

The Juridical Implications of Designating Cultural Heritage Areas on Spatial Utilization and Natural Resource Utilization.

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ABSTRACT

Mount Penanggungan is a sacred mountain in East Java with rich cultural wealth, including archaeological sites from the Hindu-Buddhist era that have been legalized by the decree of the Governor of East Java No. 188/18/KPTS/013/2015 then improved by the decree of the Governor of East Java No. 188/627/KPTS/013/2017. However, sand mining activities in the area have the potential to damage cultural heritage and the environment. This study explores the legal framework for protecting cultural heritage areas, including regulations and duties assigned to the government/local governments. The study also identifies three main problems that hinder the implementation of the law: legal substance, legal structure/institution, and legal culture. Despite the existence of laws, sand mining activities continue because of the community's dependence on the economy, imbalance of legal overlap, and low legal awareness among government officials and the community. To overcome these problems, this study recommends improving legal substance, legal structure/institution, and legal culture through education, counseling, role modeling, and law enforcement. More comprehensive protection and law enforcement are needed to preserve cultural heritage. This study contributes to the understanding of the legal framework for protecting cultural heritage areas and provides recommendations to the government to implement the law effectively.

ABSTRAK

Gunung Penanggungan adalah gunung suci di Jawa Timur dengan kekayaan budaya yang kaya, termasuk situs arkeologi dari era Hindu-Buddha yang sudah disahkan dengan surat keputusan Gubernur Jawa Timur No. 188/18/KPTS/013/2015 kemudian diperbaiki dengan surat keputusan Gubernur Jawa Timur No. 188/627/KPTS/013/2017. Namun, aktivitas penambangan pasir di area tersebut berpotensi merusak warisan budaya dan lingkungan. Studi ini mengeksplorasi kerangka hukum untuk melindungi daerah warisan budaya, termasuk regulasi dan tugas yang ditugaskan kepada pemerintah/pemerintah lokal. Studi ini juga mengidentifikasi tiga masalah utama yang menghalangi implementasi hukum: substansi hukum, struktur/lembaga hukum, dan budaya hukum. Meskipun adanya hukum, aktivitas penambangan pasir terus berlanjut karena ketergantungan masyarakat pada ekonomi, ketidakseimbangan tumpang tindih hukum, dan rendahnya kesadaran hukum di antara pejabat pemerintah dan masyarakat. Untuk mengatasi masalah ini, studi ini merekomendasikan meningkatkan substansi hukum, struktur/lembaga hukum, dan budaya hukum melalui pendidikan, konseling, modeling peran, dan penegakan hukum. Perlindungan dan penegakan hukum yang lebih komprehensif diperlukan untuk menjaga warisan budaya. Studi ini berkontribusi pada pemahaman kerangka hukum untuk melindungi daerah warisan budaya dan memberikan rekomendasi kepada pemerintah untuk mengimplementasikan hukum secara efektif.

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I. INTRODUCTION

Indonesia is a country with diverse cultures that are worth preserving and developing, one of which is cultural heritage. Cultural heritage refers to tangible cultural objects such as cultural heritage sites, cultural artifacts, geographical locations, cultural sites, and cultural heritage on land and/or water, which hold significant historical, scientific, educational, religious, and/or cultural value. The preservation of cultural heritage is also influenced by the environmental conditions of the heritage site.

Mount Penanggungan in Mojokerto Regency is one of the regions that has many cultural heritage sites, identified by the Decree of the East Java Governor No. 188/627/KPTS/013/2017 dated November 8, 2017. Mount Penanggungan is a small mountain that is historically unique because it has many archaeological sites built during the Hindu-Buddhist period in Indonesia. Mount Penanggungan is considered sacred and is believed to be the manifestation of Mahameru, the mountain of the gods. Many Javanese indigenous people and Javanese people who practice Hinduism and Buddhism often visit Mount Penanggungan for meditation and worship.

Mount Penanggungan possesses both cultural heritage treasures and natural resources such as sandstone, which is utilized by the local community. Sand mining on the slopes of Mount Penanggungan is carried out by four companies and provides economic benefits to the local community. According to an interview with David Billy, one of the sand distributors in the Mount Penanggungan area, "Every truck that enters the mine must negotiate with an employee appointed by the mine owner. Before entering the mining area, some villagers demand a tribute from the truck drivers with a nominal value of Rp.10,000.00 per truck. The number of trucks entering and leaving the mine is not limited." Therefore, it can be said that the exploration and exploitation of natural resources contribute to the surrounding community. According to Dr. Ir Amien Widodo, a geology expert from ITS, sand mining has positive economic impacts but can also cause damage to cultural heritage, especially unidentified temples. If sand mining is not regulated, it can lead to new problems such as erosion and landslides that threaten residential areas and cultural heritage buildings. Therefore, efforts are needed to limit sand mining and preserve the existing cultural heritage. Although there are economic impacts from exploration and exploitation activities, there are also negative impacts, namely the threat to existing cultural heritage sites in Mount Penanggungan.

To protect the cultural heritage of Mount Penanggungan from the impacts of sand mining exploration and exploitation, the East Java Cultural Heritage Preservation Center designated the cultural heritage area in 2015, which was then approved through Decree No. 188/18/KPTS/013/2015. However, the designated area was considered inaccurate, so in 2017, the cultural heritage center conducted a mapping of the cultural heritage area in phase 2, resulting in the Governor of East Java's Decree No. 188/627/KPTS/013/2017 regarding the geographical spatial unit of the Mount Penanggungan area as a provincial-level cultural heritage site. Nonetheless, there are still mining companies that are legal and authorized by the government to conduct mining activities within the cultural heritage area in 2015, including PT. Geolava, PT. Semeru Tambang Abadi, PT. Alam Sejahtera Harapan, CV. Barokah, and Koperasi Manatul Umah. In addition, there are also illegal mining activities of unknown quantities. The cultural heritage center takes enforcement actions against these illegal mining activities and penalizes those who continue mining after being warned. As for the existence of legal mines around the cultural heritage area, the investigators of the East Java Cultural Heritage Center stated that it can be inquired with.

This research is different from previous research, namely in the research of Yosi Abdhan Pradan, Implementation of Legal Protection of Cultural Heritage Area of Majapahit Site in Trowulan by Mojokerto Regency Government which resulted in the study First, Red Brick Industry can stand in the cultural heritage area of Majapahit site in Trowulan because Regional Regulation Number 9 of 2012 concerning Spatial Plan of Mojokerto Regency for 2012-2032 runs ineffectively. Second, Efforts to protect the cultural heritage area in Trowulan by the Mojokerto Regency Government are by making Regional Regulations on Spatial Planning, Socialization of Regional Regulation of Mojokerto Regency Number 9 of 2012 concerning Spatial Plan of Mojokerto Regency for 2012- 2032. This research is different from the research conducted by the author related to the Object of research, Use of socio-legal methods that combine social and legal approaches, and research output orientation that emphasizes the aspect of community involvement to encourage behavior change.

Theoretical implications, this research is expected to contribute to developing knowledge in the field of law, especially in the field of cultural heritage protection law which in this case can provide a study on the impact of environmental exploration and exploitation that potentially impacts the cultural heritage aspect and the social aspect of the community. The practical implications expected from this research are the existence of a practical and comprehensive solution option to solve the problem of environmental exploitation that potentially impacts the cultural heritage aspect and the social aspect of the community. In addition, this research is also expected to encourage all parties to care about environmental sustainability and cultural heritage preservation for the future.

II. RESEARCH METHODOLOGY

The research type used in this paper is socio-legal, which combines the approaches of legal and social sciences to find practical solutions. The research is conducted on the 1945 Constitution, Environmental Law, Cultural Heritage Law, Regional Regulations, as well as expert opinions and field facts. There are three types of approaches in this research. First, the conceptual approach examines problem-solving in legal research from the perspective of legal concepts underlying or values contained in the normative framework of a regulation. Second, the legislative approach prioritizes legal materials in the form of legislation as the fundamental reference for the research. This approach is usually used to study legislation that has deficiencies or promotes deviations in practice. Third, the case approach attempts to build legal arguments from the perspective of concrete cases that occur in the field. The legal materials consist of primary legal sources that are binding and secondary legal sources closely related to the primary sources, such as books, legal writings, legal expert opinions, the internet, and articles that are correlated and relevant to the research topic. The technique used to collect legal materials is library research, with documentation techniques gathered from the examination of legislation, literature review such as books, papers, articles, magazines, journals, newspapers, or writings by experts. The interview technique is also used as a supporting method for documentation. The analysis of legal materials is conducted using descriptive, constructive, argumentative, and systematic techniques to obtain an overview or description of a legal or non-legal condition or position, form a construction that can identify legal problems, and develop legal arguments and practical solutions based on the collected legal materials.

III. RESULT AND DISCUSSION

Cultural heritage or cultural heritage sites are national treasures that need to be protected and preserved because they reflect the behavior and patterns of society at that time and are the identity of the Indonesian nation. Cultural heritage cannot be renewed and deteriorates over time due to natural disasters or human activities. Therefore, cultural heritage/sites need to be

protected, including legal protection, to ensure their sustainability. Legal protection consists of preventive and repressive legal protection. In Indonesia, the legal protection of cultural heritage began during the colonial era through the Staatsblad Monumenten Ordonnantie No. 238 of 1931 concerning cultural heritage. The Indonesian government then issued Law No. 5 of 1992 concerning Cultural Heritage and new regulations in 2010 that perfected the law. The legal protection of cultural heritage/sites is regulated in Law No. 11 of 2010 of the Republic of Indonesia. The legal implications of this law include the duties and authorities of the government/local government to protect cultural heritage and the prohibition of damaging cultural heritage.

The zoning of cultural heritage/sites is one tool for managing the use of space in cultural heritage areas by determining boundaries and zones for various activities. Zoning can be used as a reference for issuing permits, implementing incentives/preventive measures, and spatial management. Zoning can also serve as technical guidelines for the development/utilization of protected areas and can bridge the gap in operational area planning. The zones of cultural heritage/sites consist of the core zone, buffer zone, development zone, and support zone. Through zoning, conservation actions can be taken to preserve the authenticity of past heritage and its practical value in the present and future.

Law No. 11 of 2010 concerning Cultural Heritage grants more authority to regional autonomy in the management of cultural heritage in accordance with the principles of decentralization, deconcentration, and assisting tasks in Law No. 23 of 2014 concerning Regional Governments. Article 96 of the law explains the 16 authorities given to local governments, such as establishing conservation ethics, collecting data on cultural heritage, developing management and preservation regulations, and determining the location and boundaries of cultural heritage areas. The central government also has 16 authorities at the same level, including formulating a master plan for cultural preservation and proposing the preservation of national culture as world or international heritage. Conflicts between the central and regional governments regarding the management of cultural heritage in Indonesia arise due to the unclear regional autonomy system and the need for adjustments to regional autonomy policies. However, the Cultural Heritage Law provides opportunities for local governments to establish or dissolve Regional Technical Implementation Units (UPTDs) and determine, abolish, or rank the importance of cultural heritage in their administrative regions.

Legal objects consist of material and non-material objects. Material objects include movable objects, immovable objects, and immovable objects intended for machinery. Non-material objects include trademarks, patents, and music. Regarding ownership/control of cultural heritage objects, Article 12 of Law No. 11 of 2010 states that anyone can own and/or control Cultural Heritage Objects while still considering their social function. Therefore, cultural heritage falls under the legal object category, both material and non-material. The legal subjects of cultural heritage areas include individuals, legal entities, and the general public who have religious, cultural, or social connections to its non-material aspects.

1. The Juridical Implications of the Implementation of Cultural Heritage Areas on the Exploitation and Exploration, as well as the Spatial Planning of Mount Penanggungan

Mount Penanggungan is a highland area located in Pasuruan Regency and Mojokerto Regency. This region has an interesting history as it was chosen as a sacred area before the Majapahit Kingdom. These facts can be seen through several inscriptions, such as the Cunggang Inscription, Pucangan Inscription, and other inscriptions found around Mount Penanggungan. Experts such as Vr Van Romondt, HG Quaritch, and others have conducted research on archaeological sites in this area and concluded that Mount Penanggungan was influenced by past historical traditions, such as megalithic traditions and Hindu culture in Java. Then, during

the Majapahit period, there was a deepening of ancestor worship with various factors emerging during that time. Mount Penanggungan has cultural heritage and natural resources in the form of sirtu sand that is explored and exploited by the surrounding community through mining activities. This mining has economic impacts on the community but can also bring changes to the landscape and damage cultural heritage. There are several legal and illegal companies conducting mining activities within and around the cultural heritage area of Mount Penanggungan. To protect the cultural heritage area, the Mojokerto Regency Government has issued Regional Regulation No. 11 of 2015 concerning Cultural Heritage, and this area has been designated as a cultural heritage area through Decree No.SK: 188/18/KPTS/013/2015. The juridical implications of the implementation of the cultural heritage area on the exploitation and exploration activities, as well as the utilization of spatial planning, will provide protection and legal certainty for cultural heritage and result in studies of any form of misuse of spatial planning in the Mount Penanggungan cultural heritage area. The following are the juridical implications of the implementation of the cultural heritage area on the exploration and exploitation of natural resources in the Mount Penanggungan area:

(a)Protection and Legal Certainty: Article 66 paragraph (1) of Law No. 11 of 2010 concerning Cultural Heritage provides protection and legal certainty against the destruction or seizure of cultural heritage, either partially or wholly. Article 72 of the same law provides guidance on the protection of cultural heritage for educational, appreciative, recreational, and religious purposes. The law protects activities that have the potential to damage cultural heritage and misuse spatial planning in the Mount Penanggungan cultural heritage area, including its slopes, considering the negative impacts of mining that can damage the land and structures on it, especially in the areas around the peak of Mount Penanggungan affected by mining exploration and exploitation of sirtu. (b)Delegation of Authority and Duties to the Central/Regional Government: Article 95 of Law No. 11 of 2010 concerning cultural heritage affirms the duties of the central/regional government to protect cultural heritage and cultural heritage areas by developing and implementing policies, including zoning and protection against destruction. The central/regional government also has the authority to halt the utilization of space in the cultural heritage area, in accordance with Article 96 paragraph (2P), which can have an impact on the exploration and exploitation of mining that can damage the existence of cultural heritage and the authenticity of the landscape in the Mount Penanggungan cultural heritage area. (c)Limitation on Licensing: Article 73 of Law No. 11 of 2010 regulates the vertical and horizontal spatial functions within the cultural heritage area. This has an impact on the limitation of exploration and exploitation activities of natural resources in the area. Meanwhile, Article 81 paragraph (1) of the same law prohibits the change of function of cultural heritage areas without the permission of the Minister, Governor, or Regent/Mayor according to their respective levels. Only activities related to religion, social affairs, science, technology, culture, and tourism can be allowed with such permission.

It can be said that the law provides protection and legal certainty for the Mount Penanggungan cultural heritage area. The government has the duty, obligation, and authority to protect the cultural heritage area through zoning. Any form of exploration, exploitation, and utilization of space that does not align with the conservation objectives of the cultural heritage area should be stopped. This includes exploration and exploitation activities of natural resources that pose a threat to the cultural heritage area, which should be discontinued due to the potential landscape damage that could lead to the destruction of the cultural heritage area. However, the cessation of exploration and exploitation activities should not be done abruptly, considering the economic impacts that may arise. The substitution of new livelihoods for the local community should be considered before halting exploration and exploitation activities.

2. Implementation of Legal Protection by the Government in Mount Penanggungan Cultural Heritage Area

Mount Penanggungan has been designated as a cultural heritage area through Decree No.SK: 188/18/KPTS/013/2015 Date SK: January 14, 2015 Level SK: Governor. Law No. 11 of 2010 concerning Cultural Heritage regulates that the protection of cultural heritage includes rescue, protection, zoning, and maintenance, preservation, and restoration of cultural heritage. Zoning of areas surrounding cultural heritage or potentially having important cultural heritage is carried out in conservation efforts to preserve culture. Mount Penanggungan has legal protection based on Law No. 11 of 2010 concerning cultural heritage and Mojokerto Regency Regulation No. 11 of 2015 concerning Cultural Heritage. To implement more effective legal protection, an analysis of the previous legal protection can be conducted. One analysis method that can be used is Lawrence M. Friedman's analysis method, which analyzes the aspects of Legal Substance, Legal Structure, and Legal Culture as follows.

Legal Substance, which includes decisions and new rules made by people within the legal system, is a determining factor for the enforcement of a law. In Indonesia, the existence and protection of Cultural Heritage Areas are regulated by Law No. 11 of 2010 concerning Cultural Heritage and harmonized with the Provincial Regulations of East Java and the Regional Regulations of Mojokerto Regency regarding Spatial Planning. However, actions related to cultural preservation in 2010 were still difficult to impose legal sanctions. Although the legal substance regarding cultural heritage areas is already comprehensive, the ineffectiveness of some laws at the national, provincial, and regional levels in Mojokerto Regency is due to economic factors affecting the community.

Legal Structure in Lawrence M. Friedman's theory is a structural system that determines whether or not the law can be enforced and implemented properly. Examples of legal structures are the Police, Prosecutor's Office, Courts, and Correctional Institutions, as regulated in Law No. 8 of 1981. In the case of the protection of cultural heritage areas, the main legal structure is the Cultural Heritage Preservation Center (BPCB), but in the case of exploration and exploitation activities of natural resources in the Mount Penanggungan cultural heritage area, the Investment and Integrated One-Stop Service Agency (DPMPTSP) is also involved in granting permits for such activities. However, there is a legal overlap between the cultural heritage area and the exploration and exploitation activities of natural resources in the Mount Penanggungan area because the Cultural Heritage Preservation Center designates the area as a cultural heritage area, but the Investment and Integrated One-Stop Service Agency grants permits for those activities. This occurs because the Cultural Heritage Preservation Center and the Investment and Integrated One-Stop Service Agency work individually, resulting in a lack of effective functioning in the legal structure.

Legal Culture is closely related to popular legal awareness that influences and relates to legal issues. The perception of the community and law enforcement officials regarding the law and how it is enforced must be taken into account. In Mount Penanggungan Cultural Heritage Area, the community is aware that the area used for mining is a cultural heritage area. Although the area is designated as a cultural heritage area, the community continues mining because if it is stopped, they will lose their livelihood. The lack of harmonization of legal substance and structure allows the community to engage in such mining activities.

3. Efforts of Law Enforcement that Can Be Implemented by the Government

Law enforcement is the activity of law enforcement officials in creating, maintaining, and preserving peace by upholding the law and taking action against any violations, both through the courts and through alternative dispute resolution mechanisms. This activity also encompasses all efforts made to respect and implement the law as a set of normative rules governing society

and the state. The actions taken in law enforcement involve the improvement of legal substance, legal structure, and legal culture as follows.

Improvement in legal substance, legal structure, and legal culture is necessary for better law enforcement. Legal substance includes rules, norms, and patterns of behavior within the system. Legal structure includes the institutional bodies of law, such as the courts of first instance, appellate and cassation courts, the number of judges, and the judicial system. Legal culture encompasses attitudes and values related to the law. Mariam Darus Badruzaman details five elements of unlawful acts, namely the existence of an unlawful act, harm, a causal relationship between the act and the harm, fault, and the violation of the law. Exploration and exploitation of natural resources in the Mount Penanggungan area can be considered potentially unlawful actions because they violate the designation of the cultural heritage area that has been approved through Decree No.SK: 188/18/KPTS/013/2015 Date SK: January 14, 2015 Level SK: Governor. Law enforcement is necessary for the preservation, prevention, and protection of the potential damage to cultural heritage. Rescue efforts are carried out to prevent damage to cultural heritage, while security measures are taken to prevent the cultural heritage from being damaged, lost, destroyed, or destroyed. If the cultural heritage cannot be relocated, zoning is required to protect it. The legal basis for the cessation and prohibition of exploration and exploitation activities of natural resources in the cultural heritage area is Article 88 and Article 96 paragraph (1p) of Law No. 11 of 2010 concerning cultural heritage, which grants the government the authority to halt the utilization process that could damage the cultural heritage area. The destruction of cultural heritage/cultural heritage areas is a great loss because cultural heritage represents the nation's identity and must be preserved to safeguard the nation's culture from foreign influences and prevent other countries from claiming it.

Law enforcement not only requires the enforcement of legal substance but also improvements in its legal structure. The synergy between legal institutions such as the Police, Prosecutor's Office, Courts, Correctional Institutions, Cultural Heritage Preservation Center, and DPMPTSP (Investment and Integrated One-Stop Service Agency) is crucial for effective law enforcement. In the case of exploration and exploitation activities of natural resources in the Mount Penanggungan cultural heritage area, the Cultural Heritage Preservation Center (BPCB) and DPMPTSP should work together to protect the cultural heritage area. Furthermore, law enforcement officials with moral integrity and justice are essential to maintain public compliance with the law. The impact of law enforcement officials lacking morals and justice can affect public compliance with the law. Therefore, the improvement of legal structure and law enforcement requires law enforcement officials with moral integrity and justice. If there are officials without morals and ethics, it can lead to cases going unresolved or abuse of power, where legal consequences become merely procedural. Officials without morals and ethics will commit violations and feel that formal procedures are not a concern.

Law enforcement will be effective if accompanied by a legal culture. However, in the case of exploration and exploitation activities of natural resources in Mount Penanggungan, the law is not fully respected by the community because they have economic interests that lead them to engage in unlawful actions. Providing new livelihoods for the community can be an important solution because zoning of the cultural heritage area can disrupt the livelihoods of those who rely

4. The Role and Efforts of the Community in the Protection of Cultural Heritage/Mount Penanggungan Cultural Heritage Area

Based on the understanding of Law Number 11 of 2010 concerning Cultural Heritage, which is the main law that regulates the protection of cultural heritage in Indonesia. This law recognizes that cultural heritage is part of the nation's identity and human rights that must be protected, preserved, and developed¹. This law also recognizes that tangible and intangible cultural

heritage is owned by the state, society, and individuals, and that they must participate in the management and utilization of cultural heritage in accordance with their rights and obligations.

The importance of the role and active involvement of the community in the management of cultural heritage is to enhance the common good. The community is considered the legitimate owner of cultural heritage, and all management efforts should have a positive impact on improving community welfare. Management is considered unsuccessful if it does not benefit the community. The community can participate in various aspects of cultural heritage management, such as registration, protection, security, development, and preservation monitoring. Although not explicitly stated as a right in Law No. 11 of 2010 concerning Cultural Heritage, community participation is deemed crucial to improve community welfare. Some examples of efforts that can be undertaken by the community to protect cultural heritage include:

The community can participate in protecting, securing, and monitoring cultural heritage/cultural heritage areas based on Law No. 11 of 2010 and Government Regulation No. 1 of 2022. The community can become members of expert teams, consisting of 60% community representatives and 40% government representatives, and be trained by the central government. These expert teams can work for the government, individuals, private institutions, non-governmental organizations, or as part of indigenous legal communities. The community can also report illegal activities that harm conservation interests or file lawsuits against permits that contradict Law No. 11 of 2010 or the principles of good governance to the State Administrative Court within a period of 90 days from the receipt or announcement of the administrative court decision. The community can also report other criminal acts that contravene Law No. 11 of 2010 to the cultural heritage office for further investigation.

The registration of cultural heritage or cultural heritage areas can be proposed by the community in accordance with Law No. 11 of 2010 concerning Cultural Heritage and Government Regulation No. 1 of 2022 concerning the National Register and Preservation of Cultural Heritage. Any individual or group of people can participate in the registration, preservation, management of the area, incentives, compensation, supervision, funding, and ownership of cultural heritage. The registration process can be done manually or online through www.cagarbudaya.kemdikbud.go.id. After registration, an evaluation is conducted by a panel of heritage experts who make recommendations for designation, classification, and disposal of cultural heritage. The naming of cultural heritage is given by the government based on proposals from expert groups in cultural preservation. The registration of cultural heritage is necessary to facilitate assessment, determination, recording, ranking, deletion, rescue, security, zoning, maintenance, restoration, research, revitalization, adaptation, and utilization.

IV. CONCLUSION

Conclusion, The application of the cultural heritage area on Mount Penanggungan has a significant impact. Law Number 11 of 2010 concerning Cultural Heritage provides protection and legal certainty for cultural heritage, gives duties and authorities to the government/regional government to protect cultural heritage and cultural heritage areas, and limits the function of spatial planning and permits for activities carried out in the cultural heritage area. This implies the prohibition of exploration and exploitation activities of natural resources in the cultural heritage zoning area that are contrary to the conservation function. As a result, the cultural heritage area on Mount Penanggungan will be protected from various activities that potentially damage the existence of cultural heritage and all forms of spatial abuse, but this can also cause social and economic impacts for the community. In an effort to improve the law, legal analysis using Lawrence Friedman's theory shows that the main problem lies in the legal structure and legal culture. There is an imbalance of legal overlap because the Cultural Heritage Preservation

Agency and the Investment and Integrated One-Stop Service Office work individually. It is necessary to take action if there are officials/apparatus who issue permits that are not in accordance with spatial planning provisions and enforcement related to illegal mining that violates the law or legal mining that endangers the cultural heritage area must be stopped, this has an impact on economic activities so it is also necessary to substitute new livelihoods and try to change people's behavior through providing new livelihoods and active community involvement that have an impact on changing people's behavior.

Recommendations, The government can stop all activities of exploration and exploitation of natural resources, including all forms of spatial use that are not in accordance with the designation of cultural heritage areas or that can endanger the cultural heritage. Providing new livelihoods for the community by utilizing the development zone and the supporting zone as tourist destinations related to religious, cultural and social tourism in the cultural heritage area as long as they do not conflict with conservation values. The government can provide a communication forum between DPMPSTP and the Cultural Heritage Preservation Agency, so that all permits around the cultural heritage area issued by DPMPSTP can be reviewed first through the Cultural Heritage Preservation Agency, so that it is expected to create legal harmonization, and take action on officials who issue permits that are contrary to spatial planning. The government needs to socialize the surrounding community regarding the importance of cultural heritage as a national identity and regarding the protection and law enforcement related to the cultural heritage area, this is expected to develop a good legal culture. The central/regional government encourages the community or the community can play an active role in submitting registration of cultural heritage that is found or suspected of having cultural heritage in accordance with Law Number 11 of 2010 concerning Cultural Heritage and Government Regulation Number 1 of 2022 concerning National Register and Preservation of Cultural Heritage. In addition, The central/regional government involves the community or the community can play an active role as an expert team consisting of 60% of the community and 40% of the government, and report other criminal acts that are contrary to Law Number 11 of 2010 concerning Cultural Heritage to the Cultural Heritage Preservation Agency or to the police, The central/regional government educates the community who find that there are permits that are not in accordance with the conservation designation of the cultural heritage area to file a lawsuit in the State Administrative Court (PTUN). The community can play a role by proposing the use of cultural heritage in the religious and cultural spheres to preserve and attract tourists' interest in the cultural heritage area of Mount Penanggungan.

Reference

- Agustinova, D. E. (2022). Strategi Pelestarian Benda Cagar Budaya Melalui Digitalisasi. *ISTORIA Jurnal Pendidikan Dan Ilmu Sejarah*, 18(2). <https://journal.uny.ac.id/index.php/istoria/article/view/52991>
- Amanda, V., Suprihardjo, R., Studi, P., Wilayah, P., & Teknik, F. (2012). *Pelestarian Kawasan Cagar Budaya Berbasis Partisipasi Masyarakat (Studi Kasus : Kawasan Cagar Budaya Bubutan , Surabaya)*. 1(1).
- Arifin, H. P. (2018). Politik Hukum Perlindungan Cagar Budaya Di Indonesia. *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, 10(1), 65–76. <https://doi.org/10.28932/di.v10i1.1034>
- Bahaya Longsorlahan Kecamatan Trawas Kabupaten Mojokerto, P., & Zulmi Rahmawan, A. (2021). *POTENSI BAHAYA LONGSORLAHAN (LANDSLIDE) KECAMATAN TRAWAS KABUPATEN MOJOKERTO*.
- Balai pelestarian cagar budaya sumatera barat. (n.d.). Cagar budaya dalam ketahanan bangsa. *Kemendikbud*. <http://kebudayaan.kemdikbud.go.id/bpcbsumbar/cagar-budaya-dalam-ketahanan-bangsa/%0A>
- BPNH. (2014). *artikel* https://rechtsvinding.bphn.go.id/index.php/view/view_online.php?page=artikel&berita=2%0A *htsvindingrec. BPNH.Go.Id.*
- Budaya, C., & Kesejahteraan, N. (2019). *REKONSTRUKSI PELESTARIAN CAGAR BUDAYA*. 2(1), 70–83.
- Credo, M., Mangolo, S., Putu, I., Sukaatmadja, G., Bagus, I., & Pujaastawa, G. (2017). "WARUGA" SEBAGAI DAYA TARIK WISATA DI DESA SAWANGAN, KABUPATEN MINAHASA UTARA. In *JUMPA* (Vol. 4, Issue 1).
- Enggran Eko Budianto. (2015). Ini penampakan tambang sirtu di lereng-gunung-penanggungan. *Detik News*. <https://news.detik.com/berita-jawa-timur/d-3036220/ini-penampakan-tambang-sirtu-di-lereng-gunung-penanggungan%0A>

- Frastien, D., Iskandar, I., & Edra Satmaidi, E. (2019). Pemanfaatan Ruang Berdasarkan Rencana Tata Ruang Dalam Upaya Perlindungan Kawasan Taman Wisata Alam Pantai. *Supremasi Hukum: Jurnal Penelitian Hukum*, 27(1), 1–22. <https://doi.org/10.33369/jsh.27.1.1-22>
- Hafiedz, A. Al, & Rusdiana, E. (2018). Kajian Yuridis Kelayakan Situs Calon Arang Untuk Ditetapkan Sebagai Cagar Budaya Berdasarkan Undang-undang Nomor 11 Tahun 2010 Tentang Cagar Budaya. *Novum: Jurnal Hukum*, 11, 1–8.
- Hendro, E. P., & Nirmala, D. (2021). Sosialisasi Undang-Undang Nomor 11 Tahun 2010 Tentang Cagar Budaya di Kawasan Cagar Budaya Kampung Melayu dan Kampung Kauman Semarang. *Harmoni*, 5(2), 81–94.
- Jimly Asshiddiqie, O. (2021). *KONSTITUSI DAN KONSTITUSIONALISME INDONESIA*.
- Kementerian Pendidikan dan Kebudayaan. Satuan Ruang Geografis Kawasan Penanggungan. *Sistem Registrasi Nasional Cagar Budaya*.
<http://cagarbudaya.kemdikbud.go.id/cagarbudaya/detail/PO2015021800004/satuan-ruang-geografis-kawasan-penanggungan%0A>
- Ketut, N., Adnyani, S., Windia, I. W., Sukerti, N. N., Ari, A. A. I., & Dewi, A. (2021). Eksploitasi Pemanfaatan Ruang dalam Pembangunan Kawasan Wisata. *Pandecta*, 16(2), 354–367.
- Lestari, R. (2020). *PENGANTAR ILMU HUKUM*. <https://doi.org/10.13140/RG.2.2.19889.61284>
- Jurnal Konstitusi*. (2013). www.mahkamahkonstitusi.go.id
- Pengantar, K. (2013). *Pedoman pedoman penilaian kriteria penetapan cagar budaya*.
- Fahmi Febri Prakoso. (2018). *PERAN DINAS PARIWISATA DAN KEBUDAYAAN DALAM PELESTARIAN CAGAR BUDAYA KABUPATEN JEMBER (The Role of Tourism and Culture in Preservation of Cultural Heritage in Jember District)*.
- PERATURAN DERAH KABUPATEN KUDUS TENTANG PENGELOLAAN DAN PELESTARIAN CAGAR BUDAYA DINAS KEBUDAYAAN DAN PARIWISATA KABUPATEN KUDUS Jl GOR Wergu Wetan, R. (2019). *NASKAH AKADEMIK*.
- Prabha, J. W. (2021). *Jurnal Widya Prabha*, 10/X/2021 1. *Balai Pelestarian Cagar Budaya Provinsi Yogyakarta*, 21.
- Prihantoro, F. (2019). Peningkatan Kesadaran terhadap Cagar Budaya di Kotabaru Melalui Kegiatan Jelajah Wisata Heritage bagi Generasi Muda di Kota Yogyakarta. *Bakti Budaya*, 2(1), 67. <https://doi.org/10.22146/bb.45041>
- Rahmat, K. D. (2021). *Konsep Pariwisata Berkelanjutan dalam Pelestarian Cagar Budaya*. 5(1), 26–37.
- Retno Wulandari. (2021). Bantuan Insentif Pemerintah Sebagai Jurus Andalan Dalam Memulihkan Sektor Pariwisata. *Opini.Kemenkeu.Go.Id*. <https://opini.kemenkeu.go.id/article/read/bantuan-insentif-pemerintah-sebagai-jurus-andalan-dalam-memulihkan-sektor-pariwisata%0A>
- Rhaki, M., Kaho, L. M. R., & Konradus, B. (2020). Kajian Terhadap Kondisi Sosial, Ekonomi dan Budaya Masyarakat dalam Mendukung Pengelolaan Cagar Alam Ndeta Kelikima di Kabupaten Ende Provinsi Nusa Tenggara Timur. *Jurnal Ilmu Lingkungan*, 18(3), 424–435. <https://doi.org/10.14710/jil.18.3.424-435>
- Sadewa, G. A. (2020). Penganugerahan Sima Tulangan, Cungggrang, dan Pucangan Di Lereng Gunung Penanggungan Abad X-XI Berdasarkan Prasasti-Prasasti Raja Balitung-Airlangga. *Journal Pendidikan Sejarah*, 8(1). *SOSIOLOGI HUKUM*. (2020).
- Supriyanta. (2007). RUANG LINGKUP KEJAHATAN EKONOMI. In *Jurnal Ekonomi dan Kewirausahaan* (Vol. 7, Issue 1). Teguh Hidayat. Pelestarian Cagar Budaya di Daerah Otonom. *Kemendikbud*. <https://kebudayaan.kemdikbud.go.id/bpcbsambar/pelestarian-cagar-budaya-di-daerah-otonom/>
- TSJUN. (2019). Gunung Penanggungan dan Nilai Sejarah yang Terancam Rusak. *ITS News*. <https://www.its.ac.id/news/2019/04/08/gunung-penanggungan-dan-nilai-sejarah-yang-terancam-rusak/%0A>
- Warda, I. N. (2008). Pengelolaan warisan budaya berwawasan lingkungan: studi kasus pengelolaan. *Jurnal Bumi Lestari*, Vol. 8 No. 2, Agustus 2008. Hal. 193-204, 8(2), 193–204.
- WARISAN BUDAYA PERSPEKTIF MASA KINI*. (2015).