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## URGENCY OF INSURANCE FOR CULTURAL HERITAGE BUILDING IN SURABAYA

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### Abstract

The cultural heritage of a region is the identity and richness of history for the region. Given the importance of the existence of cultural heritage in an area, the local government should pay special attention to the continuity of its existence. Through inventory, listing the cultural heritages, maintenance until its restoration must be done properly and continuously. This is not only the responsibility of the local government, but it is the responsibility of all parties including the local community. But in practice, local government or society are less concerned about the existence of cultural heritage in the area. This research focuses on cultural heritage buildings in Surabaya because this city is one of the cities in Indonesia which has many buildings of cultural heritage with various conditions. Local governments need to act quickly and effectively to solve the problem, so the solution can be done by including third parties such as insurance companies engaged in the insurance of losses, which can help to cover some form of damage that occurred in the building of the reserve culture in Surabaya. From the problems mentioned above, the research method used is statute approach and conceptual approach.

**Keywords:** Heritage Building; Insurance; Local Government.

### Abstrak

*Cagar budaya bagi suatu daerah adalah merupakan identitas dan kekayaan sejarah bagi daerah tersebut. Mengingat pentingnya keberadaan cagar budaya di suatu daerah, membuat pemerintah daerah seharusnya memberikan perhatian khusus terhadap kelangsungan keberadaannya. Melalui inventarisasi, penamaan cagar budaya, perawatan sampai dengan pemugarannya harus dilakukan dengan benar dan berkesinambungan. Hal ini sebenarnya tidak hanya menjadi tanggung jawab pemerintah daerah, namun menjadi tanggung jawab bagi semua pihak termasuk masyarakat daerah setempat. Namun pada praktiknya, pemerintah daerah ataupun masyarakat kurang paham dan kurang peduli terhadap keberadaan cagar budaya di daerahnya. Penelitian ini menitik beratkan kepada bangunan cagar budaya yang ada di Surabaya karena kota ini merupakan salah satu kota di Indonesia yang memiliki banyak bangunan cagar budaya dengan berbagai macam kondisi. Artinya tidak semua bangunan cagar budaya di Surabaya dapat dikatakan terawat karena ada beberapa yang saat ini kondisi memprihatinkan (rusak). Pemerintah daerah perlu bertindak dengan cepat dan efektif untuk dapat menyelesaikan masalah tersebut, sehingga solusi yang dapat dilakukan adalah dengan mengikut sertakan pihak ketiga seperti perusahaan asuransi yang bergerak dalam bidang asuransi kerugian, dimana dapat membantu untuk meng-cover beberapa bentuk kerusakan yang terjadi pada bangunan cagar budaya di Surabaya. Dari permasalahan tersebut di atas maka metode penelitian yang digunakan adalah statute approach dan conceptual approach.*

**Kata Kunci:** Bangunan Cagar Budaya; Asuransi Kerugian; Pemerintah Daerah.

## Introduction

The existence of cultural heritage in a region has a very important role, especially related to the culture in the local area. In addition to the cultural areas, cultural heritage is also closely related to history, science, education, religion. Indonesia is famous for its cultural diversity, from Sabang to Merauke, it has many cultural heritages. The cultural heritage may be objects, buildings and structures. It may be proposed to be a cultural heritage when aged 50 years or more, representing a shortest style of age 50 years, has special significance for history, science, education, religion, and/or culture and cultural values for the strengthening of the nation's personality. The criteria are regulated in Article 5 of Law No.11 of 2010 on Cultural Heritage (hereinafter referred to as Law No. 11/2010).

One form of cultural heritage is a cultural heritage building. Cultural Heritage Buildings are constructed arrangements made of natural or man-made objects. It may take form of walled and/or non-walled, and roofed rooms. Cultural heritage buildings can be offices, school buildings, hotels, hospitals, orphanages, stations, art buildings and so forth. The cultural heritage building in Surabaya has reached 220 pieces more.<sup>1</sup> Some examples of heritage buildings in Surabaya are as follows:

1. Gedung Nasional Indonesia, Jl. Bubutan No.87;
2. Gedung N.I.A.S (Fakultas Kedokteran UNAIR), Jl. Prof. Dr. Moestopo;
3. Gedung Y.M.C.A. (IMKA), Jl. Kombes Pol. M. Duryat;
4. Gedung H.B.S. (SMA 1, 2, 5, 9), Jl. Wijaya Kusuma;
5. Gedung Don Bosco (Sekolah dan Panti Asuhan Don Bosco), Jl. Tidar 115;
6. Governours Woning (Grahadi), Jl. Gubernur Suryo;
7. Gemeente Kantoor, Jl. Walikota Mustajab;
8. Rumah Sakit RKZ, Jl. Diponegoro;
9. House of Sampoerna;
10. Penjara Koblen, Jl. Koblen;
11. Orange Hotel/Yamato Hoteru (Hotel Majapahit), Jl. Tunjungan 65;
12. Gereja Kristen Indonesia, Jl. Pregolan Bunder 34.

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<sup>1</sup> Pelancong, 'Daftar Dan Kategori Cagar Budaya Di Indonesia' (*wordpress.com*, 2016)<<https://pesonawisatasurabaya.wordpress.com/tag/daftar-bangunan-cagar-budaya-surabaya/>> accessed 20 September 2017.

The conditions of cultural heritage buildings in Surabaya are not all in good condition or not all are well maintained. If this continues to be left then of course the number of cultural heritage buildings, especially in Surabaya will slowly decline. So it is urgently needed for management, preservation, protection, rescue, security, restoration and development of the Government of Surabaya, communities and other third parties who are able to guarantee the existence of the heritage building.

### **Regulation on Heritage Building in Surabaya**

According to Article 1 number 1 of Law No. 11/2010, Cultural Heritage is a cultural heritage in the form of Heritage Buildings, Cultural Heritage Structure, Heritage Sites, and Heritage Areas on land and/or in water that need to be preserved because it has important value for history, science, education, religion, and/or culture through the process of determination. So it is very important that the Local Government as the decision maker as well as executors pay special attention to the preservation of cultural heritage. In the city of Surabaya, cultural heritage related regulations are in Surabaya Mayor's Regulation No. 19 of 2011 on the Second Amendment to the Regulation of Mayor of Surabaya Number 59 Year 2007 on the Implementation of Local Regulation of Surabaya City No. 5/2005 on Preservation of Buildings and/or Cultural Heritage Sites (hereinafter referred to as Perwali No. 59/2011), Mayor of Surabaya Regulation No. 59/2007 concerning Implementation of Local Regulation of Surabaya City Number 5 Year 2005 Concerning Preservation of Building and/or Environment of Cultural Heritage (hereinafter referred to as Perwali No. 59/2007) and the Regional Regulation of the City of Surabaya No.5 of 2005 on the Preservation of Heritage Buildings and/or Environment (hereinafter referred to as Regulation No. 5/2005).

Additionally, ownership of cultural heritage buildings shall be regulated in Article 12 of Law No. 11/2010 where those entitled to possess the heritage building are every person (Indonesian citizen) and State. Then of course with the right to own, control and/or utilize the cultural heritage building, "every person or Country" becomes obligatory to preserve the building and/or cultural heritage environment

and prevent and overcome the damage to the building and/or cultural heritage environment as set in Article 8 of the Regional Regulation. 5/2005. But if in the future, the cultural heritage buildings are damaged then Article 19 of Law No. 11/2010 set as follows:

- (1) Any person who owns and/or controls the Cultural Heritage within 30 days since the knowledge of the Cultural Heritage owned and/or dominated is damaged, lost or destroyed shall report it to the competent authority in the field of Culture, the Indonesian National Police, and/or related agencies.
- (2) Any person who does not report the damage of the Cultural Reserves owned and/or controlled to the competent authority in the field of Culture, the Police of the Republic of Indonesia, and/or related institution no later than 30 days since the knowledge of the Cultural Heritage owned and/or controlled such damages may be taken over by the Government and/or the Regional Government.

The provision becomes very complicated and seems to take a long time because when someone who controls the cultural heritage building knows that the building is damaged should the main focal point is how to keep the cultural heritage buildings can be immediately repaired so it can be back as usual . In this provision, it is not an effective handling process that put forward, but administrative procedures that must be met first. It can be seen again on the existing rules in the Mayor of Surabaya City Regulation where after the obligation to report the condition of the cultural heritage building that has been clarified to the related institution; the next stage according to Article 14 Perwali No.19/2011 is to apply for a restoration permit whose procedure is as following: The procedures for obtaining a building restoration permit and/or cultural heritage environment are as follows:

1. Application for service of renovation permit must be submitted in writing to the Head of Culture and Tourism Office by filling out the complete and correct application form provided by UPTSA;
2. The application as referred to in letter shall be submitted with the following requirements:
  - a. Photos of buildings and/or cultural heritage environments accompanied by a technical drawing plan (front view, cut and perspective) of buildings and/or cultural heritage environments to be restored;
  - b. Copy of valid Applicant Identity Card (KTP) of the applicant showing the originals;
  - c. Copy of valid Family Card (KK) by showing the originals;
  - d. *Lurah* certificate with the approval of *Camat* where the location of the building

and/or cultural heritage environment, if the owner/manager is not a resident of Surabaya;

- e. Proof of ownership of building and/or cultural heritage environment;
- f. Photocopy of immigration documents for foreigners;
- g. Recent portrait of the applicant.

Responding to the request for such restoration permit, the Head of Culture shall be obliged to examine the application along with the completeness of the requirements; conducting a review to the location where the results are coordinated with the Cultural Heritage Team and the Head of the Office of *Cipta Karya* and Spatial Planning to obtain written consideration; if the application is approved, submit the concept of restoration permit in accordance with the consideration of the Cultural Heritage Team and the Head of *Cipta Karya* and Spatial Office to the Head of Culture and Tourism Office; if the application is rejected, submit the concept of rejection letter along with the reasons according to the consideration of the Culture Team and the Head of the Office of *Cipta Karya* and Spatial to the Head of Culture and Tourism Office and submit the refurbishment letter or rejection letter to the applicant.

Such condition is indeed to procedural, which needs to be the other special attention is when the refinement permit is refused then who will further restore the cultural heritage buildings that experienced the damage. It will potentially lead to “omission” of damaged cultural heritage buildings. In other words, the provisions on cultural preservation have a purpose for the maintenance, preservation, utilization, protection, rescue, security and restoration. However, it becomes difficult to do because of other provisions that are too procedural and not in accordance with its purpose.

### **Concept of Insurance for Heritage Buildings**

Insurance is an agreement between the insured with the insurer in which the obligation of the insured party is to pay the premium money and the obligation of the insurer is to provide compensation if the object of insurance is damaged, lost or destroyed due to the occurrence of uncertain events.<sup>2</sup> Insurers in this case

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<sup>2</sup> Kuat Ismanto, ‘Principle of Utmost Good Faith Dalam Perjanjian Asuransi Studi Asas Hukum Perjanjian Syariah’ (2012) 7 Jurnal Episteme.[294].

are insurance companies engaged in life insurance, insurance losses, or social insurance. The different types of insurance are in the object of insurance that must be in harmony with the principles of insurance in general.

The principles of the insurance agreement in general are the first principles of good faith, where the insurer and the insured must have good faith in carrying out their obligations until the insurance agreement expires. Second, the principle of indemnitas means that the insurer in providing compensation is only limited to losses suffered by the insured on the object of insurance that is damaged, lost and/or destroyed. This principle is in accordance with the purpose of the insurance is to restore the position of the insured on the object of insurance before the occurrence of uncertain events. The third principle is the principle of interest. The principle of interest is that the insurer will only provide compensation or insurance benefits to the party having an interest in the object of the insurance. The final principle is the principle of subrogation in which the involvement of third parties as the party that makes the event is not certain to happen. This means that these third parties must remain liable for damages, disappearances and/or destruction of insurance objects. So the insured may choose to ask for compensation against the insurer or to the third party which each choice will later lead to subsequent legal consequences. This principle applies only to loss insurance only.

The relation of cultural heritage building with the general principles of insurance law is first the principle of good faith. The insurer in this case must carry out its obligation that is to provide compensation in case of uncertain events against the cultural heritage buildings. While the beneficiary in this case is the Government of Surabaya city or the party who controls the cultural heritage buildings must provide information that is true related to the conditions of the cultural heritage buildings, but it also runs its obligations by paying a premium that has been agreed. Second is the principle of indemnity, ie the insurer will provide compensation for losses suffered by the insured for the building of the cultural heritage. However, this cultural heritage building, the insurer should not change the original building form of the cultural heritage building. This should be a special requirement between

the parties ie the insurer and the insured. Third is the principle of interest, in this case the concerned of course is the insured is the Government of Surabaya or the party who is authorized to control the building of the cultural heritage. But more broadly of course the interested in the case of the existence of heritage buildings is the entire community of Surabaya or Indonesia. The last principle is the principle of subrogation. If the damage to the cultural heritage building is caused not because of an element of force majeure or not due to the guilt of the insured, but because there is a third party that resulted in the destruction of the cultural heritage building then in this case the insured party can choose to whom the insured will ask for compensation. Payment of indemnity by the insurer does not remove the third party's liability. This means that when the insurer has paid the ghost loss to the insured for damage from the cultural heritage buildings, the insurer has the right to claim compensation to a third party as a cause of damage to the cultural heritage buildings.

The formulation of the object of insurance can be seen in Article 268 of the Code of Commercial Law (KUHD) which is as follows: "coverage can be about any interest that can be judged with money, can be threatened by a hazard and not excluded by law". In Article 1 number 25 of Law No. 40 of 2014 concerning Insurance (Law No. 40/2014) defines the object of insurance ie soul and body, human health, legal responsibility, objects and services, and all other interests that can be lost, damaged, lost, and/or reduced in value. So when the insured entered into an insurance agreement with the aim of transferring the risk that threatens his property or his soul through the payment of a premium to the insurance company (the insurer), then since then the risk has been transferred to the insurer. It is later that when the object of insurance experience uncertain events and result in damaged, lost and/or destroyed then the insurer is obliged to provide compensation in accordance with the agreements contained in the insurance agreement.<sup>3</sup>

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<sup>3</sup> Retno Wulansari, 'Pemaknaan Prinsip Kepentingan Dalam Hukum Asuransi Di Indonesia' (2017) 2 Jurnal Panorama Hukum.[107].

For cultural heritage buildings, where the form is a building such as hotels, offices, hospitals, school buildings or other buildings can be used as an insurance object. This is in accordance with the provisions stipulated in Article 268 of the Civil Code in which the article regulates the requirement to become the object of insurance if the “interest” can be assessed with money, can be threatened by a hazard and not prohibited by law. So when in association with cultural heritage buildings then the first building of cultural heritage can be assessed with money because of physical buildings. Second, it can be threatened by a danger. For cultural heritage buildings, the danger that can threaten the building may be fire, earthquake, landslide or flood. Then the third is not prohibited by law and for the building of cultural heritage there is no provision that regulates the prohibition of heritage buildings to be insured. So it is clear that the building of cultural reserves can be used as the object of insurance in insurance agreements between the insured with the Insurer.<sup>4</sup>

The above is also reinforced by the provisions of Article 57 of Law No. 11/2010 that every person is entitled to rescue the cultural heritage owned or controlled in an emergency or forcing a rescue action. The word “everyone” can mean that anyone who has a concern for the preserved or controlled cultural heritage is entitled to rescue the cultural heritage that will or has been damaged.<sup>5</sup> The form of reparation that can be done, according to the author, is to be concrete with no change in physical form (cultural heritage). So the concrete form in the rescue of cultural heritage buildings, according to the author is to insure the building of cultural heritage with insurance loss. This is far more effective than having to perform a series of administrative procedures that ultimately rescue is not necessarily implemented by the relevant agencies.

In practice insuring the building of cultural heritage is not a difficult thing. It should be started with listing the cultural heritage buildings in Surabaya and then

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<sup>4</sup> Insurer is an insurance company engaged in general insurance business is a risk-based insurance business that provides reimbursement to the insured or the policyholder due to loss, damages, costs incurred, loss of profits, or legal liability to third parties that may be subject to the insured or the holder policy due to the occurrence of an uncertain event.

<sup>5</sup> Ari Sapto dan Mashuri, ‘Pengembangan Wisata Terpadu Berbasis Cagar Budaya’ (2014) 8 Jurnal Sejarah dan Budaya.[126].



allocate budget APBD/APBN<sup>6</sup> for the payment of a premium to the insurer, as a liability of the insured. The allocation of budget for the preservation of cultural heritage has been regulated in Article 95 of Law No. 11/2010 and according to the article it is one of the tasks of the government or local government in relation to the cultural heritage. Then to cooperate with insurance companies is very possible because according to Article 96 Law No. 11/2010 states that the government or regional government has the authority to organize conservation of cultural preservation. It can be interpreted that such cooperation can include cooperation in conducting insurance agreement. If the cultural heritage buildings in Surabaya city can be insured either partially or wholly then it is expected that this effort can ease the performance of Surabaya City Government and related offices. This is very important to be realized because under Article 32 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia mandates that “the state promotes the national culture of Indonesia amid the civilization of the world by ensuring the freedom of the community in maintaining and developing its cultural values”. Given that the Indonesian culture reflects the noble values of the nation so it must be preserved to strengthen the national identity, enhance the dignity and dignity of the nation, and strengthen the bond of sense of unity and unity for the realization of the ideals of the nation in the future.

### **Conclusion**

The existence of Law No.11/2010 on Cultural Heritage in essence is about how to maintain the existence of cultural heritage, given its very important function in a region. So it takes concrete efforts that should be done by the local city government in this city of Surabaya as one of the city that has a relatively large cultural heritage. Effort that can be done to reduce the risk is to regulate the cooperation related to preservation of cultural heritage, especially in terms of cultural heritage. The party

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<sup>6</sup> Khalid Rosyadi,[*et.,al.*] ‘Analisis Pengelolaan Dan Pelestarian Cagar Budaya Sebagai Wujud Penyelenggaraan Urusan Wajib Pemerintah Daerah’ (2016) 2 Jurnal Administrasi Publik.[833].

is an insurance company. This means that if there is an uncertain event such as damage to the building of cultural heritage, then through the insurance company as the insurer, the damage can be more effectively to be anticipated by doing the restoration in accordance with the provisions of applicable legislation. This is the main obligation of the insurer and on the other hand the insured party ie the State in this case represented by the City Government (Surabaya) shall pay premiums of a certain nominal agreed in the previous insurance agreement. Source of premium payment can be through rent of cultural heritage building use or through local APBN / APBD, where this matter has also been arranged in Article 95 Law No. 11/2010 stating that the Government or the appropriate Regional Government has the duty to allocate funds for the preservation of cultural heritage.

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