

An Examination of the Principle of Due Care in the Regional Government's Policy on the Construction of the Kelingking Beach Lift

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ABSTRACT

Large-scale tourism infrastructure development in coastal areas often triggers conflicts between economic interests and ecological sustainability. This study examines the case of the construction of a glass elevator at Kelingking Beach, Nusa Penida, which was halted by the Bali Provincial Government due to various regulatory violations. The main focus of this research is to analyze the extent of the authority of local governments in controlling tourism development following the enactment of the Job Creation Law, as well as how the principles of sustainable tourism are integrated into regional policies. Using a normative legal research method, the findings indicate that the project violated five fundamental legal instruments, including spatial planning non-compliance, the absence of a Sea Space Utilization Approval, and the neglect of Bali's cultural tourism standards. This analysis concludes that although business licensing procedures have been simplified through the Online Single Submission system, local governments still possess both attributive and delegative authority in supervisory and spatial control functions to ensure environmental carrying capacity sustainability and the protection of local wisdom.

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INTRODUCTION

Bali Province is one of the regions in Indonesia with a highly significant tourism appeal. The Nusa Penida area, particularly within Klungkung Regency, is currently experiencing a crucial crossroads between economic growth and the imperative to preserve ecological and cultural integrity. One phenomenon that has attracted legal and public attention is the proposed construction of a glass elevator valued at IDR 200 billion on the cliff of Kelingking Beach. The project was initiated by PT Indonesia Kaishi Tourism Investment Development Group and was planned to reach approximately 180 meters in height, cutting through the iconic cliffs of Nusa Penida with the aim of providing tourists direct access to the shoreline. However, the project was subsequently suspended following the discovery of several fundamental regulatory violations.

The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) has fundamentally accommodated the position of regional governments in regulating their respective territories. Specifically, Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution grants broad autonomy to regional governments in administering and managing governmental affairs based on the principles of autonomy and co-administration tasks. From the perspective of regional government law, regional autonomy is understood as the right, authority, and obligation of regional governments to regulate and manage the interests of local communities in accordance with the system of the Unitary State of the Republic of Indonesia. The implementation of such autonomy, however, currently faces challenges due to the application of the Risk-Based Approach (RBA) as regulated under Law Number 6 of 2023 concerning Job Creation.

The primary legal issue in the construction process of the Kelingking Beach elevator lies in the issuance of the recommendation for the Environmental Management Effort and Environmental Monitoring Effort (UKL-UPL) by the Government of Klungkung Regency, which is strongly indicated to contain juridical defects. Such legal defects arise from the overlapping authority between the regency and provincial levels, as well as the disregard of the General Principles of Good Governance (AUPB), particularly the principle of due care. Furthermore, this legal issue is exacerbated by the limited public participation in the formulation of spatial planning policies for the area. By way of illustration, the investor claimed to have obtained a recommendation from the Klungkung Regency Environmental Agency in 2023, while the Governor of Bali later found that the project had disregarded the Spatial Utilization Activity Suitability (KKPR) document for Foreign Investment and lacked any study concerning cliff stability. This reflects a licensing gap that failed to meet the standard of diligence required from the regional government in mitigating environmental risks.

From a juridical perspective, the normative conflict between legal products issued at the regency and provincial levels must be resolved through the principle of *lex superior derogat legi inferiori* as well as the principle of concurrent authority. In the context of managing coastal areas designated as a National Strategic Tourism Area (KSPN), the authority of the Government of Klungkung Regency is limited and must strictly conform to the higher-level spatial planning framework, namely the Regional Spatial Plan (RTRW) of Bali Province. The issuance of the UKL-UPL recommendation by the regency's regional apparatus without due consideration of spatial conformity validation from the provincial government constitutes an *ultra vires* act, namely an act exceeding its lawful authority, which results in a procedural defect (*procedurale gebreken*) in the issuance of the permit. Consequently, from the perspective of administrative law, such decision may be deemed null and void by operation of law (*van rechtswege nietig*).

Sustainable tourism fundamentally serves as the primary foundation for tourism development in Indonesia, as stipulated under Law Number 10 of 2009 concerning Tourism. This principle of sustainability requires a balance between economic, social, and environmental aspects in order to ensure the protection of ecosystems throughout tourism activities. The construction of the elevator at Kelingking Beach, which clearly alters and damages the limestone cliff structure, inevitably creates a domino effect on the surrounding ecosystem and, from a geological perspective, may be considered a form of exploitation that sacrifices environmental carrying capacity for short-term economic gain.

This research aims to conduct a comprehensive analysis of the principal violations committed by the developer company of the Kelingking glass elevator, as well as the authority of the regional government in its supervisory and tourism development functions. This study is considered urgent in light of the need for synergy between the investment regime following the enactment of the Job Creation Law and regional autonomy in order to ensure the preservation of coastal environments. In the absence of firm law enforcement, unauthorized development may become increasingly prevalent due to existing regulatory loopholes, thereby potentially threatening the originality of tourism destinations which, in essence, constitute invaluable assets for the people of Bali.

IMPLEMENTATION METHOD

This study employs a normative legal research method, which primarily focuses on the elaboration of norms applicable within a particular legal system in order to identify the law in accordance with prevailing legal principles and doctrines. This method is accompanied by several approaches, namely the statutory approach, conceptual approach, and case approach. (Muhaimin, 2020)

The primary legal materials used in this research consist of several laws and regulations, including the following:

1. The 1945 Constitution of the Republic of Indonesia;
2. Law Number 10 of 2009 concerning Tourism (Tourism Law);
3. Law Number 23 of 2014 concerning Regional Government (Regional Government Law);
4. Law Number 32 of 2009 concerning Environmental Protection and Management (Environmental Protection and Management Law);
5. Law Number 6 of 2023 concerning Job Creation (Job Creation Law);
6. Bali Provincial Regulation Number 3 of 2020 concerning the Regional Spatial Plan (Bali Regional Regulation 3/2020); and
7. Bali Provincial Regulation Number 5 of 2020 concerning Standards for Tourism Administration (Bali Regional Regulation 5/2020).

Meanwhile, the secondary legal materials used in this research include books, scholarly writings, articles, and leading legal journals that are relevant to the legal issues examined in this study.

The data collection technique employed in this research is the library research method, meaning that the researcher will conduct a review and examination of legal documents related to the case under study, namely the construction of the elevator at Kelingking Beach.

Lastly, the analytical method applied is prescriptive analysis, through which the author will formulate conclusions and provide legal arguments regarding the appropriate measures that should be taken in addressing the issues and challenges arising from the legal problem discussed in this study. (Jonaedi Efendi & Johnny Ibrahim, 2016)

RESULTS AND DISCUSSION

Analysis of the Authority of Regional Governments in the Tourism Sector

The authority of regional governments in the management of tourism objects originates from the constitutional mandate of regional autonomy. Fundamentally, regional autonomy grants local governments the right to regulate and administer their own domestic affairs. Referring to the Regional Government Law, tourism affairs are classified as optional governmental affairs, meaning matters that concretely exist within a region and possess the potential to improve the welfare of the local community (Leza Aulia Pratiwi, 2022).

Philipus M. Hadjon explains that governmental authority may be obtained through three principal mechanisms, namely attribution, delegation, and mandate. Attribution refers to the conferral of new authority by law upon a governmental organ, whereas delegation refers to the transfer of existing authority from one organ to another, accompanied by the corresponding responsibility. Referring to the Tourism Law, it is evident that attributive authority is vested in regional governments at the regency and municipal levels, enabling them to formulate regional tourism development master plans and to register tourism businesses within their respective jurisdictions (M. Arif Florisadeg, 2024).

Nevertheless, coordination of authority between the provincial level and regency/municipal governments frequently encounters technical obstacles. Article 29 of the Tourism Law stipulates that provincial governments possess the authority to coordinate tourism administration across inter-regency or inter-municipal areas and to designate provincial tourism destinations. This provision serves as the legal basis for the Government of Bali Province to intervene where tourism development

at the regency level is deemed detrimental to provincial culture or spatial planning, as occurred in the Kelingking Beach glass elevator project (Jaidun, 2024).

It should be emphasized that although regional governments possess autonomy, its implementation must remain within the framework of the Unitary State of the Republic of Indonesia. Accordingly, all regional regulations enacted must not conflict with higher laws and regulations or with the public interest. In the context of the Kelingking Beach elevator project, the authority of Klungkung Regency in issuing the UKL-UPL recommendation in 2023 must be questioned, particularly with regard to its legality, given that such issuance conflicted with the provincial authority concerning the validation of the Spatial Utilization Activity Suitability (KKPR) for foreign investment (Meilinda Suriani Harefa et al., 2025).

Implementation of the Job Creation Law and the Shift in the Licensing Paradigm

The enactment of the Job Creation Law introduced a significant transformation in Indonesia's licensing regime. Through this law, the Online Single Submission Risk-Based Approach (OSS-RBA) system was introduced, offering licensing simplification by categorizing business activities according to their level of risk, ranging from low to high. This simplification aims to enhance Indonesia's attractiveness to foreign investors through deregulation of overlapping rules (M. Arif Florisadeg, 2024).

Under the risk-based licensing regime, low-risk business activities are sufficiently legalized through a Business Identification Number (NIB), which functions as both identity and operational legality. However, for high-risk business activities, business actors are required to fulfill full licensing requirements before obtaining operational legality. The construction of a 180-meter cliff elevator in a geologically sensitive area such as Kelingking Beach clearly falls within the high-risk category, given its implications for human safety and significant environmental impacts.

The problem arises where the verification mechanism within the OSS system may operate automatically without prior substantive verification. The Tourism Business Registration Certificate (TDUP) integrated within the OSS system requires supporting documents such as UKL-UPL or AMDAL as operational prerequisites. In the Kelingking Beach case, the investor claimed to have pursued the licensing route; however, the Governor of Bali later found that the permits held by the company were incomplete due to the absence of the Marine Spatial Utilization Suitability (KKPRL), which should have been issued by the Ministry of Marine Affairs and Fisheries (Umar & Nadhifah Attamimi, 2020).

This inconsistency creates a dilemma for regional governments. On the one hand, investment facilitation may increase regional revenue; on the other hand, regional governments also bear moral and legal responsibilities regarding environmental preservation. The Kelingking Beach project demonstrates a tendency for the regional government to neglect environmental sustainability in pursuit of increased regional income.

Importantly, the risk-based licensing regime under the Job Creation Law does not automatically nullify the precautionary principle in environmental law. For high-risk business activities, the OSS-RBA system merely functions as an administrative portal, while the substance of Environmental Approval remains a *conditio sine qua non*, namely an absolute requirement that must be fulfilled through a rigorous environmental feasibility assessment. Claims of "automatic permits" often advanced by business actors constitute a legal misinterpretation; without field verification and valid technical approval (Pertek) from the competent authority, the NIB lacks operational force and remains vulnerable to revocation through post-audit supervision mechanisms (Tjitrawati et al., 2022).

Case Analysis of Violations in the Kelingking Beach Glass Elevator Project

The glass elevator project at Kelingking Beach, developed by PT Indonesia Kaishi Tourism Property Investment Development Group, was an ambitious project with a complex structure. Technically, the project consisted of three main parts: an entrance at the cliff edge, a 42-meter skybridge, and an elevator structure with a restaurant covering 846 square meters.

Based on the technical review released by the Government of Bali Province on 23 November 2025, five serious violations were identified as the basis for the order to suspend and dismantle the project. The first violation concerns spatial planning and contravenes Bali Provincial Regulation

Number 3 of 2020. The project site is located within a protected local area. Under spatial planning regulations, cliff buffer zones are prohibited from permanent heavy structures to mitigate landslide risks and preserve landscape aesthetics. The second violation is the absence of a recommendation from the Governor of Bali regarding the utilization of coastal and beach areas. More fundamentally, the legal issue stems from maladministration in the issuance of the UKL-UPL recommendation by the Government of Klungkung Regency. This decision clearly violated the General Principles of Good Governance (AUPB), particularly the principle of due care.

As mandated under Article 10 paragraph (1) letter d of Law Number 30 of 2014 concerning Government Administration, as amended by the Job Creation Law, the principle of due care requires governmental bodies or officials to act with utmost caution and to thoroughly examine all information and documents before issuing a decision. The legal doctrine advanced by Philipus M. Hadjon, frequently adopted in State Administrative Court jurisprudence, requires officials not merely to examine administrative completeness formally, but also to assess the substantive essence of the matter. In this case, the Klungkung regional government should have directly verified the geological stability of the limestone cliffs and required the existence of KKPRL prior to recommending the permit. The failure to comprehensively map both legal facts and field conditions renders the recommendation juridically defective.

The third violation concerns the neglect of a cliff stability assessment. The construction involved drilling into limestone cliffs, which are geologically vulnerable to vibration. The absence of a comprehensive geological assessment clearly endangered both tourist safety and the physical integrity of the iconic Kelingking cliffs. The fourth violation relates to non-compliance with Bali's cultural tourism standards under Provincial Regulation Number 5 of 2020. The project was deemed to alter the originality of the tourism destination, replacing the natural beauty of the limestone cliffs with concrete and glass structures inconsistent with local aesthetic values.

The fifth violation is the absence of the Marine Spatial Utilization Suitability (KKPRL) permit, which should have been issued by the Ministry of Marine Affairs and Fisheries. Since the elevator foundation and supporting structures extended into coastal waters, the investor was legally required to obtain marine spatial permits. These violations collectively indicate that the investor adopted a "build first, license later" approach, which fundamentally undermines Indonesia's administrative legal order.

Violation of the Principle of Due Care and the Deficit of Public Participation

From the perspective of administrative law, every action of regional administrative officials must comply with the General Principles of Good Governance (AUPB) as mandated under Article 10 of the Government Administration Law. Among these principles, the most crucial and fatally violated in this case is the principle of due care.

This principle requires that every decision, including environmental permit recommendations, must be based upon complete information and documentation. The key question concerns the extent to which such diligence must be exercised by the regional government. Within constitutional and administrative legal doctrine, due care cannot merely be interpreted as formal administrative completeness. Regional officials are required to undertake substantive verification, field investigation, and objective risk analysis before issuing permits.

In the Kelingking Beach elevator case, such diligence should have included verification of marine spatial permits from the relevant ministry and the mandatory geological stability assessment by experts. Permits issued without evaluation of these crucial facts constitute bureaucratic negligence, thereby invalidating the legality of the decision. This principle of due care is strongly grounded in State Administrative Court jurisprudence, particularly Supreme Court Decision Number 99 PK/TUN/2016, where the Court annulled the disputed administrative object due to the violation of the principle of due care.

The lack of diligence is directly related to the absence of meaningful dialogue and the minimal participation of local customary communities. When analyzed through Sherry R. Arnstein's Eight Rungs on a Ladder of Citizen Participation, the involvement of Nusa Penida residents in this megaproject remained at the lowest level, namely minimum participation, which falls within

manipulation or mere information-giving, categorized as tokenism. The regional government demonstrably failed to carefully absorb public aspirations, as it never genuinely sought the consent of customary communities, let alone placed local residents in a position of partnership or citizen control.

Therefore, the lack of diligence in data validation, coupled with the absence of meaningful public participation, renders the entire licensing claim of this project substantively defective

CONCLUSION

Based on a comprehensive juridical analysis of the Kelingking Beach elevator construction case, it may be concluded that the regional government plays a central role in ensuring sustainable tourism development through its regulatory, supervisory, and law enforcement functions. Although there has been a shift in the licensing regime toward a risk-based approach through the OSS system following the enactment of the Job Creation Law, regional governments still retain attributive authority that cannot be disregarded, particularly in the validation of spatial planning and the protection of environmentally and culturally sensitive areas.

The action of the Government of Klungkung Regency in issuing the environmental recommendation was proven to contain substantial juridical defects, as it violated the General Principles of Good Governance (AUPB), particularly the principle of due care. Regional officials demonstrably failed to conduct factual verification and did not adequately consider the environmental stability assessment, while also neglecting the mandatory requirement of the Marine Spatial Utilization Suitability (KKPRL) permit.

These procedural and substantive defects were further aggravated by the minimal level of public participation in the licensing process. Based on the theory of levels of public participation, the involvement of local and customary communities in Nusa Penida remained at the lowest level, amounting merely to informational manipulation, such that the rights and voices of the communities most directly affected by the degradation of the cliff's aesthetic integrity were not accommodated at all.

Overall, this project indicates a serious conflict between foreign investment ambitions and regulatory compliance, as evidenced by the discovery of five fundamental legal violations. The decisive action taken by the Government of Bali Province through the order to suspend and dismantle the project constitutes a significant precedent for environmentally oriented law enforcement. At the same time, it demonstrates that regional autonomy continues to possess real and effective authority in safeguarding the integrity and local wisdom of its territory against irresponsible exploitation.

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