

Land Ownership Rights to Cultural Reserve Buildings in Surabaya based on Basic Agrarian Law and Cultural Heritage Law

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Abstract

In colonial times, the city of Surabaya was an important part that held a lot of history. Surabaya is known as the oldest port city in Indonesia during the Dutch East Indies era and was the centre of government and international trade. Apart from that, Surabaya was also named a city of heroes because the heroes at that time were willing to sacrifice themselves to fight for and defend the independence of the Republic of Indonesia by fighting the invaders. On that basis, Surabaya is rich in cultural heritage. Most of the heritage of these historic buildings is still standing and can be found in several areas of the city of Surabaya. The local Department of Tourism and Culture has established regulations to protect original historic buildings as city heritage. However, in fulfilling the rights and obligations of individuals and city governments, land rights owned from generation to generation must be considered by the local city government. This research uses normative juridical with doctrinal and statutory regulatory approaches. This research aims to find regional regulations regarding cultural heritage related to ownership rights in managing cultural heritage land and buildings.

Keywords: Cultural Heritage Building; Land Ownership Rights; City of Surabaya

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Introduction

Indonesia is home to a diverse historical past and heritage. These cultural legacies continue to exist in parts of Indonesia, ranging from Sabang to Merauke. The Indonesian government in this instance regulates it under Law of the Republic of Indonesia Number 11 of 2010 concerning Cultural Heritage (hereinafter referred to as Law No. 11/2010) as a means of safeguarding historical heritages as the country's cultural richness. The Republic of Indonesia Law Number 5 of 1992 concerning Cultural Heritage Objects is repealed by Law No. 11/2010, as it is no longer deemed necessary by societal advances. This is supported by the fact that Indonesia boasts a plethora of ancient structures and scenic natural areas that can serve as tourist attractions and boost local economies in their respective regions. One way to preserve the nation's historical assets is through tourism. As a result, Indonesia offers a wide range of tourism opportunities, including social, cultural, and natural tourism. In the modern day, tourism is seen as more than just travel; as a component of the economy, it may stimulate national growth (Yaseera & Kamalia, 2023).

Based on Article 1 number 1 of Law No. 11/2010, Cultural Heritage is "material cultural heritage in the form of Cultural Heritage Objects, Cultural Heritage Buildings, Cultural Heritage Structures, Cultural Heritage Sites, and Cultural Heritage Areas on land and/or in water whose existence needs to be preserved because they have important historical value, science, education, religion, and/or culture through a determination process." The

meaning of "material in nature" in this article refers to a cultural heritage area, whether it be on land or in water, whose existence merits protection because it has significant implications for history, science, education, religion, or the possibilities for cultural expression through a guaranteed cycle (Undang-Undang Republik Indonesia Nomor 11 Tahun 2010 Tentang Cagar Budaya, 2010). Broadly speaking, cultural heritage objects can be divided into 2 (two) types. First, cultural heritage objects can move. For example, cultural heritage objects that can move are inscriptions, statues, urns, and so on. Second, immovable cultural heritage objects (Ma'ruf & Setiaboediningsih, 2020). Examples are buildings such as temples, prehistoric caves, palaces, and so on.

Cultural heritage preservation is an effort to maintain cultural heritage so that it remains viable and protected, as well as providing benefits to culture and also having economic value for society. Considering Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, in this case, the public authorities encourage Indonesian public culture by providing opportunities for individuals to maintain and develop the quality of their cultural heritage (Sharaningtyas & Sumiarni, 2023). Preserving cultural heritage areas can help the government manage finances, which means that when cultural heritage structures are monitored and moderated, they will become a tremendous attraction for foreign and local tourists. This is one of the influences of having a source of income in the area.

Cultural heritage also includes land, as well as cultural sites attached to the land, including its existence, which must always be protected. Cultural heritage buildings built on land are part of cultural heritage that must be protected. The land context is not only intended as a residence but also as a place for historical buildings to stand (Tjandrasasmita, 1961). In addition, land and cultural sites attached to the land are part of cultural heritage, which must be protected. The land serves as a residence and historic structure. Therefore, it is very important for every individual or legal entity that uses the land to ensure that the objects placed or standing on the land have legal certainty.

The city of Surabaya is one of the silent witnesses in the struggle for the independence of the Republic of Indonesia and has now become the capital of East Java Province with the nickname the "City of Heroes". With a very strategic geographical location, especially in the Java Island region, the characteristic of the city of Surabaya is that it has cultural pluralism and can form a multi-ethnic city with a rich culture. This can be found in the presence of various ethnicities such as Malay, Chinese, Indian, Arab, European, and Indonesian ethnicities such as Madurese, Sundanese, Batak, Kalimantan, Balinese, and Sulawesi. This condition occurs not far from the consequences of the history of the city of Surabaya before independence, even starting during the Majapahit Kingdom era.

The Government of Surabaya City has listed Surabaya as the main gateway port for the Majapahit Kingdom on the basis that the location of the City of Surabaya is on the North coast of Java Island. This port then supported trade activities from that time until the final colonial period by the Dutch. Continuing in the Colonial period, its very strategic geographical location made the Dutch Colonial government in the 19th century position it as the main port which acted as collecting center for the last series of plantation production collection activities at the eastern tip of Java Island, which was in the interior for exported to Europe (Bidang Informasi dan Komunikasi Publik serta Statistik Dinas Komunikasi dan Informatika Kota Surabaya, 2023). This condition, which is part of Indonesian history, gave birth to various cultural heritages, one of which is the Cultural Heritage in the city of Surabaya in particular.

The existence of a Cultural Heritage is also inseparable from community intervention in individual matters by taking into account a right that has existed from generation to generation to the ownership of a place that has historical value. Likewise, if a place is the most important part of history and is owned by an individual, it can be passed on to the heirs

to be able to control the entire place, which can include land and buildings in the Cultural Heritage category above.

Ownership rights to land are also an issue that is almost unknown to the public. Often people do not understand the situation with buildings as property rights, owned by the government, owned by a company, rented to other people and the right to use the building itself. In essence, the structure or heritage requirements of cultural heritage can be owned by everyone and supervised jointly based on Article 25 Paragraph 1 of Surabaya City Regional Regulation Number 5 of 2005 concerning Preservation of Cultural Heritage Buildings and/or Environments (*Peraturan Daerah Nomor 5 Tahun 2005 Tentang Pelestarian Bangunan Dan/Atau Lingkungan Cagar Budaya, 2005*).

The definition of property rights is regulated in Article 20 Paragraph (1) of the UUPA which states that "hereditary, strongest and fullest rights that people can have over land, bearing in mind the provisions in article 6" as a guideline that ownership rights can also be hereditary. This definition can be connected to the Surabaya City area which is the most important part of history, such as the struggles of the ancestors which then made a place have its own cultural value, which was then passed down to their descendants to be able to have the rights that were previously attached. However, this private ownership then needs to be researched through the Regional Regulations of the City of Surabaya in order to get answers regarding what land ownership rights should be.

The task of the Central and Regional Governments as owners of Cultural Heritage objects is very important to balance the reality so that culture is seen as something big, but once again the Central Government's own commitment to the regions is still lacking in terms of in-depth control. In its efforts to save city resources as cultural heritage buildings, the Surabaya City Government has several problems, including difficulties in resolving the most common way to characterize cultural heritage structures, support from middle parties, and reluctance towards cultural heritage buildings. Building owners themselves must focus on and protect the property they own as building owners (Khoirudin, 2015). Cultural heritage buildings in general have experienced changes in the cultural heritage buildings they own by becoming contemporary buildings which sometimes change the first design of the actual building. One example is the Kalisosok Prison building which was built in 1808 by the Dutch and is currently a few percent of the original construction remains. This is because it also involves the privilege of ownership felt by the owner to have full control and full power over the land and building by making changes. This is a big concern considering the privileges and authority as well as the duties of local governments in caring for and educating building owners in cultural heritage areas.

The existence of Cultural Heritage must receive special attention from each Regional Government and land ownership by individuals which has been going on for generations. Therefore it is necessary to review Regional Regulations regarding land ownership with buildings that have the status of Cultural Heritage on them, especially in the Surabaya City area. This can be taken into account by the intervention of each Regional Government to maintain the preservation of Cultural Heritage as one of the assets of the City of Surabaya.

Previous research was conducted by Martinus Widyanto in 2022 with the title "Land Ownership Status of the Kunitir Site in the Trowulan Cultural Heritage Area, Mojokerto Regency" (Widyanto, 2020). This research concludes that the land referred to is not yet state-owned because the excavation process has not been completed. After the land excavation process is completed, the land which is an inseparable part of the Kunitir Site becomes state property as regulated in the constitution.

The next previous research was conducted by Antama Wisnu in 2017 regarding "Rights of Building Use Rights Holders to Build Hotels by Demolishing Cultural Heritage Buildings (Case Study of Amaris Hotel in Yogyakarta City)". Based on the research

conducted, it can be concluded that the Tjan Bian Thiong Cultural Heritage can be converted into and utilized as a hotel by the building owner with an adaptive development method for more contemporary activities, rather than demolishing the existing Cultural Heritage. This is under Law Number 11 of 2010.

Based on the background above, the research formulation in this study is:

- 1) What are the regional regulations of the City of Surabaya regarding ownership rights in the management of Cultural Heritage land and buildings?
- 2) What is the role of the Surabaya City government in preserving Cultural Heritage?

Materials and Methods

This research was carried out based on normative juridical methods which aim to explore and examine library materials as sources and laws as applicable norms in developing legal logic related to the problems studied (Marzuki, 2013). Both a conceptual and statutory approach are used in the problem approach. Primary, secondary, and tertiary legal resources are the types of legal materials that are employed.

Results and Discussion

1) Surabaya City Regional Regulations Concerning Ownership Rights in the Management of Cultural Heritage Land and Buildings

Land ownership rights are regulated in the UUPA or Basic Agrarian Law along with several other land rights such as ownership rights, HGB (building use rights), HGU (business use rights) and use rights. Land rights themselves will receive legal recognition or certainty if the land owner has registered their land rights at BPN (National Land Agency) so that land rights are guaranteed and have an authentic deed as proof of the owner of the rights. As time progresses and the rapid development of economic activities, land included in economic activities is used in various fields of economic activity such as leasing, buying, and selling, building public roads, natural or cultural reserves, and others (Abdurrahman, 1983). To ensure legal certainty in the land sector and to issue proof of ownership, the government engages in a series of ongoing and regular land registration activities. These activities involve gathering information or specific data about specific lands in specific areas, managing, storing, and presenting the data for the benefit of the public. The process of registering ownership rights to land for the first time, in accordance with the law, is the registration activity for a plot of land that has not been registered before. Therefore, in the agrarian sector, landowner require assurances and clarity on land rights. Article 19 UUPA requires or requires registration of land owned which consists of:

- 1) Extraction, mapping/plans, and bookkeeping of land;
- 2) Land registration and transfer of rights to the land;
- 3) Providing land documents and proof of land rights as strong evidence (Supriadi, 2008).

This results in a map or plan of the land that must be registered, documents regarding land rights that are registered and certainty about who has the right to ownership of the land, the status of the rights and all burdens on the land and a certificate as strong evidence as a form of legal protection (Rohman, 2022). Based on Article 23 of the Indonesian Government Regulation Number 24 of 1997 concerning Land Registration, the certificate has the power of proof because the reason for land registration is to provide legal certainty in the land so that its importance can be seen and felt (Hulu, 2021). Providing customized guarantees both to the party who owns the territory and controls it and uses it properly as well as to the party who holds and controls it voluntarily and is confirmed by registering the land in question in his name.

For example, if someone owns the land containing a cultural heritage building, Article 29 of Law No. 10 of 2011 concerning Cultural Heritage requires land and building owners to register as stated, namely "every person who owns and/or controls cultural heritage is obliged to register it with the government/city district free of charge" (Undang-Undang Republik Indonesia Nomor 11 Tahun 2010 Tentang Cagar Budaya, 2010). The obligation of land owners with cultural heritage buildings is also the obligation to secure them as stated in Articles 19 and 61, namely that security is carried out to protect and prevent cultural heritage or a cultural heritage site location from being lost or destroyed. This security is the obligation of the owner and/or those in control. Furthermore, the obligation to report is stated in Article 23 which states that if someone finds an object, or building, which is suspected of being cultural heritage, they are obliged to report it to the authorities/officials. The next step is the obligation to report to the owner or person in control if cultural heritage is lost or damaged to the competent authorities.

According to Law No. 11 of 2010 concerning Cultural Heritage, owners of cultural heritage land or buildings also regulate compensation, legal guarantees, and incentives. It is regulated in Article 22 paragraph 1 of Law No. 11 of 2010 that every person who owns and/or controls cultural heritage has the right to receive compensation if they have fulfilled their obligation to protect cultural heritage. The owner's legal guarantee is regulated by being recorded in the National Register of Cultural Heritage, where he or she is entitled to obtain a certificate of cultural heritage status and a letter of ownership based on valid evidence. Apart from that, Article 22 Paragraph 2 of Law No. 11 of 2010 stipulates that the owner gets an incentive right, namely a reduction in PBB tax or income tax given by the government or regional government to the owner of cultural heritage by the provisions of the law. This measurement from the Government can be marked as showing appreciation and support for the preservation of historic buildings as nowadays numerous heritage buildings have been neglected.

As one of the national interests in terms of maintaining national identity, the existence of cultural heritage buildings and/or environments in the city of Surabaya is part of the cultural wealth that must be preserved. Apart from that, the development of the city of Surabaya is experiencing rapid development and change, this of course also influences the preservation of cultural heritage buildings and/or environments. Therefore, arrangements for protection and maintenance as well as matters related to the preservation of buildings and/or cultural heritage must be made in order to preserve the building and/or cultural heritage environment. These several points later became the basis for the Surabaya city government in issuing Surabaya City Regional Regulation Number 5 of 2005 concerning the Preservation of Cultural Heritage Buildings and/or Environments (hereinafter referred to as PERDA No. 5 of 2005).

A commonplace or artificial artifact that is historic or has historical significance is considered cultural heritage. These are man-made structures, in the form of units or groups, or parts or remains thereof, that are at least 50 (fifty) years old, or that have a specific period address and cover a style period of at least 50 (fifty) years, and are thought to have had a significant influence on history, science, and culture. They are mentioned in Surabaya City Regional Regulation Number 5 of 2005 concerning Cultural Heritage Buildings (Khoirudin, 2015). From several definitions that have been understood regarding cultural heritage structures, it tends to mean that cultural heritage structures are old structures that are at least 50 (fifty years) or more old and have their own value which can be proven to be true. In this case, what is meant by verifiable value is that the building is a calm observer of the historical background of the place where it is found or the times that tell the turn of events, the brilliance or the gloomy seasons of a place or district.

Ownership related to cultural heritage buildings and/or environments can actually be owned by everyone. However, this certainly does not reduce the value of the social function of the cultural heritage and the absence of violations of regional regulations or existing laws and regulations. However, in the context of preserving cultural heritage buildings and/or environments, it must be controlled by the Regional Government, where the control referred to is the implementation of the tasks of responsibility and authority of the Regional Government which includes procedures and procedures as well as determination, research, protection, supervision and related to any permits related to the preservation of cultural heritage buildings and/or environments. This provision has been regulated in article 24 and article 25 of PERDA Number 5 of 2005. So it can be concluded that cultural heritage buildings and/or environments can be owned by individuals, but in this case all regulations related to the existence of cultural heritage buildings and/or environments must be in local government supervision.

Regardless of ownership of buildings and/or cultural heritage resulting from hereditary rights, owners are required to register cultural heritage buildings with the local government. Regarding the obligation to register the ownership of cultural heritage buildings, it has been regulated in article 22 in number 5 of 2005. However, ownership of cultural heritage which has been regulated in Regional Regulation Number 5 of 2005 does not include ownership rights over land where there are cultural heritage buildings on the land. the. So it is possible that ownership of cultural heritage buildings only covers the building, while ownership rights to land have been regulated in other statutory regulations. Property rights as the strongest rights to land have also been regulated in the basic agrarian law (*UUPA*).

Obligations in the preservation of buildings and/or cultural heritage are stated in Article 8 paragraph (2) of *PERDA* Number 5 of 2005 which states that "every person who has control and/or use of buildings and/or cultural heritage environments is obliged to maintain the preservation and prevent damage to buildings and/or cultural heritage environment". In this case, individual owners of buildings and/or cultural heritage must also be involved and participate in maintaining the preservation of the building and/or cultural heritage.

Land Rights are defined as a right derived from the legal relationship between the right holder and the Land, including the space above the Land and/or the space below the Land, to control, own, use and exploit, and maintain the Land, space above the Land, and/or underground space (UU-RI, 2021). This definition is based on Article 1 number 4 of PP No. 18 of 2021. The source of land rights itself is the existence of state control rights over land granted to and owned by individuals, both Indonesian citizens and foreign citizens domiciled in Indonesia, several people together, private legal entities and public legal entities as well as Indonesian legal entities and foreign legal entities that have representatives in Indonesia (Santoso, 2010).

2) The Role of the Surabaya City Government in Preserving Cultural Heritage

It is recorded that the city of Surabaya has more than 250 cultural heritage buildings. The number of cultural heritage buildings will increase as the inspection/data collection on cultural heritage buildings is completed. Some of these heritage structures have been lost (Pemerintah Kota Surabaya, 2023). Most of the others are still protected today. The Surabaya City Government has implemented a mature strategy in terms of managing the preservation of social heritage buildings in the Surabaya area which can be considered to support the implementation of the strategy for preserving social heritage buildings. Cultural heritage building protection strategies are provided by initiatives supported by taxpayers about the maintenance of maintainable cultural heritage structures.

The Surabaya Regional Government made Regional Regulation Number 5 of 2005 concerning the Strategy for Protecting the Cultural Heritage of the City of Surabaya which

aims to provide benefits for cultural heritage buildings so that they do not disappear over time. This stage of making regional guidelines Number 5 of 2005 is a substantial indication of the Surabaya City Government's efforts to balance the Provincial Cultural Heritage resources through a legal review. The essence of this legal review is a worthy reason to supervise cultural heritage as a resource which if not handled will waste time concerning the coordination of important institutions that have the power and responsibility to supervise local communities as a social resource and carry out regulation, sorting, implementing and preparing aid arrangements (Peraturan Daerah Nomor 5 Tahun 2005 Tentang Pelestarian Bangunan Dan/Atau Lingkungan Cagar Budaya, 2005).

The Surabaya Regional Government has also given the authority to supervise and control cultural heritage structures to the Department of Tourism and Tourism, where the regional government has also formed a team of cultural heritage specialists under the auspices of the Department of Culture and Tourism. travel industry administration, apart from controlling or directing we also handle the permits related to the redesign for which we will then advise the building owner on the most proficient method to remodel the structure appropriately without ignoring the guidelines, through this grant we also go through the implications of controlling the structure.

As per Article 1 of Law of the Republic of Indonesia Number 11 of 2010 concerning Cultural Heritage, preservation of cultural heritage itself is the dynamic endeavor of preservation that involves working with the owners or those in control of the cultural heritage to safeguard, develop, and make use of it to preserve both its existence and its value. Similar to:

- 1) Carrying out preservation or fencing or protecting against environmental factors that can damage the nature reserve itself;
- 2) Carrying out renovation and rehabilitation of cultural heritage, namely by renovating or rearranging it and making it functional again so that it can adapt to environmental developments from time to time increase its economic value, and maintain it periodically;
- 3) Conservation, namely maintaining and protecting places that fall into the category of natural or cultural reserves so that they are not damaged/destroyed;
- 4) Carrying out reconstruction by rebuilding destroyed buildings with the same details as if the cultural heritage buildings remained intact (Pemerintah, 2010).

Even though the owner of the property rights to the Cultural Heritage has power and authority over the land and buildings on it, when carrying out restoration or renovation of cultural heritage buildings everything must be done with permission from the state or reported first because all cultural heritage within the jurisdiction of the Republic of Indonesia is controlled by country.

Regional regulations that regulate cultural heritage protection strategies or potential conditions are expected to balance the existence of cultural heritage structures so that their carrying capacity is maintained, at least with local community commitment and confidentiality. It is also hoped that regions can work together to preserve buildings because it is impossible to depend on large institutions. Because, if we only depend on public authorities, then conservation goal (Fitri et al., 2016) cannot be expanded, this is because there are no assets that the central government can access. Of course, this strategy manifests the Surabaya City Government's consistency in carrying out protection and rejuvenation efforts to maintain cultural heritage structures. Regional regulations also protect the rights of holders of land and buildings belonging to cultural heritage or those who control them so that they can continue to utilize them or use them efficiently and usefully and are well maintained.

Related to the role of the regional government of the city of Surabaya in preserving cultural heritage, it can transfer ownership of buildings and/or cultural heritage which prioritizes the transfer to the regional government. This priority is also supported by providing compensation by applicable laws and regulations to owners of buildings and/or cultural heritage of the local government. As stated in article 25 of PERDA Number 5 of 2005, it states "The transfer of ownership of cultural heritage buildings and/or environments can be carried out by prioritizing the transfer to the Regional Government with compensation by applicable laws and regulations" (Pemerintah Kota Surabaya, 2005).

Conclusion

Economic activities in Surabaya, Indonesia, have led to the development of land for leasing, buying, selling, public roads, and cultural reserves. This has led to the existence of cultural heritage buildings and environments owned by individuals. The city has over hundreds of cultural heritage buildings, with some lost but most protected. The Surabaya City Government has implemented a mature strategy for managing the preservation of these buildings, including land registration and reconstruction. The government requires permission from the state or reports first when restoring or renovating these buildings, as all cultural heritage within Indonesia's jurisdiction is controlled by the country. If ownership of a cultural heritage building is transferred to the Regional Government, the government can provide compensation. This ensures legal certainty in the land sector and ensures that cultural heritage buildings remain protected and protected.

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