

The Efforts of Obstructing the Preservation of Cultural Heritage Buildings in the Decision of the State Administrative Court of Indonesia (A Case Study of the Decision of the State Administrative Court of Bandung No. 121/G/2019/Ptun.Bdg)



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ABSTRACT: This research is conducted out of our concerns about the preservation of cultural heritage buildings in Indonesia. One of the triggers is the Decision of Sumedang Regent Concerning the Designation of Special Regency-Ranked Cultural Heritage of a house on Jalan Geusan Ulun, Regency/City of Sumedang, Jawa Barat, Indonesia. The heirs of the house objected and filed a lawsuit to the State Administrative Court (*Pengadilan Tata Usaha Negara*) Bandung. They won the case and the judge decided that the decision of the Regent of Sumedang was invalidated. The result, however, indicates that there is a legal problem. On the one hand, the Law on Cultural Heritage dictates that the regional government must preserve, develop, and utilize cultural heritages. It also regulates that it is compulsory for every one who possesses and/or controls cultural heritages to register them—free of charge—to the regency/city government. Moreover, the law emphasizes that unregistered cultural heritages could be taken over by the regional government. On the other hand, one of the legal considerations of the judge was that there had been no socialization. The judge did not describe the elements of the articles referred to as the legal material. The judge pointed out that the defendant's actions that eventually made a house an object of dispute contradicted the principles of austerity in the principles of good governance. This study endeavors to conduct an in-depth discussion to answer these questions: (1) Could the lawsuit of the plaintiffs be interpreted as a way to hinder the efforts to preserve cultural heritage and (2) Have the legal consideration and judge's decision been oriented to the preservation of cultural heritage? This normative study uses secondary data—primary and secondary legal material. The primary legal material is analyzed by describing, systemizing, analyzing, and assessing the preservation of cultural heritage buildings using the theory of good-governance principles and the theory of preservation.

KEYWORDS: Preservation, Cultural Heritage Building, Judge's Decision, State Administrative Justice

I. INTRODUCTION

The state of the Republic of Indonesia has national objectives. The fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia mentions four national objectives, namely to “protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace, and social justice.”[1]

The 1945 Constitution, particularly Article 32 section (1), mandates that “The state shall advance the national culture of Indonesia among the civilizations of the world by assuring the freedom of society to preserve and to develop cultural values.” Therefore, Indonesian culture must be lived by every citizen. Indonesian culture which reflects the nation's honorable values should be preserved to strengthen national identity, improve national dignity, as well as to cement unity and solidarity to the realization of national goals in the future. Indonesian culture with its noble values should be preserved to improve the practices of Pancasila, the quality of life, the national pride and identity, national unity, and people's welfare as the direction of national life.[2]

Indonesian culture as a national identity is necessary for the advancement of the Indonesian nation. Culture is commonly preserved as cultural heritage—tangible and intangible. Tangible cultural heritage in particular has been regulated in Law no. 11/2020 on Cultural Heritage. The law categorizes types of cultural heritages into these categories: Cultural Heritage Objects, Cultural Heritage Structures, Cultural Heritage Buildings, Cultural Heritage Sites and Areas. The preservation of cultural heritage emphasizes in protection, development, and utilization.[3]

Some regional regulations have been ratified to preserve cultural heritages, particularly cultural heritage buildings. One of many ways to preserve cultural heritage buildings is by registering them. Referring to Article 1 point 16 of Law no. 11/2010 on Cultural Heritage, registration is an effort to register objects, buildings, structures, locations, and/or unity of geographic spheres to be proposed as cultural heritage to the regency/city government or Indonesian representatives in other countries to be included in

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the National Register of Cultural Heritage. The registration process involves studies conducted by the Expert Team of Cultural Heritage. The team will give recommendations to minister, governor, and regent/mayor to be designated. According to Article 1 no. 11 of Laws on Cultural Heritage, the designation means giving status to cultural heritage objects, buildings, structures, locations, or unity of geographic spheres, executed by the regency/city government based on the recommendation of the Expert Team of Cultural Heritage. The registration enriches the register of national cultural wealth either in Indonesia or outside the country.

Article 28-30 of Law no. 11/2010 on Cultural Heritage regulates that in the registration process of cultural heritage—including cultural heritage building—regency/city government collaborates with everyone (stakeholders). It is compulsory for anyone who owns and/or controls cultural heritage to register it—free of charge—to the regency/city government. Furthermore, anyone can participate in the registration of objects, buildings, structures, and locations that are suspected to be cultural heritage even though they do not own them. Regional/city governments register cultural heritages, either those owned by the state or those whose owners are unknown, in accordance with their level of authority.

‘Everyone’ does not necessarily refer to ‘individuals’, as stipulated in Article 1 of Law no. 11/2010 on Cultural Heritage. In addition to individuals, it includes groups of people, the public, incorporated business entities, and/or unincorporated business entities. The registration documents, as firmly stated in Article 21 of the Law on Cultural Heritage, are passed to the Expert Team of Cultural Heritage to be assessed. Following the feasibility study of the expert team, the heritage would be or would not be designated as cultural heritage through Ministerial Decree (national level), Governor’s Decision (provincial), and Regent’s/Mayor’s Decision (regency/city).

Article 33 section (1) and (2) regulates that the regent/mayor issues the designation of cultural heritage status no later than 30 (thirty) days after the recommendation—stating that the object, building, structure, location, and/or the unity of geographic sphere meets the requirement as cultural heritage—from the Expert Team of Cultural Heritage is received. The Government Regulation no. 1/2022 dictates the technical aspects of registration and designation feasibility study in detail.

The process, from registration to the designation, is one of the mechanisms to preserve cultural heritage. The duty and authority of the government are stipulated by Article 95-97 of Law no. 11/2010. It is forbidden for anyone to obstruct the preservation of cultural heritage. In addition, there are criminal provisions for individuals obstructing the efforts to preserve cultural heritage. Article 104 of Law no. 11/2010 states that “Every individual who deliberately prevents, obstructs, or derail the efforts to preserve cultural heritage as referred to by Article 55 is imprisoned for maximum 5 (five) years and/or fined no less than IDR10,000,000.00 (ten million rupiahs) and IDR500,000,000.00 (five hundred million rupiahs) maximum.”

Interestingly, in the decision of Bandung State Administrative Court no. 121/G/2019/PTUN.BDG, it is stated that there was a designation of a cultural heritage building by the Decision of the Regent of Sumedang no. 646/KEP.500-DISPARBUDPORA/2017 dated 28 December 2017 on the Designation of Special-Regency Level Cultural Heritage, sequence no. 16, Appendix Old House Type 1, situated on Jalan Geusan Ulun no. 150, Village/Sub-district of Regol Wetan, Sumedang Selatan Regency, Regency/City of Sumedang, Jawa Barat. The heirs of the house objected and filed a lawsuit to the State Administrative Court (*Pengadilan Tata Usaha Negara*) of Bandung. They won the case and the judge decided that the Decision of the Regent of Sumedang was invalidated and the defendant had to revoke it.

On the other hand, one of the legal considerations of the judge was that there had been no socialization. The judge did not describe the elements of the articles referred to as the legal material. However, the judge pointed out that the defendant’s actions, that eventually made a house an object of dispute, contradicted the principles of austerity of good governance as stipulated by Law no. 30/2014 on Government Administration.

It is the legal problem as discussed above that encourages this research. This research, titled “The Efforts of Obstructing the Preservation of Cultural Heritage Buildings in the Decision of the State Administrative Court of Indonesia”, endeavors to answer these questions: (1) Could the lawsuit of the plaintiffs be interpreted as an effort to hinder the efforts to preserve cultural heritage, and (2) Have the legal consideration and judge’s decision been oriented to the preservation of cultural heritage?

A. RESEARCH METHOD

This normative legal research focuses on laws related to the preservation of cultural heritage and the decisions of the judge of the state administrative court.[4] Referring to Whitney in Moh Nazir, normative legal research is fact-finding with precise interpretation. As qualitative research, this study aims at finding qualitative truth i.e. the coherence of an aspect with certain quality parameters (values or characters).[5]

The approach of this study is political law to deliberate options about substances of law to apply and to determine in which direction the law is directed. In this case, political law is applied to study *ius constitutum* and to prescriptively formulate *ius constituendum*. *Ius constitutum* consists of laws and regulations on the preservation of cultural heritage buildings, while *ius*

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constituendum comprises proposals that prescriptively suggest solutions for upcoming regulations so that the decisions to designate cultural heritage, government regulations, and judge's decisions are following the principles of cultural heritage preservation.

The primary legal sources are Article 32 section (1) of 1945 Constitution, Law no. 5/1986 on State Administrative Court, Law no. 11/2010 on Cultural Heritage, Law no. 30/2014 on Government Administration, and Government Regulation no. 1/2022 on National Registry and Cultural Heritage Preservation. The secondary legal sources consist of books, magazines, journals, papers, research results, theses, and internet files related to the designation and preservation of cultural heritage buildings.

The legal sources examination involves describing, systematization of, analyzing, interpreting, and evaluating the positive law. Horizontal systematization of equivalent legal forms is used to find harmony and antinomy between the sources.[6] Subsequently, following the vertical and horizontal systematization, the principles of legal reasoning and regulation validity are applied. The interpretation is grammatical, teleological, and anticipative.[7] The legal explanation employs sociology of law and political law to criticize legal norms. Furthermore, based on the deductively drawn conclusion, this study is prescriptively proposing the ideal concept of cultural heritage building preservation.

B. DISCUSSIONS

1. The interpretation of the lawsuit filed by the plaintiffs as an effort to obstruct the preservation of cultural heritage

a. The lawsuit of the plaintiffs

The plaintiffs were 10 (ten) people who filed their lawsuit to the State Administrative Court of Bandung. The plaintiffs demanded the decision revoked following these reasons:

- a. The expert team, which was funded by the Regional Revenues and Expenditures Budget (APBD) of Sumedang, that recommended the designation of the cultural heritage in the Regency of Sumedang, was illegal because it was designated by the chief of the Education and Sports Agency. The team was supposed to be designated by the regent of Sumedang.
- b. The plaintiffs claimed that there were contradictions between information provided by the expert team and the facts on the site. The expert team did not coordinate or establish communication with the owner or the heirs.
- c. The building that was designated as cultural heritage, in this case, did not possess cultural urgency that made it feasible to be a cultural heritage.
- d. The plaintiffs felt wronged because they did not have the freedom to perform legal acts on the object that was designated cultural heritage by the defendants, such as selling or modifying the shape of the building, because of the stipulation of the Law no. 11/2010 on Cultural Heritage.
- e. There was a violation of Article 7 section (2) letter f of Law no. 30/2014 on Government Administration dictating that: “[The government] Provides opportunities for community members to be heard for their opinions before making decisions and/or actions under the provisions of the legislation”. The explanation of this article states that: “The citizens of the community whose opinions are heard are every party weighed down by the government. Mechanisms to provide opportunities for community members to be heard can be carried out through face-to-face communication, socialization, deliberation, and other forms of activities that are individual and/or representative.”
- f. There was a violation of Article 46 section (1) of Law no. 30/2014 stipulating that: “Agency and/or government official provides socialization to the involved parties concerning the related legal standing, requirements, documents, and facts before designating and/or making a decision and/or action which could weigh down the community members”.

The analysis of the plaintiffs' arguments above is discussed below:

One of the reasons behind the plaintiff's requesting the revocation of the designation of their building as cultural heritage is that the Expert Team of Cultural Heritage of Sumedang is illegal. They argued that the expert team was designated by the decree of the chief of the Tourism, Culture, Youth, and Sports Agency of the Regency of Sumedang, while the Law no. 11/2010 on Cultural Heritage regulates that the Expert Team of Cultural Heritage is appointed by a regent's decree. In other words, it is not an issue of the system and procedure of regional financial management as regulated by the Regulation of the Regent of Sumedang no. 1/2011 on the System and Procedure of Regional Financial Management. In their postulate, the plaintiffs claimed that they had sent a letter of objection to the defendant. The plaintiffs waited for ten days for the letter to be responded to by the defendant before filing a lawsuit to the state administrative court. However, the plaintiffs did not try establishing communication with the defendants to get an answer from them, and instead they went straight to the state administrative court to file a lawsuit to request the cancellation of the decision.

Regardless of the fact that the Expert Team was not designated by the regent's decree, should the plaintiffs find the assessment invalid, they could request for a reassessment of the building following the stipulation of the Law no. 11/2010 on Cultural Heritage.

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Another argument of the plaintiffs is that the Expert Team of Cultural Heritage did not coordinate or communicate with the owner or the heirs. Normatively speaking, such stipulations do not exist. Conversely, referring to Article 29 section (1) of Law no. 11/2010 on Cultural Heritage, it is compulsory for everyone who owns and/or controls cultural heritages to register them for free to the regency/city government. Furthermore, section (6) regulates that cultural heritages as referred to by section (1) could be taken over by the central government and or the regional government if they were not registered. Therefore, should the owners fail to register the building, due to the fact they are required to do so following the stipulation of section (6), the registration will be performed by the local government in which case is the corresponding agency.

Regarding the plaintiffs' argument that there is no literature describing the historical urgency of the building, the Law on Cultural Heritage contains no stipulation about the matter. However, section (5) describes the criteria for cultural heritage:

- a. aged 50 years old or more;
- b. representing the style of a period from at least 50 (fifty) years ago;
- c. possessing significant importance to history, science, education, religion, and/or culture; and
- d. possessing cultural values for strengthening national identity.

To examine a heritage, the Expert Team of Cultural Heritage does not only use literature but also primary and secondary data. The secondary data in particular are primary legal materials such as laws and regulations as well as diverse legal opinions and various documents. As mentioned in the previous paragraph, cultural heritage is an object that has significant importance to history, science, education, religion, and/or culture. Therefore, when an object possesses at least one significant importance, it fits the criteria for cultural heritage.

Article 11 of Law on Cultural Heritage, however, firmly states that an object could be designated as cultural heritage although it does not fit the criteria mentioned in section (5): "Object, building, structure, or unity of geographic sphere which based on research has significant importance to Indonesian community or nation but does not fit the criteria mentioned in Article 5-10 could be recommended to be designated cultural heritage."

The plaintiffs felt wronged. One of the reasons is that they do not have the freedom to perform legal acts on the object that was designated cultural heritage by the defendants, such as selling or modifying the shape of the building, because of the stipulation of the Law no. 11/2010 on Cultural Heritage.

Firmly and certainly, it is not forbidden to perform legal acts toward cultural heritage buildings unless it involves destroying or abandoning them. Not only that the owner could implement adaptation to the building, but they could also do acts related to trading, granting, inheriting, and exchanging, under the stipulation in Article 12 section (3) of Law no. 11/2010 on Cultural Heritage that dictates that the property could be obtained through inheritance, grant, exchange, gift, purchase, and/or decision or designation of the court unless the cultural heritage is controlled by the government. However, the plaintiffs did not inform their loss in detail or concretely.

Regarding the argument of the plaintiffs about the error in the owner's name of the cultural heritage, if the paradigm was the preservation of cultural heritage the plaintiffs should request reassessment instead of the revocation of the designation.

As briefly mentioned, the plaintiffs argue that the defendant is violating: Article 7 section (2) letter f of Law no. 30/2014 on Government Administration dictating that: "[The government] Provides opportunities for community members to be heard for their opinions before making decisions and/or actions under the provisions of the legislation", whose explanation states that: "The citizens of the community whose opinions are heard are every party weighed down by the government. Mechanisms to provide opportunities for community members to be heard can be carried out through face-to-face communication, socialization, deliberation, and other forms of activities that are individual and/or representative."; Article 46 section (1) of Law no. 30/2014 stipulating that: "Agency and/or government official provides socialization to the involved parties concerning the related legal standing, requirements, documents, and facts before designating and/or making a decision and/or action which could weigh down the community members."; Article 47 of Law no. 30 /2014: "Should the decision weigh down community as referred to by Article 46 section (1), it is compulsory for agency and/or government official to inform involved parties no less than 10 (ten) days before designating and/or deciding and/or making action, unless there is another stipulations in laws and regulation."; The General Principles of Good Governance (*vide* Article 10 section (1) of Law no.30/2014) dictating that: "The general principles of Good Governance" as referred to by this Law include the principles of: (a) legal certainty; (b) utility; (c) partisanship; (d) austerity; (e) not abusing authority; (f) transparency; (g) public interests; (h) good service.

The plaintiff's argument, however, is not thorough because in Article 72 letter f of Law no. 30/2014 on Government Administration there is a clause as follows: "under the provisions of the legislation." The exception clause is affirmed in Article 47: "unless there are other stipulations in laws and regulation." Therefore, in the context of Law no. 11/2010 on Cultural Heritage, it is not necessary for the voices of the community to be heard. The spirit of the Law on Cultural Heritage puts aside various interests. If the object is not designated as cultural heritage, it will vanish, extinct, and lose its importance as a national identity. Seen from

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the viewpoint of legal reasoning, if, horizontally, there are laws whose materials contradict each other (antinomy), the principles of contradictive legal reasoning apply. Therefore, following the principles of *lex speciali derogate generali*, the regulations on the designation of cultural heritage refer to Law no. 11/2010 on Cultural Heritage.

The plaintiffs also claimed that there were violations of the principles of good governance by referring to Article 10 section (1) of Law no. 30/2014 on Government Administration. Seen from the viewpoint of legal reasoning, if, horizontally, there are laws whose materials contradict each other (antinomy), the principles of contradictive legal reasoning apply. Therefore, following the principles of *lex speciali derogate generali*, the regulation on the designation of cultural heritage refers to Law no. 11/2010 on Cultural Heritage that specifically regulates cultural heritage, instead of the Law on Government Administration that is more general in nature.

Another point from the plaintiffs is that the decree of the Regent of Sumedang does not provide any benefits. Regarding this postulation, however, every person involved in the effort of preservation will get an incentive, which is firmly dictated by Article 1 point (12) of Law no. 11/2010 on Cultural heritage. The incentive is support such as advocacy, assistance, or other non-financial aids from the government to encourage the preservation of cultural heritage. Article 22 regulates that:

- (1) Everyone who possesses and/or controls cultural heritage is entitled to get compensation after fulfilling their duty to preserve cultural heritage.
- (2) The incentive in the form of the deduction of land and building tax and/or income tax could be given by the government/regional government to the owners of cultural heritage who have preserved cultural heritage following laws and regulations.

The passage above palpably shows that incentive is given once after the preservation efforts are done—and preservation efforts are committed after the object is designated as a cultural heritage.

The plaintiffs also argued that the defendants had never properly taken care of, maintain, preserve, and protect the object. The defendant was abandoning the cultural heritage and they had never fulfilled the mandate of the Law on Cultural Heritage. However, in principle, taking care of, maintaining, preserving, and protecting cultural heritage is also the duty of the owner, in which case is the owner of cultural heritage building.

Another argument of the plaintiffs was that, formally, the decision contains palpable legal invalidity and, materially, it was designated under “assumptions”, and therefore the designated object was an *error in persona*. It could be argued that *lex specialis derogate generali* of cultural heritage is following the stipulation of Article 1 point (1) that cultural heritage is appointed through a process of designation. Referring to the Great Dictionary of the Indonesian Language (KBBI), process means sequence of change (event) in the development of a thing. In archaeology, to decide whether or not an object is a cultural heritage, we need assumptions. Therefore it should be followed up by another step; after the registration, the expert team will study the object before it is eventually designated as cultural heritage. The concept of “assumption” is of the utmost importance in the efforts of tangible cultural heritage preservation. However, if an object is only regarded as a cultural heritage after it is designated, most likely all objects assumed as a cultural heritage will be vanished and be lost.

The explanations above show that the arguments of the plaintiffs fit the criteria of the acts of obstructing the effort to preserve cultural heritage, as regulated in Article 55 that it is forbidden for everyone to deliberately prevent, obstruct, or derail the efforts of cultural heritage preservation. Furthermore, Article 14 dictates that everyone who deliberately prevents, obstructs, or derails the efforts of cultural heritage preservation as referred to by Article 55 is imprisoned for a maximum 5 (five) years and/or fined no less than IDR10,000,000.00 (ten million rupiahs) and IDR500,000,000.00 (five hundred million rupiahs) maximum.

2. The orientation of legal consideration and the judge’s decision in cultural heritage preservation

a. The legal consideration of the judge

In general, the judge considered that the *a quo* dispute object had fulfilled the elements for a state administrative decision, as regulated in Article 1 point (9) of Law no. 51/2009 on the Second Amendment of Law no. 5/1986 on State Administrative Justice. The legal action of the defendant to issue the *a quo* dispute object had been regulated following the stipulation of Article 45 of Law no. 11/2010 on Cultural Heritage and Article 16 of the Regional Regulation of the Regency of Sumedang no. 7/2015 on the Preservation of Cultural Heritage Building, Structure, and Culture. When we observe it more closely, referring to the stipulations of the laws and regulations, the defendant’s character of authority, in this particular case, is not making a public policy but issuing concrete, individual, and final (*beschikking*) decisions. Therefore, in issuing the *a quo* dispute object, the defendant is viewed as an official of state administration performing an executive function in the scope of state administrative duties to fulfill the mandate of laws and regulations. Subsequently, the legal action of the defendant in issuing the *a quo* dispute object is also a legal act of state administration.

The lawsuit of the plaintiffs is not vague because it is clear that the object of the lawsuit is the Decision of the Regent of Sumedang no. 646/KEP.500-DISPARBUDPORA/2017 dated 20 December 2017 on the Designation of Special-Regency Level

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Cultural Heritage, sequence no. 16, Appendix Old House Type 1, situated on Jalan Geusan Ulun no. 150, Village/Sub-district of Regol Wetan, Sumedang Selatan Regency, Regency/City of Sumedang, Jawa Barat. Furthermore, it is also clear that the defendant is demanded and ordered to revoke the *a quo* dispute object. In considering and examining the disputed object, the board of judges constrains themselves solely on the legal aspect (*rechtmatigheid*) without deliberating the utility aspect (*doelmatigheid*). The board of judges, referring to the doctrine of the state administrative procedure law, is *ex-tunc* in nature, which means that they examine the disputed object without considering the changes in laws and regulation, the legal standing, or rights and responsibilities of the involved parties after the disputed object is issued and examined.

In considering whether or not there is procedurally juridical invalidity committed by the defendant when issuing the disputed object, the board of judges referred to the stipulation of laws and regulations as discussed above. It could be concluded that, principally, the studies to identify and classify objects, buildings, structures, locations, and the unity of geographic sphere to be designated as cultural heritage must be performed by the Expert Team of Cultural Heritage that is appointed by the decree of the regent/mayor for regency/city level. Furthermore, the defendant gives compensation to the person who has the right if the object, building, structure, or location is designated cultural heritage.

The board of judge assessed that the issuing procedure of the disputed object is not in harmony with the existing laws and regulations as discussed above. The procedure used by the defendants to issue the disputed object could not be justified right by law. Therefore, it could be concluded that there was a juridical invalidity because the process of issuing the *a quo* disputed object violated the stipulation of the existing laws and regulation, in which case is Article 31 section (3) of Law no. 11/2010 on Cultural Heritage; Article 16 section (3) of the Regional Regulation of the Regency of Sumedang no. 7/2015 on the Preservation of Buildings, Structures, and Area of Cultural Heritage—when appointing the Designation Team of the Appointment of Experts/Instructors/Source Persons and Field Assistants of the designation of the regency level cultural heritage sites in the fiscal year of 2017; the stipulations of Article 22, Article 24 section (1), Article 33 section (2) of Law no. 11/2010 on Cultural Heritage; Article 28 of the Regulation of the Minister of Public Works and Public Housing no. 01/PRT/M/2015 dated 18 February 2015 on Preserved Cultural Heritage Buildings; and Article 35 of the Regional Regulation of the Province of Jawa Barat no. 11/2012 on the Preservation of the Cultural Heritages of Jawa Barat. The board of judges concluded that there was a procedural juridical invalidity in the issuing of the disputed object and the substance of the material violated the existing laws and regulation and the general principles of good governance.

b. The judge's decisions

Regarding this case, the board of judges decided to:

- a) Grant all of the accusations of the plaintiffs.
- b) Declare the revocation of the Decision of the Regent of Sumedang no. 646/KEP.500-DISPARBUDPORA/2017 dated 28 December 2017 on the Designation of Special-Regency Level Cultural Heritage, sequence no. 16, Appendix Old House Type 1, situated on Jalan Geusan Ulun no. 150, Village/Sub-district of Regol Wetan, Sumedang Selatan Regency, Regency/City of Sumedang, Jawa Barat.
- c) Oblige the defendant to revoke the Regent's Decision of Sumedang no. 646/KEP.500-DISPARBUDPORA/2017 dated 28 December 2017 on the Designation of Special-Regency Level Cultural Heritage, sequence no. 16, Appendix Old House Type 1, situated on Jalan Geusan Ulun no. 150, Village/Sub-district of Regol Wetan, Sumedang Selatan Regency, Regency/City of Sumedang, Jawa Barat.
- d) Sentence the defendant to pay court fees of IDR596,000.00 (five hundred and ninety-six thousand rupiahs).

c. Based on the material law of Cultural Heritage

It may be argued that the judge's consideration solely refers to Article 7 section (2) letter f and Article 10 of Law no. 30/2014 on Government Administration. The judge did not apply the principles of non-contradictive legal reasoning. Moreover, the judge did not apply the principles of *lex speciali derogate legi generali*. Therefore, it is only natural to think that the judge was not following—or orienting the objective to—the principles of cultural heritage preservation.

Cultural heritage does not refer to intangible objects but to the objects that could be seen or perceived through senses—seen, touched, felt, measured, and observed. It has significant importance and it contains embedded information and meanings that have to be preserved. The preservation of cultural heritage is inseparable from retaining information that is related to its role within society (social), backgrounds of beliefs (ideology), and the ability of people living in the past to create it.[8] The concept of the preservation of cultural heritage has various interpretations and interests. Monika Murzyn Kupisz and Jaroslaw Dzialek assert that the development of cultural heritage could be utilized as social capital. On the one hand, the preservation could be directed to improve the values of the cultural heritage—and is aimed at preservation—although it could also play role in improving the welfare

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of the community. On the other hand, the cultural heritage is only for the benefit of the capital owners—thus the development is not oriented to preservation.[9]

The provision of Article 5 Chapter III of Law no. 11/2010 on Cultural Heritage specifically dictates the criteria of cultural heritage, as follows:[10]

- a. aged 50 years old or more;
- b. representing the style of a period from at least 50 (fifty) years ago;
- c. possessing significant importance to history, science, education, religion, and/or culture; and
- d. possessing cultural values for strengthening national identity.

According to Article 8 of Law no. 11/2010 on Cultural Heritage, cultural heritage buildings could be:

- a. Singular or plural; and/or
- b. Standing alone or one with natural formation.

Cultural heritage as a cultural resource is vulnerable, unique, rare, limited, and irreversible. Therefore, the utilization efforts should be based on preservation. Subsequently, the preservation—protection, development, and utilization—should balance the interests of academics, ideology, and the economy. The protection of cultural heritage from the threat of physical development, either in the urban or rural areas, requires clear and firm government policy. To give the authority to the government and to regulate the rights and responsibilities of the community in the management of cultural heritage, a good managerial system—for planning, execution, and evaluation related—is required.

The preservation of cultural heritage needs to adjust to new paradigms in the field of archaeology, the changes in the government system, as well as the practices of the democratic system and globalization. The effort is the responsibility of both central and regional government, supported by every person and customary law community (*masyarakat hukum adat*). Supervision by every person and customary law community is required and honored.

As with the changes in paradigms in the field of archaeology, there are also changes in paradigms in the preservation of cultural heritage. These days, preservation is not only for the sake of the preservation itself but also for the sake of development and utilization. It is not solely for academic interest but also for the development and utilization that could benefit the public in general. The development of paradigms is vital so that the preservational efforts could walk abreast with the utilization interests. In other words, preservation and utilization should support each other, by referring to the principles of utilization-oriented conservation and conservation-oriented utilization as well as sustainable preservation.[11]

The value of existence emphasizes the preservation to make sure that the cultural creations survive or exist, regardless of the benefit. The framework of thinking about cultural heritage preservation lies in two main aspects. *First*, the preservation of cultural values from the past and the present, as well as the potential importance for the future. *Secondly*, the preservation of physical evidence that could assure the important values of the past, the present, and the future could be appreciated by the community. Therefore, essentially, the preservation of cultural heritage should be oriented to the interests of cultural heritage that could positively affect the community.[12]

The 1945 Constitution, particularly Article 32 section (1), mandates that “The state shall advance the national culture of Indonesia among the civilizations of the world by assuring the freedom of society to preserve and to develop cultural values.” Therefore, Indonesian culture must be lived by every citizen. Indonesian culture which reflects the nation’s honorable values should be preserved to strengthen national identity, improve national dignity, as well as to cement unity and solidarity to the realization of national goals in the future. Indonesian culture with its noble values should be preserved to improve the practices of Pancasila, the quality of life, the national pride and identity, national unity, and people’s welfare as the direction of national life.[13]

Following the mandate of the 1945 Constitution, the government is responsible to implement policy to holistically improve the culture for the welfare of the people. Therefore, all of the creations of the nation—in the past, the present, and the future—should be utilized as capital for development. As a heritage from the past, cultural heritage is important and needs to be preserved. Preservation does not only an effort of protection but also development and utilization. Therefore, management of cultural heritage is required and regulated in the state policy—the laws and regulations, as well as legal theories, should be utilized for conserving cultural heritage.[14]

Cultural heritage buildings are the wealth of national culture. Because they play important roles in understanding and developing history, science, and culture, they need to be protected and preserved to instill the awareness of national identity and interests. Moreover, it could also benefit social, religious, and tourism interests. Referring to Article 1 point (6) of Law no. 11/2010 on Cultural Heritage, cultural heritage is a unity of geographic sphere with two or more cultural heritages that are situated close to one another and/or show unique layout.

d. The importance of cultural heritage in strengthening national character/identity

A nation is a political and legal concept that is defined as a unity of authoritative organization with the consisting elements—people, territory, and sovereign government. A nation is a sociological conception referring to a unity of a particularly large community that

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has a shared identity as the unifying bond. The identity could be based on traditional similarities such as ethnicity, religion, and language, or modern similarities like dreams and value settings gathered from the experience of living together. In practice, a nation could be based on two or more similarities. Culture is a sociological concept referring to a shared system and life settings of society—religious, legal, economic, or art. Culture is dynamic in nature, which means that it is evolutively developing simultaneously with the endless interaction among the community members.[15]

The 1945 Constitution provides strong assurance of the cultural identity of the community. Article 28I section (3) of the 1945 Constitution dictates that the cultural identity and the rights of the traditional community shall be respected in accordance with the development of times and civilizations. Culture, referring to the 1945 Constitution, has roles in improving life quality and in realizing human welfare. Article 28C section (1) gives assurance for every individual to get an education and to benefit from art and culture, in addition to science and technology. The state assurance and recognition are not only limited to the rights of the individual and traditional community. The 1945 Constitution also recognizes and respects the unities of community possessing certain cultural roots as a unity of customary law community with traditional rights as stated in Article 18D section (2) and Article 28F section (3). This recognition provides legal existence to the customary law communities so that they have a legal capacity as a legal individual to participate in the life of the nation and the state as well as to protect their traditional rights.[16]

The roles of the state are not only limited to passively providing protection and recognition to the cultures that exist among the particular community. The state has the responsibility to advance the national culture among the civilizations of the world by assuring the freedom of society to preserve and develop cultural values, as mandated by Article 32 section (10) of the 1945 Constitution. The protection of national cultural diversity certainly has to be realized by protecting the valuable Indonesian national cultural objects. It is through these cultural objects that the nation of Indonesia could always learn about the roots of their identity and value settings as one nation. These cultural objects become the learning source for the nation of Indonesia to understand themselves as well as to learn from the successes and failures in the past. As a consequence of its responsibility, the state has the controlling rights over cultural objects. From the viewpoint of science, cultural heritages are essentially cultural resources that have important values for science, as historical sources, so they need to be preserved.[17]

In his study on acculturation, Miguel Leon Portilla,[18] an expert in anthropology and history, argues that cultural identity is important for a nation. The loss and destruction of the identity lead to community disintegration and, even more, lead to the situation in which the people are alienated and easy to submit to. The community becomes incapable of determining the direction to act in for the sake of their interests. Therefore the identity of each nation should be maintained. One of the most significant things of cultural identity is the consciousness of history shared by a nation (or other social groups). The consciousness of history lies in the roots of identity. It will bring about the memories of cultural roots, past events, and even hopes of a shared future. If the memories of history were lost, the cultural identity would too vanish.

Some studies have concluded that national identity is mostly instilled in history. It is the duty of experts in history and archaeology to present the historic substances. The gathered facts of the past should be arranged as good history emphasizing structural or procedural aspects. It, however, depends on the theory or ideology adopted by the experts in those fields.

The definition of identity is closely related to the concept of nation. A nation is an assemblage of individuals unified by shared reference of cultural values. There are often additional characteristics that are assumed to mark a unity of the nation, namely places of residence, origin, and political objectives. It should be asserted that the existing nation of Indonesia is not identical to the indigenous nations of Indonesia. The definition of the Indonesian nation, however, has been extrapolated either consciously or unconsciously. To create the new nation of Indonesia, extrapolation is often consciously made by interpreting the past to be connected to the ideas of the present.[19]

Archaeological resources play important role in building and strengthening national identity. Besides improving national dignity, they could also fortify the community from the effect of globalization so the nation of Indonesia is not subjugated by modern imperialism. Some countries succeeded in utilizing the results of archaeological studies to justify regimes and claim past territories. German successfully used the studies as a tool of propaganda between 1930 and 1940. Some archaeologists had studied earthenware styles to identify a special ethnic group and used remaining skulls to see differences between races. Nazi then utilized the result to create a map of race in Europe and identified the race of the Aryan as superior.[20]

We could take a look at the collapse of the communist states, the Soviet Union and countries in Eastern Europe, due to the vulnerability of the communist system itself. After seventy years of being a totalitarian state that was dependent on the authority of the party, the Soviet Union failed to develop cultural aspects to support the system, creating a vulnerable artificial condition. In dealing with crucial problems, either globally, internationally, or nationally, the communist system surprisingly failed and collapsed.[21]

The role of archaeology is to represent symbolic objects (cultural heritage) to be significant and meaningful both in themselves and for the next generation. Therefore, the interpretative measures to present the ancient objects to contemporary society

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are needed. The significant process of the presentation could refer to human, their organization, and their arrangement that could be meaningful for the next generation. Furthermore, it could strengthen the identity of a nation and give profound meanings. In every culture, there are local geniuses who could improve the character of a nation. The contribution of the philosophy of history is to reflect the archaeological findings to find essential meanings as well as to seek patterns as well as societal and historical structures. Those findings, as previously discussed, are the elements that reflect the identity of a nation.

The discussions above clearly illustrate that cultural heritages, as a part of human culture, have significant importance to the community in shaping civilization. Therefore, the revoking of the decree over cultural heritage, which is based on weak reasons, deserves to be regretted, as it could become a legal precedent that does not support the effort of cultural heritage preservation.

CONCLUSIONS

1. The accusations of the plaintiffs as mentioned in the Decision of the State Administrative Court of Bandung no. 121G/2019/Ptun.Bdg could be interpreted as obstructing the efforts of preserving cultural heritage buildings. By referring to the principles of cultural heritage preservation dictating that it is everyone's responsibility to register cultural heritage. The registered object will then be studied by the Expert Team of Cultural Heritage. If the study shows that the object fits the criteria, the expert team will recommend it to the regent/mayor to be designated as a cultural heritage. In this case, all of the processes had been performed and the building had been designated. Another argument of the plaintiffs—who referred their argument to the Law no. 30/2014 on Government Administration—that there were no socializations or publications could be viewed as an effort to preserve cultural heritage. Law no. 11/2010 on Cultural Heritage dictates that it is not necessary for the voices of the community to be heard. The spirit of Law no. 11/2010 on Cultural Heritage puts aside various interests due to the assumption that the cultural heritage would be lost and vanish if they were not designated. Furthermore, the nation could potentially lose objects that have significant importance to the national identity. Seen from the viewpoint of legal reasoning, if, horizontally, there are laws whose materials contradict each other (antinomy), the principles of contradictive legal reasoning apply. Therefore, following the principles of *lex speciali derogate generali*, the regulations on the designation of cultural heritage refer to Law no. 11/2010 on Cultural Heritage.
2. The consideration and the decision of the judge are not oriented toward the preservation of cultural heritage. It is based on the fact that the judge did not apply the non-contradictive legal reasoning. Moreover, the judge did not approach the laws and regulations using the principles of *lex speciali derogate legi generali*. Cultural heritage as a cultural resource is vulnerable, unique, rare, limited, and irreversible. Therefore, the utilization efforts should be based on preservation. Subsequently, the preservation—protection, development, and utilization—should balance the interests of academics, ideology, and the economy.

ACKNOWLEDGMENT

We would like to express our utmost gratitude to those who have supported us in gathering the data for this research.

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