

# Research on the Legal Issues of Tourist Attractions in Economic Development

Yuchao Chen<sup>1</sup>, Yuzhuo Chen<sup>2\*</sup>

<sup>1</sup>School of Law Shanghai University of International Business and Economics, Shanghai, China

<sup>2</sup>College of Tourism and Landscape Architecture, Guilin University of Technology, Guilin Guangxi Zhuang Autonomous Region, China

\*Corresponding author: Yuzhuo Chen, [jfzzgdadt@163.com](mailto:jfzzgdadt@163.com)

**Copyright:** © 2022 Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), permitting distribution and reproduction in any medium, provided the original work is cited.

**Abstract:** Tourism attraction was initially proposed in tourism management, which has not been stipulated in China's legislation. Tourism attraction plays an important role in the development of tourism economy in rural areas, especially in remote areas with limited resources. Therefore, it is necessary to analyze the legal attributes of tourist attractions and solve the key problems by clarifying the subject of rights through legislation, improving the value evaluation standards, expanding the scope and period of protection of rights. Using non-legislative methods to promote economic reform and growth, as well as using existing laws to achieve coordinated economic and social development.

**Keywords:** Tourism attraction; Civil law; Regional economies

**Online publication:** January 21, 2022

## 1. Introduction

The concept of tourist attraction was first put forward by Bao Jigang and Zuo Bing in their paper "Legislating for tourist attractions rights <sup>[1]</sup>." Professor Bao Jigang pointed out that "in most cases, tourist attraction is the pronoun of tourism resources <sup>[2]</sup>." However, simply from its literal meaning, attractions represent all kinds of material or non-material factors that can attract people and legal person to carry out tourism, tourism development and other tourism activities, which include but not limited to natural landscape, transportation facilities, scenic spot services, hotel accommodation, cultural products, intellectual property, etc.<sup>[3]</sup>. In addition to the income distribution of scenic spots, its significance and value are more reflected in its attraction to external funds. At present, the financing guarantee is mainly based on various properties that can be freely transferred with assessed value. Nevertheless, historical and geographical factors are the reasons that restrict the development of some villages. These villages and towns have poor basic conditions, and it is difficult to develop other industries except tourism based on tourism resources.

As a result, tourism has become the most likely way to achieve economic development in underdeveloped area, and local government can take the tourism as a breakthrough to promote the improvement of the whole industrial chain. Tourism attractions also provide a new possible property as a financing tool for underdeveloped areas. Therefore, it is necessary to make a full study of tourism attractions from a legal perspective. In recent years, such important reform policies are introduced and relevant researches are increasing. The relationship between tourism policy, number of tourists and articles of studies on tourism resources are showed in **Figure 1**. The purpose of this paper is also to solve the theoretic

divarication on the legal characterization of tourism attractions and to definite whether tourism attractions can be used for financing guarantee. Finding a way to reduce investment risks and provide legal protection for rural economic development and attracting investment.

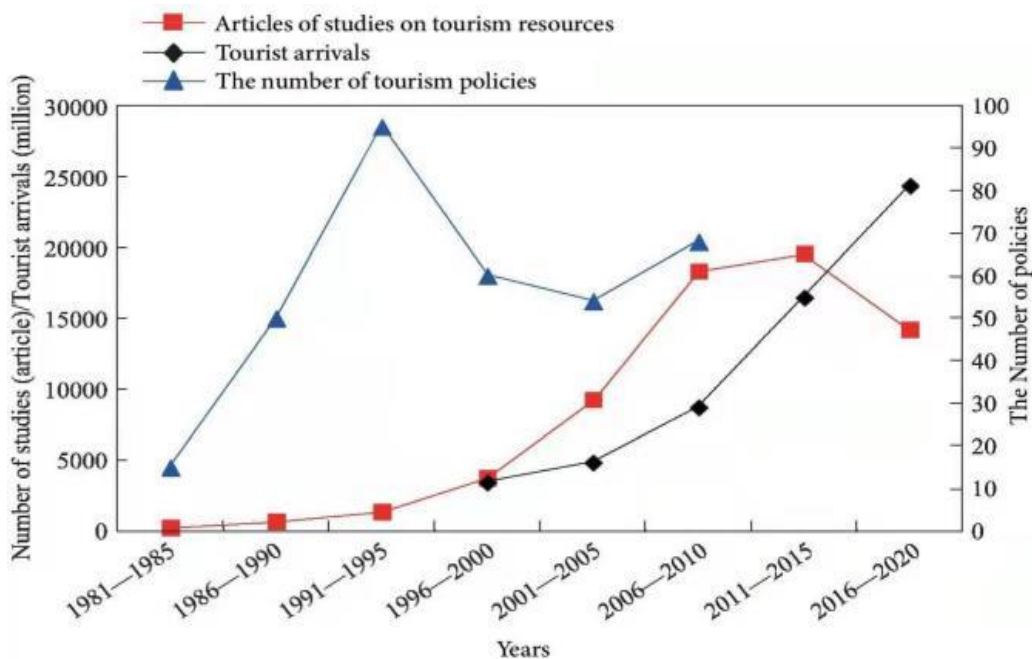


Figure 1. Relationship between tourism policy, number of tourists and studies on tourism resources [4]

## 2. Characteristics of tourist attractions

### 2.1. Species diversity

Based on the concept of tourism attractions, it can be found that tourism attractions are not isolated things, but a whole of all factors including tourism development and sightseeing and etc. [5]. The reason why rural areas' tourism exploiting is laborious can be analyzed from two aspects. On one hand, due to the ambiguity of the concept and the wide variety of types of tourist attractions, it is difficult to implement the terms of economic development and financing guarantee in the existing law in practice. On the other hand, planners must determine the extent of tourist attractions in light of the specific circumstances of each area. In the lack of defined legislative criteria, local government organizations aim to expand the scope of attractions as much as possible in order to attract more investment, while investors expect to limit the scope in order to generate more financial leverage.

### 2.2. The subject of proprietary right is complex

Different tourist attractions have obvious differences in ownership due to the types of tourist attractions. It may result in a conflict of ownership or ownership that is ambiguous due to a mix of nature and human factors. For example, on state-owned or collectively held property, self-built buildings and self-planted plants generate ownership concurrence, and unclear divisions of attractions affect the determination of whether the subjects have the real and sufficient right to dispose of the attractions.

### 2.3. Difficulty in valuation

Not only the various contents, tourism attractions are also different in the profit-making methods and duration of assets, which make it difficult to reasonably determine the value. Normally, based on the reasonable market environment, the value of commodity exchange is determined by the buyer and the seller. Except related party transactions, transactions lacking commercial essence, debt restructuring, equity

replacement and other special transactions, most assets can be evaluated through the real transaction price. Then, on the basis of this theory, evaluating the value of tourist attractions can try from the contract price with obvious commercial essence. First, If the contract price determined by both parties can reasonably reflect the commercial value of the asset, then the asset can choose the contract price, that is, the fair value, as the evaluation price or the preliminary measurement price. Second, if the contract price is unfair, such as obviously high or low, it should be reasonably estimated in other ways. In fact, for its own reasons, the contract price of tourist attractions often has the characteristics described in the second article. For example, the land allocated by the government free of charge and the natural development right also belong to tourist attractions in a broad sense. However, due to the fact that the enterprise does not pay consideration when obtaining these resources, the financial accounting can only enter the account at the nominal price from the perspective of accrual basis, as the initial recognition value of the asset. Obviously, in this case, both the unfair contract price and the nominal price cannot accurately reflect the real price of tourist attractions, especially the natural resources such as mountains, rivers, ancient buildings, etc., referencing to the current accounting standards is more difficult to determine their value.

### **3. Analysis of legal issues related to main tourist attractions**

#### **3.1. The subject of natural resource right disposition is not clear**

Natural resources are the most important part of tourism attractions, especially land and natural landscape, which are the most valuable assets for tourism development and investment. The property rights section of the Civil Code stipulates five ways of ownership: state-owned, collective owned, private owned, legal person owned or non-legal person owned and community owned. However, the content of the provision is not specific and the scope is small. For example, the natural landscape, which is composed of rivers, trees, trees, grassland and other parts constitute a collection of natural resources. Under the existing legal systems, the subject of ownership may create the concurrence between the state and the collective. Therefore, who can exercise the right of disposition? Especially, whether the rural collective organizations can also exercise the right to dispose of natural landscape according to Article 262 of the Civil Code. This paper holds that, local collective organizations should be allowed to decide the development of tourism in some areas.

First of all, basing on the reality of rural areas, the local collective organizations and villagers' households have formed a long-term and close relationship with the natural landscape, and even have a spiritual or substantive dependence. Whether using the landscape to develop or finance, the actions will have an inseparable impact on the local villagers. So, collective organizations are indispensable when disposing the natural resources.

Secondly, most large-scale scenic locations are created by the local government in terms of policy. However, in rural regions with a weak economic foundation, government agencies find it difficult to conduct individual analyses on the development of rural land or natural scenic locations. Even if they are able to do so, the reporting, review, and approval processes are generally time-consuming. It will make the development of grassroots areas more challenging procedurally. At the moment, China is progressively allowing grassroots management more autonomy. Investment methods that are more focused and adaptable can better match the demands of actual development.

Finally, in the law, there are no provisions in China legal system, it remains to be discussed whether the legislation of tourism attraction rights can be directly implemented. However, according to the specific development situation, the regional administrative organs can coordinate with the regional governments, planning bureaus, resource management agencies and other departments to release the right of independent decision-making appropriately. At the same time, taking the record and register system as the supervision measures can ensure the legitimacy and order of rural independent development. Only clarifying the subject of exercising rights can use of the relationship between various elements to drive economic development.

### **3.2. Determining the nature of tourism supporting services in practice**

Professor Bao Jigang pointed out in his article that tourism reception services, such as hotels, restaurants, cableways in scenic spots, all belong to the scope of tourism attractions. From the perspective of legal provisions, Article 115 of the Civil Code specifies that the scope of real estate includes movable property and real estate. In view of the types of services in tourism development, we suggest that services should be divided into facility services and behavior services. For example, hotel service and cableways service belong to facility service; Security services and catering services are behavioral services. In practice, if the owner creates tourist attractions from the hotel or cableway and other tourist facilities, the financing guarantee only needs to stipulate the rights and obligations in the agreement. The financing object is not “services” but “facilities,” which does not conflict with the basic concept of tourist attractions. The key point is whether the behavior service can be included. From its creation basis, the attribute of tourism behavior service is a kind of behavior based on the creditor’s rights which consent of the parties and only forming a labor relationship between the two parties.

Creditor rights, on the other hand, are relative and cannot match the dominating, absolute, and exclusive nature of property rights. The outcome of service behavior and activity is not the same in terms of material property. It does not fall within the purview of current laws’ definitions of general moveable property or real estate, and it is unable to include the behavior into the description of existing items. In brief, most tourism service facilities may secure finance through analogy with other movable and real estate assets. However, tourist services are, by their very nature, a type of creditor’s rights activity based on a contract that does not relate to a property right and cannot be identified as such. It is true that good service will naturally become a favorable condition to attract consumers, but since service is not an object in law, and the main body of service behavior is people, it will inevitably have subjectivity. How to ensure that the service quality will not decline in the long-term operation is lack of corresponding conditions. At the same time, how to recognize high-quality service and how to rate service quality varied from person to person. As a result, high-quality service will become a favorable situation to attract tourism development and stimulate consumption, regardless of the basic essential of service behavior or the subsequent finance difficulty. Professor Bao Jigang argues that tourism service is a tourist attraction, but that it might impose some restrictions. That is, the service should focus on the object rather than the conduct; the item that offers service, not the activity, is what can attract tourists.

### **3.3. Attaching importance to the economic value of intellectual property**

In rural development, intellectual property is not the first choice for financial guarantee because of its lower value, slow realization and uneven quality compared with land, construction and other real estate. However, intellectual property with local characteristics, such as traditional folk literature, folk handicrafts and geographical trademarks, can highlight regional characteristics. Whether the content with local traditional connotation is taken as the development basis, it will become a unique means to attract funds and develop tourism <sup>[6]</sup>. On the other hand, in remote areas, the local government and villagers have little knowledge of intellectual property rights and low awareness of rights protection. Many excellent traditional cultural has lost because they are not protected effectively. Nevertheless, the legal provisions related to the protection of traditional culture are principled. In practice, as a result of cost reasons, the law has not been applied effectively. This paper holds that, nowadays the state continues to attach importance to the protection of intellectual property rights and carry forward traditional culture, developing by using the intellectual property can undoubtedly become an effective means of traditional culture protection, in the realization of local economic development at the same time can take into account the intellectual property protection of traditional culture. In the process of using intellectual property financing guarantee, there are many problems need to be solved, but this paper only discusses the following legal issues.

First, the ownership of intellectual property rights of traditional culture. The emergence and spread of local traditional culture has a long history. In addition to the original creator, there may be long-term improvement and optimization in the history. Thus, determining the specific owner becomes much more difficult. Professor Wu Handong thinks that the subject of right of folk literature and art works can be defined as the state, and the rights of those who collect, organize and disseminate the works can be protected [7]. Indeed, in order to protect the long-standing traditional culture, the state as the right holder is the most effective and powerful way to protect the rights.

However, this paper confirms that considering the regional characteristics and national characteristics, a specific group of a region is the most representative subject to reflect the intellectual property rights, and many cultural achievements are more likely to represent the local historical foundation and development context. For the purpose of protection, the state should act as the right holder in the latter order. If the inheritor of a work or art is clear, especially for the art and culture with obvious family inheritance characteristics, the inheritor can be used as the obligee to exercise intellectual property rights; In the absence of a clear inheritor, as a kind of local common wealth, the government can take the lead to establish a separate intellectual property management unit for unified management or apply for the intellectual property collectively enjoyed by local villagers. Only when the above-mentioned subjects cannot be determined can the state exercise unified management and protection.

Second, the evaluation institutions and standards are not perfect. Evaluation of intellectual property are necessary as stipulated in relevant state regulations, but it is difficult to determine the quantification criteria of intellectual property. Generally, in business practice, the value of intellectual property and the proportion of future income distribution are mostly determined by agreement. We can have a more comprehensive understanding and prediction of the application value of intellectual property through the cooperation of asset appraisal institutions and project professional structure. Besides, existing evaluation model need to be optimized.

Third, the actual operational risk. As a kind of virtual property, intellectual property has a long development cycle in the early stage. In addition to transforming the virtual intellectual property into physical performance, it also needs to highlight the characteristics of regional culture in the long-term publicity, so as to create a regional business card to attract tourism activities. However, intellectual property has a protection period. Under the legal system of intellectual property, its value fluctuates after exceeding the protection period tort disputes and other issues will arise, which will inevitably increase the burden of long-term operation. On the other hand, in the actual development and operation, in case of bankruptcy due to mismanagement, the intellectual property used as capital contribution or guarantee in the liquidation process will also be used as bankruptcy property to pay off. In view of the uncertainty of the evaluation standard of intellectual property value, it is difficult to determine its auction value. For investor and creditors, this represent that the guarantee risk will increase.

#### **4. Conclusion**

The current state of affairs in rural regions is precarious. For its cheap cost and consistent income, tourism has become one of the most successful means of social development. Tourist attractions are useful not only in protecting rural villagers' income rights, but also in integrating all precious resources to provide a new path for rural economic growth. It is not enough to just pass rules to fix numerous difficulties with tourist sites. At the same time, a growth in the number of laws will aggravate the legal system's instability and conflict of laws. Property right is the most functional, effective and priority rights in civil law. Therefore, In the future research and application, we should focus on non-legislative methods. To find the most appropriate way to achieve rural revitalization is to determine the key issues of tourism development. Such as making up for the deficiencies in the actual operation process, clarifying the legal standards and using

existing laws to eliminate obstacles in rural innovation and development.

### **Disclosure statement**

The author declares no conflict of interest.

### **References**

- [1] Bao J, Zuo B, 2012, Legislating for Tourist Attractions Rights. *Tourism Tribune*, 27(7): 11-17.
- [2] Bao J, Chu Y, 1999, *Tourism Geography (Revised Edition)*. Higher Education Press, Beijing, 3+72.
- [3] Wall G.1997, Tourism Attractions: Points, Lines, and Areas. *Annals of Tourism Research*, 24(1): 240-243.
- [4] Zhang J, 2021, From “Tourism Resource” to “Tourist Attraction.” *Tourism Tribune*, 2021, 36(06): 45-59.
- [5] Swarbrooke J, 1999, *The Development and Management of Visitor Attractions*. Oxford: Butterworth-Heinemann, 4-5, 7-9.
- [6] Wu B, 2001, *Principles of Regional Tourism Planning*. China Travel & Tourism Press, Beijing, 150-152.
- [7] Wu H, 2013, *Research on Intellectual Property Right (3rd Edition)*. Renmin University of China Press, Beijing, 417, 432.

#### **Publisher’s note**

Inno Science Press remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.