

## **Evaluation of the Negative List for Investment in Historical Temple Objects: A Double-Edged Sword**

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### **Abstract**

*This research will recommend the government regulate the service sector of operating historical and archaeological tourism as a closed business sector. Law No. 25 of 2007 and the Presidential Regulation No. 44 of 2016 has classified this matter as a business sector that is closed to investment. But Law No. 11 of 2020 and Presidential Regulation No. 10 of 2021 provide an opportunity for investors to invest in the field of service operations for historical and archaeological tourism. These laws open job opportunities and provide foreign exchange for the state from tourism at historical sites such as temples. However, the increase in investment also attracts more visitors, which could potentially harm the preservation of the Temple. This research will evaluate both Law No. 11 of 2020 and Presidential Regulation No. 10 of 2021. The evaluation will suggest how Presidential Regulation No. 49 of 2021 should regulate the classification of the field of services for the operation of historical and archaeological heritage tourism. The business sector should be classified as a closed business sector to fulfil the rights of future generations to historical knowledge.*

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## **1. INTRODUCTION**

Opening of the service sector, the operation of historical and archaeological tourism is a double-edged sword for investment. This business sector generates foreign exchange for economic development. The number of visitors to Borobudur Temple reaches two thousand to two thousand three hundred people every day in 2023. The Central Statistics Agency of Magelang Regency shows an increase in visitors to Borobudur Temple from 2021 to 2023. The number of visitors to Borobudur Temple increased from 674 people in 2021 to 53,936 people in 2022. The number of visitors to Borobudur Temple increased again in 2023 to 193,053 people. The entrance ticket price also reached Seven Hundred and Fifty Thousand Rupiah for each local tourist and One Hundred United States Dollars for each foreign tourist on June 5, 2022. The Government of the Republic of Indonesia estimates that Borobudur Temple can contribute two billion US dollars in foreign exchange from tourism. This profit potential attracts investors to invest in the temple tourism sector. However, on the other hand, this business sector threatens the preservation of historical sites. The preservation of Borobudur Temple is threatened by visitors who frequently climb the sacred mandala and temple walls. As evidence of the history of the Republic of Indonesia during the Hindu-Buddhist Kingdom, the preservation of temples should be a concern of the Government of the Republic of Indonesia.

At first, the field The service of operating historical and archaeological heritage tourism is a sector that is closed to foreign investment. Foreign investors are not allowed to invest in

the field of operating historical and archaeological heritage tourism services (such as temples, palaces, inscriptions, relics, ancient buildings). This is based on the provisions of Article 12 number 2 of the Republic of Indonesia Law Number 25 of 2007 in conjunction with Attachment 1 (pages 1 and 2) Presidential Regulation of the Republic of Indonesia Number 44 of 2016. Presidential Regulation of the Republic of Indonesia Number 44 of 2016 was previously the Negative Investment List applicable in the Republic of Indonesia. The Negative Investment List regulates which business sectors are open and closed to investment in Indonesia.

The provisions of Article 77 number 2 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation and Article 2 Regulation of the President of the Republic of Indonesia Number 10 of 2021 change The Negative Investment List previously in effect in the Republic of Indonesia. The service of operating historical and archaeological heritage tourism has become a business sector that is open to investment activities. Presidential Regulation of the Republic of Indonesia Number 44 of 2016 was promulgated on May 18, 2016. While the Presidential Regulation of the Republic of Indonesia Number 10 of 2021 enacted on February 2, 2021. Based on legal basis *The latter law derogates the former law*, then Presidential Decree of the Republic of Indonesia Number 10 of 2021 will override the provisions of Presidential Decree of the Republic of Indonesia Number 44 of 2016. Provisions of Article 14 letter (b) of the Presidential Regulation of the Republic of Indonesia Number 10 of 2021 confirming the validity of the legal principle. The reason for enacting the Job Creation Law and Presidential Decree No. 10 of 2021 is to create as many jobs as possible.

But it should be historical and archaeological heritage tourism operating services sector regulated as a closed business sector. The reason is to preserve the temple as a historical object. Future generations have the right to benefit from historical knowledge. This right is regulated in Article 28C and Article 28F of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 13 of Law Number 39 of 1999. Therefore, the preservation of historical objects should be a concern of the Government of the Republic of Indonesia. Presidential Regulation of the Republic of Indonesia Number 49 of 2021 does not change the provisions of the Negative Investment List (DNI) which have been regulated by Job Creation Law and Regulation of the President of the Republic of Indonesia Number 10 of 2021. So this research aims to evaluate the Negative Investment List in the provisions Job Creation Law and Presidential Decree of the Republic of Indonesia Number 10 of 2021. This research will also show how the regulation field historical and archaeological heritage tourism services that should be included in the Negative Investment List legislation. Both of these issues will be analyzed in a journal article entitled *Evaluation of the Negative List for Investment in Historical Temple Objects: A Double-Edged Sword*.

## 2. DISCUSSION

### 1. Evaluation of the Negative List of Investments in Historical Objects of the Republic of Indonesia

Historical objects are one of the business sector objects regulated in the Negative Investment List (DNI) in the Unitary State of the Republic of Indonesia. Negative Investment List (DNI) is a list issued by the Government of the Republic of Indonesia regarding which businesses can be invested in Indonesia. Initially, DNI in Indonesia was regulated in the provisions Law of the Republic of Indonesia Number 25 of 2007 and its implementing regulations, namely Presidential Regulation of the Republic of Indonesia Number 44 of 2016. Field Businesses that are closed to foreign investment in Indonesia are: the production of weapons, gunpowder, explosives and war equipment, and business sectors that are explicitly stated as closed by law. Besides that, There are still twenty

other business fields that are closed to foreign and domestic investors as regulated in the provisions of Attachment 1 of Presidential Regulation of the Republic of Indonesia Number 44 of 2016. The twenty business fields that are closed to foreign investment based on Presidential Regulation of the Republic of Indonesia Number 44 of 2016 are the following business fields:

1. *Cannabis cultivation;*
2. *Catching of fish species listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);*
3. *Utilization (taking) of coral or reefs from nature for building materials/lime/calcium, aquariums, and souvenirs/jewelry, as well as coral, both live and dead coral from nature;*
4. *Chlor alkali manufacturing industry with mercury process;*
5. *Pesticide active ingredient industry;*
6. *Chemical industry;*
7. *Ozone-depleting materials industry;*
8. *Chemical industry List-1 of the Chemical Weapons Convention as stated in the provisions of Attachment I of the Republic of Indonesia Law Number 9 of 2008 concerning the Use of Chemical Materials as Chemical Weapons;*
9. *Any form of gambling and/or casino activities;*
10. *Alcoholic beverage industry;*
11. *The liquor industry containing grape alcohol;*
12. *Malt beverage industry;*
13. *Organization and operation of land transportation passenger terminals;*
14. *Organization and operation of motor vehicle weighing;*
15. *Telecommunications or Navigation Aids and Vessel Traffic Information System (VTIS);*
16. *Provision of flight navigation services;*
17. *Implementation of motor vehicle type testing;*
18. *Management and operation of radio frequency spectrum and satellite orbit monitoring stations;*
19. *Government museums; and*
20. ***Historical and ancient relics (such as temples, palaces, inscriptions, hermitages, ancient buildings, and so on).***

One of the twenty closed business sectors is field historical and archaeological heritage tourism operations services. The objects of this business sector are historical objects, such as temples, palaces, inscriptions, relics, ancient buildings, and so on. As a result, investors cannot invest in the historical and archaeological tourism business sector.

The enactment of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation changes the provisions Law Number 25 of 2007 and Presidential Regulation of the Republic of Indonesia Number 44 of 2016. Provisions of Article 181 number 1 of Law Number 11 of 2020 in conjunction with Article 14 letter (b) of the Presidential Regulation of the Republic of Indonesia Number 10 of 2021 making the previous Negative Investment List invalid. Service sector of Historical and archaeological heritage is no longer a business sector that is closed to investment activities. Article 77, number 2 of Law Number 11 of 2020, only regulates six business sectors that are closed to investment activities. These six business sectors are:

1. *Cultivation and industry of class I (one) narcotics;*
2. *Any form of gambling and/or casino activities;*

3. *Catching of fish species listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), utilization and harvesting of coral;*
4. *Utilization or taking of coral and coral from nature;*
5. *Chemical weapons manufacturing industry; and*
6. *Chemical and ozone-depleting substances industry.*

The service sector Historical and archaeological heritage is not one of the six sectors. Therefore, this business sector is open to investment in the Republic of Indonesia based on the newer DNI.

Changes to the Negative Investment List have both negative and positive impacts of service sector in Historical and archaeological heritage experiences both types of impacts. The positive impact is the increase in tourism foreign exchange through entrance ticket revenue from each foreign tourist visiting Borobudur Temple. By 2023, the number of foreign tourists visiting Borobudur Temple will reach 2,000 to 2,300 people per day. Although the Covid-19 pandemic resulted in a decrease in visitors to Borobudur Temple by 674 people, the number increased to 53,936 people in 2022 and 193,053 people in 2023. The increase in the number of foreign tourists visiting Borobudur Temple has caused the Government of the Republic of Indonesia to view the historical temple tourism sector as a business that has the potential to contribute to tourism foreign exchange of two billion US dollars. The increased ticket price for Borobudur Temple, which has reached seven hundred and fifty thousand Rupiah for each local tourist and one hundred US dollars for each foreign tourist visiting since June 5, 2022, supports the validity of these expectations.

The potential profits from the tourism sector of the historical object of Borobudur Temple encourages investors to invest in order to reap as much profit as possible. The capital they invest will create jobs in the Borobudur Temple tourism sector, thereby opening up employment opportunities for Indonesians. The tourism and creative economy sectors in Indonesia, one of which is tourism to the historic Borobudur Temple, has absorbed as many as Twenty Two Million people by 2023. The absorption of labor clearly contributes positively to economic development in Indonesia by reducing the unemployment rate and providing funds for the country's economic development from Indonesian tourism foreign exchange which reached 10.46 billion US dollars (where this amount makes the contribution of Tourism GDP to the national economy reach 3.8%). These various positive impacts have realized the objective of enacting Law Number 11 of 2020 concerning Job Creation, namely creating jobs that will absorb workforce as much as possible.

However, the enactment of the Job Creation Law and its implementing regulations is a double-edged sword. It not only has a positive impact on the economy but also negatively impacts the preservation of temples as historical sites in Indonesia. Field opening Historical and archaeological heritage tourism services offer investors opportunities to invest. Historical tourism businesses in Indonesia attract visitors to temple areas. However, not all visitors are willing to preserve the temples. For example, in 2016, visitors were found climbing the sacred mandala and temple walls. Borobudur. Apart from climbing, visitors also move and even steal rocks or other objects in the temple. Visitors' efforts to find the right place and position for photos also damage the preservation of temples in Indonesia. Apart from throwing rubbish anywhere, visitors also deface the temple reliefs with spray paint. In fact, the temple reliefs contain important information. Such as the Karmawibhanga relief at the base of the temple (*Kamdhatu*), which explains human actions that contain good or evil and all the

consequences of these actions. Various actions of visitors as explained in this paragraph threaten the preservation of the temple.

## **2. Knowledge of Past History as a Basic Right of the Next Generation**

Temples are not only places of worship, but also important historical objects. The temple has cultural, historical and religious values. An example is Borobudur Temple, whose existence is important for Buddhists in Indonesia. Borobudur Temple was founded by the Sailendra Dynasty or Dynasty. This serves as evidence of the existence of a dominant kingdom in Central Java during the Ancient Mataram era. If the temple's preservation is not addressed, future generations will gradually lose historical objects. Consequently, they will not gain knowledge about Indonesia's past history. History is a crucial aspect of social and national life. Historical information must be passed down to future generations.

The next generation has the right to know the origins of their nation. This right is the right to benefit from knowledge. These human rights are regulated by the Constitution and the Human Rights Law, namely Article 28C and Article 28F of the 1945 Constitution of the Republic of Indonesia (UUD 1945) in conjunction with Article 13 of Law Number 39 of 1999 concerning Human Rights (UU HAM). The right to information is a first-generation human right. First Generation Human Rights are civil and political rights. One type of such right according to the International Covenant on Civil and Political Rights (*International Covenant on Civil and Political Rights*) 1966 is the right to information. The right to information is regulated in the provisions of Article 19 (2) of the 1966 *International Covenant on Civil and Political Rights*. So the right to information is a first-generation human right.

As a member of the United Nations, the Republic of Indonesia is obliged to uphold the Universal Declaration of Human Rights of 1948. This obligation is also stated in the ratification of the International Covenant on Civil and Political Rights in 1966. The ratification of both reflects the Indonesian people's awareness of the importance of human rights. Awareness of the importance of human rights stems from each person's empathy for the plight of others. World War II is an example of an event that fostered human empathy for the suffering of others. According to Hunt, empathy gives rise to awareness of the importance of human rights. Those who become pioneers in protecting human rights are people who are awakened by this empathy.

Awareness of the importance of human rights should motivate states to fulfill their obligations. According to Starck, states have an obligation to protect the human rights of their citizens. Stahl also put forward one of the characteristics of a state based on law (*rule of law*), namely the protection of fundamental rights. The reason human rights are fundamental is their connection to each person's identity as a bearer of rights. According to Griffin, human rights are related to the individual person as their bearer. Griffin's opinion aligns with Benhabib, who views human rights as part of every person's identity. Tasioulas also mentioned a similar relationship between human rights and dignity. A person's identity and dignity are essentially interrelated. Therefore, human rights, which relate to both, are fundamental. Therefore, the state is obliged to protect human rights, one of which is the right to information.

## **3. Negative List of Investments in Indonesia: Historical Tourism Objects That Should Be**

This research falls within the legal discipline. According to Brotosusilo, research within the legal discipline has five characteristics, one of which is demonstrating how the law should apply in society. Therefore, this research aims to demonstrate how the

government should regulate the Negative Investment List in Indonesian legislation. The Government of the Republic of Indonesia is obliged to advance science and culture, as stipulated in Articles 31 and 32 of the 1945 Constitution. To fulfill this responsibility and fulfill the right of future generations to information, the government needs to amend the Negative Investment List for historical objects in Indonesia. The Indonesian government should prioritize the preservation of Borobudur Temple in its legislation regarding the Negative Investment List (DNI). This will ensure that future generations in Indonesia can continue to access information related to the past history of historical objects such as temples.

This study assesses the Negative Investment List in the Job Creation Law and Presidential Regulation No. 10 of 2021 as regulations that threaten the preservation of temples. In other words, the negative investment list threatens the preservation of historical objects in Indonesia. Therefore, the negative investment list contradicts the human rights of future generations to access information in the form of historical knowledge of the past. The negative investment list, according to the provisions of the Article 77 number 2 of Law Number 11 of 2020 in conjunction with Article 2 of Presidential Regulation of the Republic of Indonesia Number 10 of 2021 also hampers efforts. The Government of the Republic of Indonesia to advance science and culture as regulated in the provisions of Article 31 and Article 32 of the 1945 Constitution.

Therefore, the Government of the Republic of Indonesia should regulate the field **service** operation of historical and archaeological heritage tourism as a business sector closed to investment activities in Indonesia. The previous Negative Investment List had already designated this business sector as closed to investment. The DNI has succeeded in preventing investors from investing in the historical object tourism business sector. DNI according to Law Number 25 of 2007 in conjunction with Presidential Regulation of the Republic of Indonesia Number 44 of 2016 is correct. Closing investment in this business sector has at least preserved the historic site. The closure has limited the number of visitors, which, if excessive, could potentially damage the temple's preservation.

However, the Negative Investment List according to the Republic of Indonesia Law Number 11 of 2020 and the Presidential Regulation of the Republic of Indonesia Number 10 of 2021 brought changes in the form of negative consequences for the preservation of the temple. This legislation made the previous DNI invalid. So that the field of historical and archaeological heritage tourism operating services become business sectors that are open to investment activities in Indonesia. Economic interests, namely to create employment opportunities and obtain tourism foreign exchange from historical tourism businesses whose funds come from investor capital, are the reasons for the enactment of the Job Creation Law and the Presidential Regulation of the Republic of Indonesia Number 10 of 2021.

In other words, the Indonesian government prioritizes economic gain over the preservation of the temple's historical sites. As evidence, on October 8, 2020, the Indonesian government chose not to revoke Law No. 11 of 2020 concerning Job Creation. Even when there are provisions regarding problematic liquor investments in the Presidential Regulation of the Republic of Indonesia Number 10 of 2021, the Government of the Republic of Indonesia still does not revoke the Job Creation Law and the Presidential Regulation of the Republic of Indonesia Number 10 of 2021 but only revokes the related attachment to the Presidential Regulation of the Republic of Indonesia Number 10 of 2021 regarding the requirements for new capital investment in the liquor investment sector. Provision Presidential Regulation of the Republic of Indonesia Number 49 of 2021 still does not change the provisions of the Negative Investment List (DNI) which have been regulated by Job Creation Law and Regulation

of the President of the Republic of Indonesia Number 10 of 2021. Up to the field historical and archaeological heritage tourism operating services are still open to investment activities in Indonesia.

It cannot be denied that foreign direct investment (*foreign direct investment*) is profitable, especially in terms of capital, which tends to be larger than domestic investment. Nevertheless, preserving historical objects remains crucial and essential for passing on historical knowledge to future generations in Indonesia. They have the right to access information about past history, as stipulated in Article 28C and Article 28F of the 1945 Constitution in conjunction with Article 13 of the Human Rights Law. This right is also regulated in Article 19 (2) of the 1966 Constitution. *International Covenant on Civil and Political Rights*. This right is also regulated in the provisions of Article 19 of 1948 *Universal Declaration of Human Rights* (Universal Declaration of Human Rights of 1948). States are obliged to protect and fulfill human rights. One of these is the right to information, the source of which is historical objects such as temples.

The Government of the Republic of Indonesia should regulate the field historical and archaeological heritage tourism operating services as business sectors that are closed to investment activities. This needs to be regulated in new legislation as a change from Regulation of the President of the Republic of Indonesia Number 10 of 2021 And Presidential Regulation of the Republic of Indonesia Number 49 of 2021. If the Government has implemented regulations regarding this matter, then new legislation will be born as written law containing legal norms that bind investors not to invest in the field of operating services for historical and archaeological heritage tourism.. Legal norms in the form of commands (*commandment*) Not making investments will prevent investors from investing so that investment in the historical tourism business sector in Indonesia can be limited and the number of visitors can be controlled and the preservation of the temple is maintained because of it.

In order to maintain the preservation of historical temple objects in Indonesia, regulations regarding field historical and archaeological heritage tourism operating services as It is important to implement business sectors closed to investment activities. To date, the provisions of Presidential Regulation of the Republic of Indonesia Number 49 of 2021, as an amendment to Regulation of the President of the Republic of Indonesia Number 10 of 2021, is still in effect and there are no other laws and regulations that change or revoke it. The Presidential Regulation of the Republic of Indonesia Number 49 of 2021 is still in effect, therefore field historical and archaeological heritage tourism operating services remains a business sector open to investment. Consequently, the preservation of Indonesia's historic temple sites remains threatened.

This research will also provide an alternative for the Government of the Republic of Indonesia. This alternative is a regulatory model other than closing the historical and archaeological heritage tourism service sector to investment activities. If the Government cannot regulate this business sector as a closed business sector for investment activities, then it is better to create regulations that pay more attention to the preservation of historical temple objects. The Government of the Republic of Indonesia can regulate the types of sanctions that can have a deterrent effect on visitors who damage the preservation of the temple. For example, legislation related to the Negative Investment List can impose prison sanctions for temple visitors who climb the walls and Mandala Temple. In addition, criminal sanctions can be imposed for visitors who litter and deface the temple walls with spray paint. Fines and imprisonment are types of sanctions under the Law on the Criminal Code in Indonesia. Both types of sanctions should be applied with adjustments to the fines and imprisonment sentences based on the provisions of Chapter Eleven of Law Number 11 of 2010 concerning Cultural

Heritage. For example, the nominal fine of Five Hundred Million to Five Billion Rupiah in Article 105 of Law Number 11 of 2010 can be used as a reference in determining the amount of fines for visitors who damage the preservation of temples.

According to Pound, Law is a social force in the form of behavioral regulations that reconcile various conflicting interests. Pound's thoughts on law as a tool of social engineering (*law as a tool of social engineering*) comes from the awareness that in society there are various overlapping interests. Everyone has their own interests and it is not uncommon for these interests to clash with each other, resulting in conflict. By recognizing the existence of various overlapping interests in society, the role of law is to recognize an interest and determine the extent to which that interest can be fulfilled. In other words, the role of law is to determine the boundaries between one interest and another. Legal boundaries will satisfy the desires of people living in an organized society and balance various conflicts to achieve a balance between interests that need to be protected.

Based on Pound's thinking, legislation regarding the Negative Investment List must balance the interests of both parties. On the one hand, there are economic interests in creating jobs, as was the stated objective of the Job Creation Law. Meanwhile, there is another legal interest in the form of the rights of future generations to historical information from the past, based on the provisions of Article 28C and Article 28F of the 1945 Constitution in conjunction with Article 13 of the Human Rights Law. Neither of these two legal interests can be simply set aside. Therefore, the government should regulate legislation that can balance both legal interests. The government can regulate the types of sanctions that can provide a deterrent effect in legislation regarding the Negative Investment List. This will ensure the preservation of temples as historical objects and the country continues to benefit from foreign exchange from the temple tourism sector.

### 3. COVER

This research evaluates the provisions Article 77 number 2 of the Republic of Indonesia Law Number 11 of 2020 in conjunction with Article 2 number 1 of the Presidential Regulation of the Republic of Indonesia Number 10 of 2021. This indicates that the Negative Investment List violates the rights of future generations to historical information. Future generations in Indonesia have the right to access historical information from the past through historical temple objects. This right is regulated by Article 28C and Article 28F of the 1945 Constitution in conjunction with Article 13 of the Human Rights Law. Opening the historical and archaeological heritage tourism service sector to investment attracts visitors, which has the potential to damage the preservation of temples. Therefore, the government should regulate the historical and archaeological heritage tourism service sector as a business sector closed to investment activities.

However, economic interests cannot be dismissed. Opening up the historical and archaeological heritage tourism sector to investment offers benefits through foreign exchange earnings and job creation. Both legal interests, namely the economic interests of the Job Creation Law and the right to information for future generations, cannot be dismissed. Presidential Regulation of the Republic of Indonesia Number 49 of 2021 still does not change the provisions of the Negative Investment List according to Job Creation Law and Presidential Regulation of the Republic of Indonesia Number 10 of 2021. If the historical and archaeological heritage tourism sector is to remain open to investment, the government should regulate the types of sanctions that can have a deterrent effect in legislation regarding the Negative Investment List. This will ensure the preservation of



temples as historical sites and ensure the country continues to benefit from foreign exchange from the temple tourism sector.

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