



Urgency of Determination of Regional Cultural Reservoir Cultural Results in the Process of Criminal Measurement of the Storage of Cultural Reserve Culture in Indonesia (In Perspective of Law Number 11 of 2010)

Inang Fitnasari; I Nyoman Nurjaya; Slamet Suhartono

Faculty of Law; Universitas 17 Agustus 1945 Surabaya; Indonesia

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Abstract

Crime theft of Cultural Heritage objects on the site or museum is a legal problem that occurred in Indonesia and became an international concern with the issuance of International Convention No. 11806. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property has regulated the prohibition and prevention of imports, exports and the illegal transfer of cultural property rights. Based on the description of the background, then the problem formulation, then the problem can be formulated as follows “what is the effectiveness of PPNS investigations in the theft of Cultural Heritage objects in Indonesia (PPNS)?”. Based on the background and analysis of the research results, the following conclusions can be obtained investigation of theft of Cultural Heritage objects by PPNS as regulated in Article 100 of Act Number 11 Year 2010 is not effective at the investigation stage, PPNS investigators and the National Police in investigating criminal acts of theft of Cultural Heritage objects are guided by the Decree on the stipulation of Cultural Heritage issued by the Regional Government.

Keywords: *Heritage; Cultural; Criminal*

A. Preliminary

1. Background Problems

Crime theft of Cultural Heritage objects on the site or museum is a legal problem that occurred in Indonesia and became an international concern with the issuance of International Convention No. 11806. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* has regulated the prohibition and prevention of imports, exports and the illegal transfer of cultural property rights.

This convention arises out of concern for the loss of Cultural Heritage objects both on sites and museums stored in Indonesia and brought to regions outside Indonesia both in Asia and Europe. But often

the law enforcement process is not effective at the police investigation stage or PPNS investigation. The theft of Cultural Heritage objects in a number of museums in Indonesia has occurred in around 20 cases¹. Act Number 11 Year 2010 is not able to prevent or handle or even return items that have been brought abroad, so a more detailed assessment of Article 1 number 1 of Act Number 11 Year 2010 requires implementing regulations at the lower level² governing the regulations implementation (PP) of Act Number 11 Year 2010 as well as regulating administrative sanctions for Regional Governments that do not make a Decree for the stipulation of Cultural Heritage.

After the entry into force of the theft of objects Cultural preservation processes of law enforcement are often stopped and cannot be continued in the process of investigation or prosecution, even if the stolen object is an object that already has a national register, for example the theft of 87 masterpiece collections at the Sonobudoyo Jogjakarta museum occurred in August 2010, the theft of four 1000-year-old gold collection artifacts at the national museum in 2013,³ the theft of eight heirlooms at the Sang Nila Utama Museum in Riau on March 13, 2017⁴.

Cases of theft of Cultural Heritage objects that occur repeatedly with the same mode CCTV dead and there is no SK Decree on the Local Government. However, the theft mode does not become a learning process for museum managers, BPCB and local government to play an active role in the protection, preservation and registration of Cultural Heritage objects in their area which results in ineffective law enforcement processes against criminal acts of theft of Cultural Heritage at the investigation stage. The deterioration of the law not only occurred in the center of power, but also occurred in areas⁵ where the emergence of the Bali APBD was due to the slow handling of cases of pratima theft by international mafias.⁶ The national legal system always faces a gap between the substance of positive law that is formulated (*rule of law*) and that carried out by the community (*social behavior*)⁷ because law as a set of regulations, is only meaningful to the community if supported by sanctions and its strict implementation⁸ of order, certainty, benefit, justice and *rechtstoepassing* "or" *law enforcement* "for various problems⁹.

2. Problem Formulation

Based on the description of the background, then the problem formulation, then the problem can be formulated as follows "what is the effectiveness of PPNS investigations in the theft of Cultural Heritage objects in Indonesia (PPNS)?".

¹ Agus Dermawan T., "Karya Seni Sahabat Pencuri", Kompas, September 19, 2013, p. 7.

² <http://purbawidya.kemdikbud.go.id/index.php/jurnal/article/view/P4%281%292015-5> accessed, January 16, 2019.

³ Agus Dermawan T, *Museum Nasional Dibobol: Empat Koleksi Emas Berumur 1000 tahun Hilang*, Kompas, September 13, 2013, p. 1.

⁴ <https://daerah.sindonews.com/read/1190277/174/museum-pekanbaru-dijarah-maling-8-benda-pusaka-hilang-1490083155> accessed, October 7, 2019.

⁵ Soetandjo wignjosoebroto, *Hukum dan keadilan Masyarakat*, Setara Press, 2011. p. 68-69.

⁶ <http://beritabali.com/read/2015/03/13/20140001/APBD-Bali-Siap-Lawan-Mafia-Pencuri-Pratima.html> accessed, September 18, 2018.

⁷ Juhaya S. Paraja, *Teori Hukum dan Aplikasinya*, Bandung, CV. Pustaka Setia, 2001, p. 55.

⁸ Benny Bosu, *Aspek-Aspek Merosotnya kewibawaan Hukum di Indonesia*, Malang, Setara Pers, 1996, p. 1.

⁹ Aminuddin Ilmar, *Konstruksi Teori Hukum*, Makasar, Hasanuddin Universty Perss, 2016, p. 4-5.

3. Methodology

Based on the formulation of the problem, this research was conducted in order to obtain the following things to analyze and find the effectiveness of PPNS investigations in criminal acts of theft of Cultural Heritage objects in Indonesia. This research is also expected to be a guideline for all levels of society, especially those related to the legal world such as the Regional Government, PPNS, Police, Prosecutors, Judges, lawyers, lecturers, law students and other layers who need a reference related to law enforcement the theft of objects Cultural Heritage, and also useful for those who carry out similar research.

B. Discussion

1. The Effectiveness of the Investigation of PPNS in the Criminal Function of the Cultural Research Objects in Indonesia

Indonesia is a state based on law (*rechtstaat*), not based on power (*machstaat*) Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which determines as follows, "The State of Indonesia is a state of law". The law is an instrument / tool that regulates the life of the nation and state including the regulation of cultural heritage which is specifically regulated in Law Number 11 Year 2010 concerning Cultural Heritage. Cultural Heritage is a 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 that need to be preserved because they have important values for history, science, education, religion, and / or culture¹⁰ through the process of stipulation (Article 1 number 1 of Law Number 11 Year 2010).

Determination process is a series of processes starting from the objects suspected to be Cultural Heritage, registered with the local government, reviewed by the curator until the issuance of the Decree on the determination of the Government's Cultural Heritage for further registration to the national registration, but in its implementation after the enactment of Act Number 11 Year 2010, the government Not all regions make decree on the stipulation of Cultural Preservation in their territory as mandated by Act Number 11 Year 2010 even in the process of investigating criminal acts of theft of Cultural Heritage objects by PPNS, Decree on the stipulation of Cultural Heritage of local government becomes formal legal whether or not an investigation process can be conducted. criminal act of theft of Cultural Heritage.

The case of the theft of objects of cultural heritage in the provisions of Article 106 paragraph (1) of Law Number 11 Year 2010 in its implementation often experiences obstacles in the process of investigation and investigation of PPNS and the National Police even at this time there is no definite record of the number of theft of objects Cultural Heritage in the site or museum is a concern of various mass media.¹¹ The process of law enforcement¹² against the perpetrators of the theft of Cultural Heritage

¹⁰ Based on the philosophical foundation of the Law of the Republic of Indonesia Number 5 of 2017 on the Advancement of Culture (Law No. 5-2017), it is stipulated that the state advances the national culture of Indonesia in the midst of world civilization and makes culture as an investment to build the future and civilization of the nation for the realization of national goals as mandated by the 1945 Constitution of the Republic of Indonesia, look at the Tomy Michael, Law Enforcement Through 'Ludruk' And Cultural Advancement, Asia Pasific Fraud Journal Volume 3, No.1st Edition (January-June 2018).

¹¹ <https://www.cnnindonesia.com/hiburan/20170825122202-241-237227/catatan-kelam-kehilangan-warisan-leluhur-indonesia> accessed October 9, 2018.

¹² Law enforcement is a must in a country. The country in question is a legal state that remains in accordance with the legislation, Tomy Michael, Tourism Law (Study On the Dutch Cemetry in Peneleh Surabaya), DiH: Jurnal Ilmu Hukum volume 15 No. 2 Agustus 2019 – Januari 2020, Fakultas Hukum Universitas 17 Agustus 1945 Surabaya.

objects at the investigation and investigation stages is often stalled¹³ and has not been revealed and repeated¹⁴ with the same mode, there is no SK on the stipulation of the Regional Government Cultural Heritage and CCTV dead, this is also disclosed by the following representative of the East Java BPCB, "the theft that occurred is still being processed, when one location is lost we look for who took it if there is information, but the theft of Cultural Heritage objects mostly issued SP3 (Notice of Termination of Investigation), because there is not enough evidence "¹⁵.

The decree on the stipulation of the Regional Government's Cultural Heritage is also one of the obstacles in the investigation of the theft of Cultural Heritage objects that took place at the Sonobudoyo DIY Museum in 2010. The investigation process of PPNS DIY and Polda in the case of theft of Cultural Heritage objects in the Sonobudoyo Museum, has yet to be revealed. The majority of the DIY community expressed dissatisfaction with the handling of the Sonobudoyo Museum collection theft case¹⁶ and even the residents of Nayan Hamlet, the discoverer of the missing Nayan masks, said they were very disappointed with the loss of their findings submitted to the museum and hoped that the case of theft of Cultural Heritage objects in the Sonobudoyo Museum could be revealed.¹⁷.

PPNS investigators of the Special Region of Jogjakarta also expressed their disappointment at the decision of the police investigator and the regional government of Yogyakarta, which was revealed as follows, "Cases of theft of Cultural Heritage objects in the Sonobudoyo museum encountered obstacles in their investigation. DIY (Korwas investigator), because the missing object does not yet have a Decree on the stipulation of Cultural Preservation made by the regional government, whereas the Regional Government of DIY does not make Decree on the stipulation of Cultural Heritage as mandated by Law Number 11 Year 2010 Article 1 number 1, with the issuance of Regional Regulation No. 6 In 2016 which states that no Cultural Heritage objects have cultural heritage".¹⁸

Investigation of the theft of objects Cultural heritage in Indonesia is influenced by several interrelated factors, namely law, law enforcement, facilities and facilities, society and culture. According to the legal system theory proposed by Lawrence M. Friedman, "*a legal system in actual operation is a complex organism in which structure, substance and culture interact.*"¹⁹ The law in its operation has three interrelated components namely structure, substance, and culture.

One of the main causes of the ineffectiveness of the PPNS and Polri investigation process is that investigators in investigating criminal acts of theft of Cultural Heritage objects are guided by the provisions of Article 1 number 1 of Act Number 11 Year 2010 that Cultural Heritage objects are objects that already have a Decree on the Establishment of Regional Government. Objects that are suspected of being lost in the site or museum if they do not yet have a Decree on the Decree of the Regional Government cannot be further investigated based on the provisions of Article 106 paragraph (1) of Act Number 11 Year 2010.

This was also revealed by PPNS BPCB DIY as follows, "from the legal side there was a decision stating that the case of theft of Cultural Heritage objects in the Sonobudoyo Museum could not be further investigated because objects suspected of being Cultural Heritage did not have a Decree on the Establishment of Cultural Heritage of the Regional Government of Jogjakarta, with the word other things

¹³Inang Fitnasari, "Perlindungan Hukum Terhadap Benda Cagar Budaya Dari Tindak Pidana Pencurian, Perusakan dan Pemindahan dalam perspektif Undang-Undang Nomor 11 Tahun 2010"(Tesis Pascasarjana, Magister Hukum Universitas Widyagama Malang, 2015) p. 1.

¹⁴Jerome Frank, *Hukum dan Pemikiran Modern*, Nuansa Cendikia, Bandung, 2013, p. 213.

¹⁵Danang, Wakil Ketua BPCB Jatim Mojokerto, *Report*, Mojokerto, August 7, 2014.

¹⁶https://id.wikipedia.org/wiki/Pencurian_koleksi_Museum_Sonobudoyo, accessed November 15, 2019.

¹⁷https://id.wikipedia.org/wiki/Pencurian_koleksi_Museum_Sonobudoyo, accessed November 14, 2019.

¹⁸Report, Septemehr 13, 2018 with Dendi Pokja Perlindungan dan PPNS DIY.

¹⁹Lawrence M. Friedman, *Op.cit.*, p. 16.

that have not been decreed in the Decree of the Regional Government of Jogjakarta have been lost, that is our problem. Once accommodated Article 31 paragraph (5) during the process of determining objects suspected of being Cultural Heritage, protected as a Cultural Heritage but this Article was ignored by the investigator coroner, the reference still the Decree on the Determination of Cultural Heritage of the Regional Government of DIY, if it is protected, yes, but to be used as a basis for full investigation, it must remain SK²⁰.

Investigation of the theft of Cultural Heritage objects in the Sonobudoyo Museum as stipulated in Article 106 paragraph (1) of Law Number 11 Year 2010 is not in accordance with the principle of legality stipulated in Book I of Penal Code Article 1 paragraph (1), "An act cannot be convicted, except based on existing legal provisions" Investigators should continue the investigation process of the theft of Cultural Heritage objects using the provisions of Article 362 of the Criminal Code as a criminal act of theft of ordinary objects if constrained by the decree on the stipulation of Cultural Heritage issued Regional government.

The government should immediately issue regulations implementing Law Number 11 Year 2010 concerning Cultural Heritage, and has already passed the PP no later than a year after Act Number 11 Year 2010 was enacted last November 2010, this is the cause of law enforcement in taking action perpetrators of theft of Cultural Heritage objects are often stopped and encounter obstacles in the field as disclosed PPNS DIY below, "Until now Act Number 11 of 2010 there are no implementing regulations, should PP Cultural Heritage and Museum have been passed no later than a year after the Act invited." ²¹

C. Closing

Based on the background and analysis of the research results, the following conclusions can be obtained investigation of theft of Cultural Heritage objects by PPNS as regulated in Article 100 of Act Number 11 Year 2010 is not effective at the investigation stage, PPNS investigators and the National Police in investigating criminal acts of theft of Cultural Heritage objects are guided by the Decree on the stipulation of Cultural Heritage issued by the Regional Government.

Article 1 number 1 of Law Number 11 Year 2010 is amended by removing the words "determination process" so that investigators can accommodate the provisions of Article 31 paragraph (5) of Law Number 11 Year 2010 in cracking cases of theft of Cultural Heritage objects that have not been have a Decree of Establishment, a Regulation on the Implementation of Law No. 11 of 2010 is immediately made in order to impose strict sanctions on regional governments that do not immediately register and require a Decree on the stipulation of Cultural Heritage in their area.

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²⁰ Dendi, Report, Balai Pelestarian Cagar Budaya Daerah Istimewa Jogjakarta, Jogjakarta, September 13, 2018.

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