

CRITICAL LEGAL ANALYSIS OF WATER MANAGEMENT POLICY IMPLEMENTATION IN TOURISM REGIONS: EXAMINING REGULATORY UNINTENDED IMPACTS

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Abstract: *The utilization of water resources for tourism activities in Kuningan Regency demonstrates increasing ecological pressure on springs, recharge zones, and the overall environmental carrying capacity, while Regional Regulation (Perda) No. 2 of 2013 on Tourism Administration fails to provide adequate regulatory instruments. In light of these conditions, this study poses two research questions: (1) how the utilization of water resources is regulated under Perda No. 2 of 2013, and to what extent such regulation is effective in protecting aquatic ecosystems; and (2) what constitutes an ideal legal model to prevent unintended impacts arising from water utilization by the tourism sector. The objective of this research is to formulate a regulatory model for water utilization capable of ensuring ecosystem sustainability and ecological justice through improvements to the regional legal framework. This study employs a normative juridical method using statutory, conceptual, and critical analytical approaches grounded in Klaus Bosselmann's theory of ecological justice. The findings reveal that Perda No. 2 of 2013 does not regulate limits on water extraction, conservation obligations, protected spring zones, or licensing mechanisms for water utilization, thereby failing to prevent ecological degradation and inequitable access to water between tourism operators and local communities. The discussion underscores the need for an ecosystem based regulation model integrating the intrinsic value of nature, ecosystem integrity, ecological limits, and intergenerational responsibility as foundational normative principles.*

Keywords: *Water Resource Governance, Tourism, Regional Regulation, Ecological Justice.*

I. INTRODUCTION

Tourism has become one of the leading economic sectors relied upon by the Government of Kuningan Regency to stimulate regional economic growth (Rina Masruroh & Neni Nurhayanti, 2016). The region's natural landscapes, temperate climate, and abundant water resources provide a distinctive appeal for visitors. From Sangkanhurip to Palutungan,

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tourism development has expanded rapidly over the past two decades, capitalizing on the area's natural endowments, including the utilization of water for various tourism facilities such as hot spring baths, restaurants, lodging establishments, and recreational parks.

As the primary legal instrument governing these developments, the Regional Government enacted Kuningan Regency Regional Regulation Number 2 of 2013 on Tourism Administration. This regulation is intended to establish a planned, integrated, and sustainable tourism governance system. Nevertheless, as with any public policy, its implementation inevitably produces both intended impacts and unintended impacts particularly negative spillover effects that must be critically examined within the legal and regulatory framework (Abdullah Ramdhani & Muhammad Ali Ramdhani, 2017).

Field observations indicate that the extensive extraction of water by tourism operators has had a direct impact on agricultural areas in Kuningan Regency. Approximately 3,816 hectares of rice fields situated near key water sources have been affected, particularly in the eastern regions of the regency such as Cidahu, Cimahi, Cibereum, and Cibingbing which have experienced recurring drought (Ajun Mahrudin, 2024). These drought conditions may stem from meteorological factors, including reduced rainfall, as well as agronomic conditions, such as diminished soil moisture and inadequate groundwater retention (Henny Pratiwi Adi, 2011).

From a sociological perspective, the disparities emerging from unregulated resource exploitation illustrate a growing erosion of legal protection for local communities. Rather than functioning as a safeguard, the law appears to provide implicit legitimacy for tourism businesses to continue extracting water without meaningful restraint. In this context, the community becomes the principal victim of the State's regulatory absence. Law, which should serve as an instrument of protection, instead assumes the character of a permissive framework.

This dynamic underscores that law, in practice, does not always operate as a neutral norm (Ifdhal Kasim, 2000). It often functions as a mechanism that reinforces dominant economic interests. The absence of regulatory provisions governing water management cannot merely be regarded as an oversight; it reflects a form of *legal silence* that disproportionately benefits well-established economic actors. A legal regime that fails to protect the environment and the community is, by its nature, structurally and ideologically imbalanced.

The unintended impacts of Regional Regulation Number 2 of 2013 on Tourism Administration are readily apparent. Water resources are exploited without clear regulatory limits; there are no technical instruments for ecological conservation or monitoring; and local communities increasingly lose access to clean water as commercial tourism consumption expands. The frequently cited expression "*het recht hink achter de feiten aan*," meaning that the law always lags behind social reality, aptly captures this phenomenon (Admin, 2021). It highlights the need for public policy that not only resolves current problems but is also forward-looking, capable of anticipating and preventing future unintended consequences (Nurul Fika et al, 2019).

This pattern repeats itself over time. Each dry season, residents endure declining water availability, while tourism enterprises continue operating with a stable supply. In every episode of water scarcity, community concerns surface, yet these grievances fail to elicit an adequate regulatory response. Such repetition is not the result of natural cycles alone; it is the consequence of legal inertia and normative gaps that should have been addressed through effective regulation.

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Against this background, the present study offers a critical examination of the substantive provisions of Kuningan Regency Regional Regulation Number 2 of 2013 on Tourism Administration. It further seeks to formulate legal norms that may guide public policy reforms aimed at reducing the unintended impacts associated with water management and utilization in Kuningan Regency.

II. RESEARCH METHOD

The methodological approach employed in this study is the normative juridical approach. The research adopts a descriptive-analytical specification, aiming to describe and analyze existing facts systematically, factually, and accurately by utilizing doctrines and principles of positive law relevant to the issues under examination. The data sources consist of primary legal materials, secondary legal materials, and tertiary legal materials. The data collection technique applied in this research is library research. The data obtained were analyzed using a qualitative normative method, relying on secondary data derived from document studies by systematizing written legal materials. The qualitative component is intended to examine data generated from library research concerning conservation in the management and utilization of water resources in tourism areas. Meanwhile, the normative component signifies that the study is grounded in the applicable statutory regulations as binding positive law (Sahat Maruli Tua Situmeang, 2022).

III. RESEARCH RESULT

In contemporary regional development, tourism has emerged as one of the strategic sectors, not only due to its contribution to economic growth and the increase of Local Own-Source Revenue (PAD), but also because of its role in strengthening cultural identity and promoting environmental sustainability. As one of the prominent tourist destinations in West Java, Kuningan Regency has sought to structure its tourism development trajectory through legal instruments in the form of Regional Regulations. Such regulations function not merely as administrative guidelines, but also as reflections of how local law interacts with higher-level national legal norms. Accordingly, it becomes essential to examine Kuningan Regency Regional Regulation Number 2 of 2013 on Tourism Administration both in terms of its formal legitimacy and normative substance to ascertain the extent to which the regulation is capable of reconciling economic development interests with ecological preservation and the protection of community rights.

Formally, Kuningan Regency Regional Regulation Number 2 of 2013 on Tourism Administration constitutes a valid legal product enacted under the attributive authority conferred by the Law on Regional Government. Within Hans Kelsen's Stufenbau Theory, the validity of a legal norm is determined by its position within the hierarchical structure of norms (Ricca Anggraeni & Indah Mutiara Sari, 2020). Consequently, the Regional Regulation derives its normative legitimacy from higher legal norms, namely Law Number 10 of 2009 on Tourism and Law Number 23 of 2014 on Regional Government.

However, the formal validity of a regional regulation does not automatically guarantee that its normative substance aligns with higher legal principles. In accordance with the Stufenbau theory, a lower norm (inferior norm) must not conflict with a higher norm (Mhd. Yusrizal Adi Syaputra, 2016). This doctrine is reflected in Article 7 paragraphs (1) and (2) of Law Number 12 of 2011 on the Formation of Laws and Regulations, which establishes the hierarchy of legal norms in Indonesia as follows:

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- (1) The Types and hierarchy of legislation consist of:
 - a. The 1945 Constitution of the Republic Indonesia;
 - b. Decrees of the People's Consultative Assembly (MPR);
 - c. Laws/Government Regulations in Lieu of Laws;
 - d. Government Regulations;
 - e. Presidential Regulations;
 - f. Provincial Regulations; and
 - g. Regency/Municipal Regulations.
- (2) The legal force of legislation is determined by its position within the hierarchy as referred to in paragraph (1).

The supremacy of norms, as affirmed in Article 7 paragraph (2), demonstrates that the legal force of a regulation is determined by its position within the hierarchical structure of legislation. A lower norm cannot contradict a higher norm because its validity is derivative rather than autonomous. This principle not only maintains legal order and prevents contradiction in terminis within the legal system, but also ensures procedural justice where the formation of norms follows lawful procedures and substantive justice, meaning that the content of a norm must not deviate from fundamental legal principles (Ilham Dwi Rafiqi, 2021).

The governance of legal norms within this hierarchical framework requires coherence, consistency, and integration. Coherence demands that each norm maintains a logical relationship with the superior norm above it. Consistency requires the avoidance of contradictions between regulations of equal or differing ranks. Integration ensures that all norms can be applied harmoniously within the national legal system, without creating conflicts or legal gaps that may undermine legal certainty itself.

This hierarchical arrangement of legislation directs legal governance toward the attainment of three fundamental values: legal certainty, justice, and utility. Legal certainty is achieved through the clarity of the normative order and the respective authority of each level of regulation. Justice is realized when lower norms do not conflict with the values and principles guaranteed by higher norms, particularly the Constitution. Utility arises when all levels of regulation can be implemented effectively without producing legal disharmony that may disrupt social order.

Kuningan Regency Regional Regulation Number 2 of 2013 on Tourism Administration was enacted with the intention of guiding tourism development in a planned, integrated, and sustainable manner. Normatively, the regulation is designed as a regional legal instrument capable of promoting economic growth, expanding employment opportunities, and simultaneously maintaining environmental sustainability. Within the framework of its intended impacts, the regulation is expected to serve as a bridge between economic interests and ecological considerations.

Over the past five years, tourism visitation trends in Kuningan Regency have shown a consistent annual increase (BPS, 2025). This rise in visitor numbers cannot be separated from the enactment of Regional Regulation Number 2 of 2013, which opened new pathways for local tourism development through its orientation toward the utilization of natural resources. This development has had direct implications for aggregate increases in Local Own-Source Revenue (PAD). Notably, Kuningan Regency's PAD grew from IDR 29.87 billion in 2020 to IDR 38.63 billion in 2024 (BPS, 2025).

Nevertheless, this increase in local revenue has not been accompanied by the development of technical regulatory frameworks governing tourism administration, thereby generating unintended impacts such as reduced water supply for local residents, drought affecting agricultural land, and the expansion of rainfed rice fields. The technical elaboration of Kuningan Regency Regional Regulation Number 2 of 2013 on Tourism Administration is connected to Kuningan Regency Regional Regulation Number 2 of 2009 on Licensing Service Retribution and Kuningan Regent Regulation Number 28 of 2024 on the Community-Based Integrated Strategy for Water Resource Development and Management. However, these instruments have yet to regulate technical norms concerning the management and utilization of water resources as a strategic ecological component within tourism governance, as mandated by Law Number 17 of 2019 on Water Resources, particularly Article 19 paragraphs (2) and (3):

- (2) *“Water Resource Managers as referred to in paragraph (1) may consist of ministerial technical units/regional technical units or state-owned/regional-owned enterprises operating in the field of Water Resource Management”.*
- (3) *“Certain task and authorities referred to in paragraph (1) does not include: (a). Formulating policies; (b). Establishing water resource management plans; (c). Determining water resource management plans; (d). Designating water source protected areas; (e). Issuing permits; (f). Establishing coordinating body; (g). Setting norms, standards, procedures, and criteria; (h). Forming water resource management entities; and (i). Determining BPJSDA unit values.”*

Thus, the attribution of authority to local institutional bodies becomes ineffective when it is not regulated through a Regional Regulation, because, under the statutory framework, local water-resource management units do not possess sufficient authority to independently establish technical policies. The absence of technical norms has resulted in a lack of operational standards, protective obligations, and ecological accountability mechanisms for both business actors and regional government institutions. Kuningan Regent Regulation Number 28 of 2024 on the Community-Based Integrated Strategy for Water Resource Development and Management is, in principle, intended to serve as a technical instrument to operationalize regional policies on water resource protection. However, upon critical examination, this regulation encounters a fundamental issue namely, its predominance of abstract, declaratory, and verbatim provisions that merely replicate higher-level norms. A technical regulation should contain “operational and applicable” instruments, such as:

- The establishment of quality standards and carrying-capacity thresholds for catchment areas;
- Monitoring models, reporting mechanisms, and enforcement procedures;
- Procedures for the utilization of water resources for tourism purposes;
- Environmental permitting mechanisms integrating AMDAL/UKL-UPL requirements;
- Zoning rules, river boundary arrangements, and protected-area designations;
- Structured, measurable frameworks for public participation rather than declaratory statements.

Therefore, the reformulation of water-resource governance requires a more progressive legal paradigm. Such a paradigm is articulated in the concept of ecological justice, as developed by Klaus Bosselmann. Bosselmann argues that modern law must recognize nature as a moral subject possessing inherent value, rather than merely an object for human use

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(Klaus Bosselmann, 2013). Within his theoretical framework, Bosselmann asserts that an environmentally just legal system must incorporate four core principles:

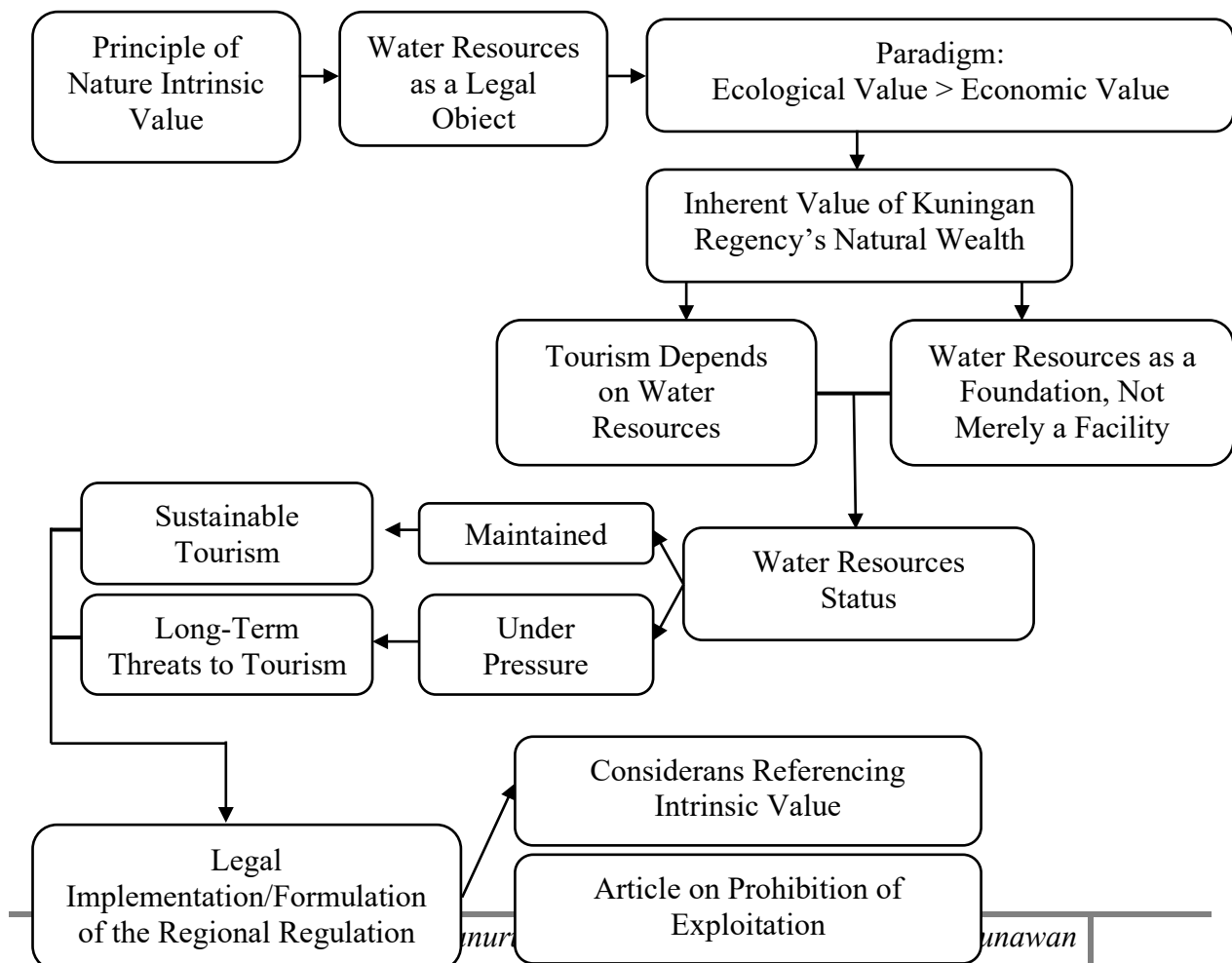
1. The intrinsic value of nature;
2. Ecosystem integrity;
3. Ecological limits; and
4. Intergenerational responsibility.

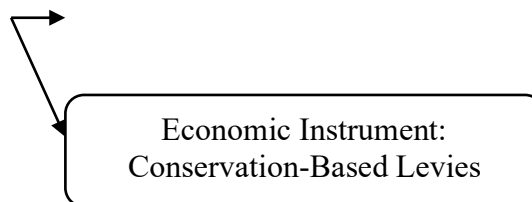
These four principles are not merely ethical guidelines; they must constitute the normative foundation of positive law. The first element, the recognition of nature's intrinsic value, requires that water be understood as an ecological component possessing value in and of itself not solely as an economic resource for tourism (Klaus Bosselmann, 2015). In the context of Kuningan, this approach is particularly significant, as all nature-based tourism activities depend heavily on the sustainability of water resources. If water continues to experience ecological stress, the long-term viability of tourism in the region will inevitably be undermined. An ideal regional regulation must therefore incorporate the principle of nature's intrinsic value into both its considerans and its foundational legal doctrines.

The formulation of this principle would shift the orientation of the Regional Regulation from merely facilitating the tourism industry toward establishing ecological protection as its primary objective, a shift that may be illustrated through the following conceptual model:

Image 1.

Flowchart of the Integration of the Principle of Nature's Intrinsic Value within the Framework of the Regional Tourism Regulation





The diagram above illustrates the conceptual flow through which the principle of nature's intrinsic value is integrated into the regulatory framework of the Regional Regulation governing water management in Kuningan Regency. The flow begins with a philosophical recognition that nature possesses inherent value in and of itself, thereby requiring water resources to be treated as ecological subjects with moral and normative standing deserving of protection, rather than merely as facilities supporting tourism related economic activities.

This shift produces a transformation in regulatory orientation from one centered on economic value to one grounded in the understanding that ecological value must serve as the primary basis of water-resource governance. The recognition of the inherent value of Kuningan Regency's natural wealth, particularly its water resources, underscores that tourism in the region is fundamentally dependent on the sustainability of hydro-ecological conditions.

If pressure on water sources continues to escalate without adequate legal safeguards, the long-term viability of tourism will be jeopardized. The diagram also illustrates the causal relationship indicating that tourism sustainability can only be maintained if the condition of water resources remains preserved and free from ecological stress. Accordingly, within the framework of regional regulation, the principle of nature's intrinsic value must be reflected in both the considerations and the foundational principles of the Regional Regulation, ensuring that the orientation of the regulatory framework shifts from merely facilitating economic activities to prioritizing ecological protection as its central objective.

The integration of this principle is subsequently translated into positive legal norms through three elements: (1) the formulation of a consideration grounded in the intrinsic value of nature; (2) the inclusion of provisions prohibiting water exploitation that exceeds ecological carrying capacity; and (3) the regulation of economic instruments, such as conservation-based levies, to ensure that every tourism activity bears a proportionate share of ecological restoration obligations (Klaus Bosselmann, 2013). Thus, the diagram affirms that the protection of nature's intrinsic value does not end at the normative philosophical level, but must be materialized through concrete legal instruments that are responsive to ecological threats capable of undermining the sustainability of water resources in Kuningan Regency.

The second element, the protection of ecosystem integrity, requires that water policies preserve the functional relationships among ecological components spring systems, infiltration areas, vegetation, and water flow so that they are not degraded by economic utilization. Empirical findings demonstrating an increase in aggregate water resource utilization, when compared to the expansion of rainfed agricultural land, indicate a declining resilience and carrying capacity of water resources in Kuningan Regency. This clearly shows that water use by tourism operators is often carried out without adequate understanding of the ecological sensitivity of spring ecosystems.

The legal formulation model must incorporate provisions concerning spring protection zones, obligations of ecological conservation, restoration of water catchment areas, and prohibitions against water utilization exceeding ecological carrying capacity. These

provisions must be mandatory and enforceable, rather than mere administrative recommendations. Ecosystem integrity can only be safeguarded through an ecosystem based regulatory approach, which requires that tourism business permits be denied where such activities threaten the sustainability of water-based ecosystems (Klaus Bosselmann, 2013). This must be expressly articulated through prohibitory norms and administrative sanctions (James Salzman, 2019). Without the establishment of ecological limits, exploitation will lead to the depletion of water sources, as has already begun to occur in several areas of Kuningan.

Implementation of this principle must include the determination of water-use quotas for each tourism operator. Such quotas must be established based on objective assessments of carrying capacity and environmental load, rather than investment-driven considerations. In addition, a Water Utilization Permit (Izin Pemanfaatan Air/IPA) should be mandated as a regulatory instrument distinct from the general tourism business license. The IPA must serve as a legally binding mechanism, supported by stringent technical requirements such as mandatory installation of water-flow measuring devices and periodic reporting on usage.

Monitoring of water-use quotas must be based on open environmental data, enabling the public to oversee whether business actors exceed the quotas that have been established. This transparency-based approach aligns with the principles of ecological justice, namely justice that takes into account the interests of ecological communities as well as affected human populations.

The fourth element, intergenerational responsibility, mandates that the present generation bears the obligation to safeguard natural resources so that they remain available for future generations. In the context of water management, this implies that every tourism activity must assume the ecological consequences arising from its water utilization. In accordance with these four principles, their normative foundation has been codified in Law Number 17 of 2019 concerning Water Resources, as elaborated in the following table:

Table 1.

The Correlation Between the Four Principles of Ecological Justice and Law Number 17 of 2019 Concerning Water Resources

No.	Principle	Articles	Explanation of Article Substance	Causal Relationship Between the Principle and the Norm
1	Intrinsic Value of Nature	Article 3 letter (c); Article 21(1); Article 24(1)	Emphasizes that water is not merely of economic value but possesses environmental functions that must be safeguarded.	The principle of intrinsic value is reflected in the recognition that the ecological function of water must be preserved.
2	Ecosystem Integrity	Article 22(2)(g); Article 24(3)(a–d); Article 26(1)	Affirms that conservation includes the protection of springs, rivers, wetlands, groundwater recharge areas, and related ecological zones.	Positions water management on an ecosystem-based approach rather than on a sectoral basis.
3	Ecological Limits	Article 22(2)(c);	Establishes ecological carrying capacity and	The principle of ecological limits arises

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		Article 24(1); Article 25(a–d)	assimilative capacity as guiding parameters, and prohibits actions that disrupt hydrological systems or degrade water quality.	from the acknowledgment that natural capacity is finite, thereby requiring regulation to prevent over-extraction.
4	Intergenerational Responsibility	Article 3(b); Article 14(14); Article 24(8)	Conservation is intended to maintain water resources for “present and future generations”; conservation principles serve as a basis for long-term spatial planning.	The norms are designed to protect the rights of future generations to water availability through conservation and regulated utilization.

Source: Author’s Analytical Findings 2025

Then, a comprehensive legal model for water governance in Kuningan Regency is one that integrates Bosselmann’s principles of ecological justice, addresses the normative gaps within Regional Regulation of Kuningan Regency Number 2 of 2013 on Tourism Administration, and positions the protection of water resources as a state obligation that is ecological, moral, and constitutional.¹ Such a model would be capable of mitigating unintended impacts and ensuring the sustainability of water ecosystems for both present and future generations.

IV. CONCLUSION

This study concludes that the Regional Regulation of Kuningan Regency Number 2 of 2013 on Tourism Administration has not provided an adequate technical framework to safeguard the sustainability of water resources, which constitute the primary foundation of tourism activities in Kuningan Regency. The absence of regulatory provisions concerning limits on water use, spring protection zones, conservation instruments, and licensing mechanisms for water utilization has generated unintended impacts in the form of ecological pressure, inequitable access to water, and increased vulnerability among local communities. This condition demonstrates that the formal validity of a regional regulation is insufficient to ensure ecological justice when its substantive norms fail to respond to environmental dynamics.

The findings of this research affirm that the paradigm of water governance must shift from a utilitarian orientation that treats water merely as a supporting facility for tourism toward an ecological paradigm that recognizes the intrinsic value and ecosystem integrity of water resources. Klaus Bosselmann’s principles of ecological justice namely the intrinsic value of nature, ecosystem integrity, ecological limits, and intergenerational responsibility are shown to be highly relevant as the foundation for formulating an ecosystem-based regulatory model capable of directing tourism management in a manner that does not exceed environmental carrying capacity.

Accordingly, a reformulation of regional regulations governing the management and utilization of water is required through the establishment of mandatory operational

¹ Andri G. Wibisana, *Perlindungan Lingkungan dalam Perspektif Keadilan Antar Generasi*, Jurnal Masalah-Masalah Hukum 46(1), 2017, hlm. 13.

provisions, such as the determination of water-use quotas based on ecological carrying capacity, the adoption of a dedicated Water Utilization Permit separate from business licensing, the imposition of ecological conservation obligations, standardized monitoring and reporting mechanisms, and the incorporation of conservation-based economic instruments. Such a regulatory model is expected to serve as a more ecologically just legal framework, thereby preventing the adverse impacts of water exploitation by the tourism sector, ensuring the long-term sustainability of water ecosystems, and fulfilling the State's responsibility to protect the rights of present and future generations to water resources.

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