (Mamik Retnowati, n.d.), but also free from other disturbances, which, although less harmful to health, can damage the aesthetic aspects of their living environment or the environment in which they live. So the issue of beauty (aesthetics) and cleanliness is also a concern for many people. (Destiny & SH, 2015) Human

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actions can result in a decrease in the quality of the beauty of the tourist environment because tourism is a social activity (Mamik Retnowati, n.d.). (Oka Netra, 1997: 93).

As a symbol of Hinduism in Bali, temples include stone trees that are purified or have special sacred values and should not be desecrated. Temples for Hindus are as a means to worship *Ida Sang Hyang Widhi Wasa* and all its manifestations and also as a place to worship ancestral holy spirits with various levels. While specifically the function of the holy place is a means to improve the quality of mankind, both as individual beings and social beings. Individually this serves to communicate the human self with God Almighty as the source. (Oka Netra, 1997: 93)

But with the development of tourism in Bali that allows temples as a tourist attraction, the impact is the occurrence of cases of destruction (non-physical). For example, in the tourist attraction of Pura Luhur Batukaru, Tabanan, there are tourists who climb to the top of the temple. At Pura Besakih Temple happens tourists ride *padmasana* and sit on it. In the Ubud Monkey Forest area, there is also harassment by tourists on holy water that pours out used to wet the buttocks. In the Kayu Putih Tourism Attraction of Old Village, Marga, Tabanan, there are trees with sacred places, tourists are completely naked while climbing tree roots, and many more examples of similar cases that injure sacred places.

The occurrence of destruction and environmental pollution of tourist attractions in Indonesia, often due to tourist visitors or visitors to places both local and foreign tourists think that tourist attractions are public places and free for anyone who visits there, the lack of public understanding in interpreting democracy makes people wild to interpret the word "free", especially in behavior. (Barda Nawawi Arif, 2006: 10)

The large number of cases that occur shows that the mechanism of supervision and monitoring by the government and local governments has not run effectively and in addition, the implementation of criminal sanctions against perpetrators of destruction and environmental pollution of tourist objects in reality on the ground has not been carried out thoroughly.

Problem Statement

Based on the background described above, the author formulates the problem, namely How are the Sanctions Imposed on Foreign Tourists Who Damage (Non-Physical) Tourist Attractions of Religious Value?

RESEARCH METHODS

This research is an empirical legal research. Empirical legal research makes social facts, social phenomena or social symptoms in reciprocal relation to law, as the object of research or the basis of its rejection with the focus of its study on the attitudes and behaviors of individuals, groups, communities, institutions, and states (Irwansyah, 2020: 185). The object of study of empirical legal research can be: (a) the effectiveness of the rule of law; (b) compliance with the rule of law; (c) the role of legal institutions in law enforcement; (d) implementation of the rule of law (Peter Mahmud Marzuki, 2013). The approach used is a statutory approach and a fact approach, and is supported by a conceptual approach to strengthen arguments. Primary data collection techniques are carried out by interviews, while secondary data are carried out documentation studies by recording. Legal data is collected, then classification and preparation and analysis are carried out with reasoning and argumentation and presented in a qualitative descriptive manner.

RESULTS AND DISCUSSION

Every crime must be followed by a crime, not not, without bargaining. A person gets punished for committing a crime. It is not seen any consequences arising from the imposition of crime, no matter whether the community may be harmed (Firdaus, 2017). Dwidja Priyanto, : 24). Criminal conviction is basically suffering to criminals justified because criminals have made suffering for others. (Abdul Halim Barkatullah and Teguh Prasetyo, 2005: 90). According to Hegel, crime is a logical necessity as a consequence of crime.(Firdaus, 2017) (Muladi and Barda Nawawi, 2010: 12).

Relative theory (*deterrence*), this theory views punishment not as retribution for the guilt of the perpetrator, but as a means of achieving useful goals to protect society towards well-being. From this theory emerges the purpose of punishment as a means of prevention, namely general prevention aimed at the community (Firdaus, 2017). According to this theory, punishment is imposed to carry out the purpose or purpose of the punishment, which is to correct the discontent of society as a result of the crime. The purpose of punishment should be viewed ideally, other than that, the purpose of punishment is to prevent (prevent) crime. (Leden Marpaung, 2010: 106)

Crime is not simply to retaliate or reward people who have committed a criminal act, but has certain useful purposes. Retaliation itself has no value, but only as a means to protect the interests of society. The basis of criminal justification lies in its goal is to reduce the frequency of crimes. Crime is imposed not because people make crimes, but so that people do not commit crimes. So this theory is often also called the theory of purpose (*utilitarian theory*) (Akbar & Indrawan, 2018).(Dwidja Priyanto: 26).

The combined theory can be divided into two broad groups, namely:

1. A combined theory that prioritizes retaliation, but that retribution must not exceed the limits of what is necessary and sufficient for the maintenance of public order;

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2. A combined theory that prioritizes the protection of community order, but the suffering of a criminal offender must not be more severe than the actions committed by the convict (Mamik Retnowati, n.d.). (Adami Chazawi, 2010: 162-163).

Model of Sanctions Imposed on Tourists Who Commit (Non-Physical) Destruction of Tourist Destinations of Religious Value.

An important part of the penal system is imposing sanctions. Its existence will give direction and consideration to what should be used as sanctions in a criminal act to enforce the enactment of norms.

When viewed in its development in an increasingly complex society, criminalization policies cannot exclude decriminalization which means the process of determining a despicable act that was originally threatened with a crime against the perpetrator, then considered no longer a criminal offense. Decriminalization policy means reevaluation of actions that have been criminalized by considering their rationality and relevance in social change.

Based on the results of the author's research, for Foreigners who commit dishonorable acts such as climbing holy places, climbing sacred trees, harassing holy springs, there are two types of actions (sanctions) that can be imposed, namely those given by the Immigration Office and or given by indigenous peoples, while related to the enforcement of Bali Regional Regulations on Tourism related to "non-physical damage" has never existed.

Bali Provincial Regulation Number 5 of 2020 concerning Tourism, in Article 7 paragraph (1) stipulates: "everyone is prohibited from damaging all or part of the physical and non-physical Tourist Destination (DTW)". It is not explained what is meant by "non-physical" damage in this Bylaw so there is still a blurring of norms. But it can be made that the interpretation meant by "non-physical" damage is the disruption of religious magical values such as the sanctity of the holy place which indeed because of its existence must indeed be purified. Then in Article 37 paragraph (1) it is stipulated: "Any person who violates the provisions of Article 7, shall be threatened with a penalty of imprisonment for a maximum of 3 (three) months or a maximum fine of Rp. 50,000.00 (Five million rupiah).

Immigration Administrative Actions

In Law Number 6 of 2011 concerning Immigration, several terminologies related to Immigration Administrative Actions are regulated, including: Immigration Administrative Actions are administrative sanctions set by Immigration Officials against Foreigners outside the court process. (Article 1 number 31). Immigration Detention Center is a technical implementation unit whose temporary shelter carries out immigration functions as a temporary shelter for foreigners subject to Immigration Administrative Action (Article 1 point 33).

The Immigration Detention Room is a temporary shelter for foreigners subject to Immigration Administrative Actions located at the Directorate General of Immigration and the Immigration Office. (Article 1 number 34). Detainees are foreigners living in Immigration Detention Centers or Immigration Detention Rooms who have received a detention decision from the Immigration Officer. (Article 1 number 35). Deportation is the act of forcibly removing a Foreign National from Indonesian Territory. (Article 1 number 36)

Article 75 paragraph (1) of the Immigration Law, specifies:

Immigration officials are authorized to take Immigration Administrative Actions against Foreigners residing in Indonesian Territory who carry out dangerous activities or are reasonably suspected of endangering public security and order or do not respect or disobey laws and regulations.

Article 75 paragraph (2) of the Immigration Law, specifies:

Immigration Administrative Actions as referred to in paragraph (1) may be:

- a. inclusion in the Prevention or Arrest list;
- b. restriction, change, or cancellation of the Residence Permit;
- c. prohibition to be in one or several certain places in the territory of Indonesia;
- d. the necessity to reside in a certain place in Indonesian Territory;
- e. imposition of load fees; and
- f. Deportation from Indonesian Territory.

Article 75 paragraph (3) of the Immigration Law, specifies:

Immigration Administrative Action in the form of Deportation can also be taken against Foreigners who are in Indonesian Territory for trying to avoid threats and punishment in their home country.

Referring to the provisions of Article 75 paragraph (1) of Law Number 6 of 2011 concerning Immigration mentioned above, Foreigners residing in Indonesian Territory who carry out dangerous activities or are reasonably suspected of endangering public security and order may be subject to Immigration Administrative Action. Therefore, Foreigners who commit "non-physical destruction" of Tourist Destinations (DTW) can be classified as committing acts endangering (disturbing) public order. Foreigners who climb into holy places or other objects that Hindus wash, will have an impact on the lives of the Hindu community supporting the occurrence of "*leteh*" (nature does not actually become "dirty"). This caused a reaction from the local indigenous people, resulting in a disturbance of public order.

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Based on the results of an interview with the Head of the Intelligence and Enforcement Section of the Immigration Checkpoint of the Denpasar Class I Immigration Office, Foreigners are subject to Immigration Administrative Action because the person concerned based on reports from the community has violated customary norms in Bali. Enforcement by the Immigration authorities can be carried out actively because there is an intelligence section, it can also be on public reports. Immigration has synergized to collaborate with other relevant agencies or agencies. If there is a complaint from the public accompanied by a clear identity, every complaint will *be crosschecked* by the Immigration, if true, a Minutes of Examination (BAP) will be made immediately. According to available data, to date there have been 35 foreigners deported from various cases. (Interview with Ikbal Rifai, S.H.,M.H, Head of Enforcement Section of Denpasar Class I Immigration Office, May 17, 2023).

Action by Indigenous Peoples

The Hindu community in Bali highly upholds the values of local wisdom (local geneus) who know several terms such as luan-teben, sukla, leteh, romon. In a sacred place (temple, big tree, beji) the community is very abstinent from indecent acts which are certainly not in accordance with religious norms and prevailing social norms. If anyone commits a violation, it must be responsible for restoring the balance of natural life *niskala* (occult).

Foreigners as tourists visiting Bali come from various countries that have diverse cultures and characters. Their culture is clearly not the same as the culture of the Indonesian nation, especially with Bali with cultural characteristics influenced by Hindu teachings. Lately many foreigners have committed acts that disturb the sanctity of Hindus in Bali. Because of the actions of the Foreigner, the community became restless, causing discomfort. The Hindu community considers the actions of foreigners to cause the sacred place to be *leteh* (magically dirty), so it must be immediately neutralized with certain ceremonies / rituals.

According to the narrative of Bandesa Adat Wongaya Gede (Tabanan), that in *the wawengkon* (area) of Wongaya Gede Traditional Village, precisely around Pura Luhur Batukaru there have been cases of Tourists (Foreigners) who climbed to *the temple pelinggih*. This happens because of the factor of ignorance of tourists alone, tourists claim because previously there was no information if the place that turned out to be sacred should not be climbed. If this is the case, it cannot always blame tourists, it is also necessary to hold self-introspection and always *nggeh*, there needs to be assistance for Tourists (Foreigners) who visit holy places. Regarding sanctions given to Tourists (Foreigners) who have committed unethical behavior in *Pelinggih* which is sanctified by Hindus, based on the results of *Paruman* (village meeting) the temple must be purified again by performing certain rituals such as *pecaruan* and *guru piduka*. Because the perpetrators are Tourists (Foreigners) of different faiths, in *Paruman* it is agreed that the person concerned reimburses with a sum of money, while the implementation is assisted by the *Pangempon* (administrator) of the Temple. (Interview with I Ketut Sucipto, Bandesa Adat Wongaya Gede, Penebel, Tabanan, May 18, 2023).

Almost the same thing was conveyed by Bandesa Adat Bayan, Old Village, Marga District, Tabanan Regency. According to his narrative, in Bayan Traditional Village in 2022 there was an indecent incident (naked) in the area of eucalyptus trees which were sanctified by the *traditional manners of* Bayan Traditional Village, because the location of eucalyptus trees was in the temple area. The unethical act was committed by a Tourist (Foreigner) of Russian nationality with the initials A-L. The case is very viral, not only social media, but various print and electronic media, both local and national, are widely reported. The handling of the case is carried out by various elements/agencies, ranging from *prajuru* adat, police (Polsek, Polres, Polda), government (Camat), to the Immigration Office agencies.

The incident has caused *leteh* (dirty in unreal nature) which is believed to affect the lives of indigenous people. To restore it to its original state, certain rituals are needed according to the traditions that prevail in Bayan Traditional Village. The perpetrators of the desecration of the consecrated place are sanctioned to bear the costs *of prayascita and funeral fees, and apologize on a scale*. The apology on a scale was carried out in front of the Bayan indigenous people, while on *a scale* it was carried out against God in the temple area. Against the imposition of customary sanctions, the perpetrator realized the mistakes he had made and could accept the sanctions imposed and promised to invite his friends to come to visit. It is honestly said that they did the deed out of ignorance and lack of information. (Interview with I Wayan Negeriawan, S.Pd, Bendesa Adat Bayan, Marga, Tabanan, June 11, 2023).

CONCLUSION

Foreign Tourists who commit "non-physical destruction" of Tourist Destinations of religious value due to the absence of information about it. Against perpetrators there are two models of sanctions, namely: (1) sanctions given by the Immigration Office in the form of Deportation. Deportation can only be carried out by the Immigration Department, if there are reports / complaints from the community or from other agencies such as the police; and (2) sanctions (customary reactions) by indigenous peoples in the form of the obligation to carry out certain rituals (*prayascita, pecaruan, guru piduka*) and apologize before local indigenous people. The obligation to carry out the ritual is intended to cleanse nature in order to restore the balance of *niskala* (unreal/occult) nature.

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SUGGESTION

To avoid the recurrence of damage to Tourist Destinations by Foreign Tourists, it is necessary to provide assistance to Foreign Tourists who visit Tourist Destinations of Religious value, or at least in each Tourist Destination Destination posted an information board about prohibitions for visitors, if necessary include sanctions for violators.

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