



The Meaning of Legal Protection of Ancestral Graves as a Cultural Reserve in the National Culture System in Indonesia

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<http://dx.doi.org/10.47814/ijssrr.v6i6.1210>

Abstract

Indonesia has a vast territory and is an archipelagic country. Indonesia as an archipelagic country has various kinds of indigenous peoples, so it is rich in culture. Various indigenous peoples have their own ancestral graves. Ancestral Graves are the tombs of their ancestors or parents. The government in carrying out its authority and power in developing an area is based on the applicable rules. The fact of the clash between culture and government can be seen from the development of areas carried out by the government, for example the construction of toll roads, offices, and road widening, forcibly and immorally displacing the ancestral graves of indigenous peoples. The development of this area is very beneficial for the community. But we also remember that ancestral graves are also very important for indigenous peoples. The problem that occurs is the development project displacing ancestral graves, and ignoring indigenous peoples. The research method used is normative legal research.

Keywords: *Legal Protection; Cultural Heritage of Ancestral Graves; National Cultural System in Indonesia*

Introduction

The State of Indonesia is an archipelagic country with ethnic and ethnic religions with a long cultural history as well as the state and its people as a country which are still classified as developing countries. Its diverse cultural heritage makes Indonesia a country that has a variety of unique cultures, for that it is necessary to protect the culture in Indonesia.

The diversity of cultures that exist in Indonesia is highly respected, for this reason in the 1945 Constitution article 32 paragraph 1 namely the State promotes Indonesian national culture in the midst of world civilization by guaranteeing the freedom of the people to maintain and develop their cultural values. The purpose of the article above is a guarantee for the culture that exists in each region. (Aldy Yohanes Manueke, 2021)

Indonesian cultural heritage as evidence or historical documents must have some messages that at some point will reflect the ties of the nation with the natural areas around it and also its relations with other social groups. National culture, cultural heritage is a national cultural heritage that has significant socio-cultural values. In addition, cultural heritage can also be thought of as the nation's cultural roots (national cultural roots) which have built our national identity colored by local features or distinctive local wisdom. As the basis of the nation's culture, this cultural heritage will certainly have great potential for the development of the nation in the future.

In Indonesia, there are many Ancestral Tombs scattered in various regions in Indonesia. Every tribe in Indonesia has its own ancestral graves. Along with the development of the times, each region always carries out development for the welfare of its people. The development of development in the area eventually came into conflict with indigenous peoples. The conflict is that the construction carried out by the government, for example the construction of toll roads, offices, road widening, collides with the ancestral graves of indigenous peoples. The government has not been able to confirm whether the ancestral graves are included in the cultural heritage category. Therefore, the problem raised is related to the meaning of legal protection of the cultural heritage of the ancestral graves of indigenous peoples.

Research Method

The type of research used by researchers in this study is normative juridical law research. Normative juridical law research is a research in the form of an inventory of applicable laws, to find the principles of these laws, so that this research seeks to make legal discoveries that are in accordance with certain legal issues. (Bahder J. Nasution, 2008) Normative juridical law research is library law research, which includes research on legal principles, research on legal systematics, research on the level of synchronization of laws and regulations vertically and horizontally between legal regulations, comparisons and legal history. (Soerjono Soekanto dan Sri Mamudji, 2013) The types of approaches used in this study are statutory approaches, conceptual approaches, and case approaches. The types of legal materials in this study are primary legal materials consisting of national legislation and international conventions, while secondary legal materials consist of textbooks, research reports, scientific articles and dictionaries.

Research Results and Discussion

Culture as objects created by humans is cultural heritage. Archaeological investigations that have been carried out so far show that Indonesia is a country that is very rich in various cultural heritages, both in form and function.

Law Number 11 of 2010 concerning Cultural Heritage is the legal basis for the protection and preservation of the Indonesian nation's cultural heritage, and for advancing Indonesian culture. To protect culture, the state has a very important role. The state is responsible for the protection, utilization and development of culture.

Article 1 paragraph 1 Law Number 11 of 2010 Concerning Cultural Conservation states that Cultural Conservation is material cultural heritage in the form of Cultural Conservation Objects, Cultural Conservation Buildings, Cultural Conservation Structures, Cultural Conservation Sites, and Cultural Conservation Areas on land and/or in water whose existence needs to be conserved because it has important values for history, science, education, religion, and/or culture through a stipulation process. Based on this article, to be recognized as a cultural heritage must go through a government determination.

Law Number 11 of 2010 Concerning Cultural Conservation Cultural Conservation is a material cultural heritage. Furthermore, there are 5 classifications of Cultural Conservation objects, namely:

1. Objects of Cultural Conservation
2. Cultural Conservation Building
3. Cultural Conservation Structure
4. Cultural Heritage Sites
5. Cultural Conservation Area

Objects, buildings, or structures can be proposed as Cultural Conservation Objects, Cultural Conservation Buildings, or Cultural Conservation Structures if they meet the following criteria:

- a. aged 50 (fifty) years or more;
- b. represents the shortest style period of 50 (fifty) years;
- c. has a special meaning for history, science, education, religion, and/or culture; And
- d. has cultural values for the strengthening of the nation's personality.

After fulfilling the criteria as a cultural heritage, the classification of cultural heritage objects is as follows:

a. Cultural Conservation Objects can:

- 1) In the form of natural objects and/or man-made objects that are utilized by humans, as well as remnants of biota that can be linked to human activities and/or can be linked to human history;
- 2) Is movable or immovable; And
- 3) Is a unit or group?

b. Cultural Heritage Buildings can:

- 1) Single or multiple elements; and/or
- 2) Free standing or integrated with natural formations.

c. Cultural Conservation Structures can:

- 1) Single or multiple elements; and/or
- 2) Partially or completely merged with natural formations.

d. Cultural Conservation Site if:

- 1) Contains Cultural Conservation Objects, Cultural Conservation Buildings, and/or Cultural Conservation Structures; And
- 2) Store information on human activities in the past.

e. Cultural Conservation Area if:

- 1) Contains 2 (two) Cultural Conservation Sites or more that are located close together;
- 2) In the form of cultural landscapes formed by humans aged at least 50 (fifty) years;
- 3) Has a pattern showing the function of space in the past, aged at least 50 (fifty) years;

- 4) Showing the influence of past humans on the process of using large-scale space;
- 5) Show evidence of the formation of a cultural landscape; And
- 6) Has subsoil that contains evidence of human activity or fossil deposits.

Cultural Conservation Objects, if they meet the criteria through a new designation process, can be recognized as cultural heritage. Determination of Cultural Conservation is carried out by the Government based on recommendations from the Cultural Conservation Expert Team (TACB), the recommendation states that the object is appropriate or not designated as Cultural Conservation objects. Determination of Cultural Conservation is based on ranking, namely there is a National rating, Provincial ranking, and Regency/City ranking.

Protection of Cultural Conservation in Law Number 11 of 2010 concerning Cultural Conservation states that cultural heritage is a nation's cultural wealth as a form of thought and behavior in human life that is important in society, nation and state. Because cultural heritage is the nation's cultural wealth, it needs to be preserved. The state is responsible for the preservation of cultural heritage.

The Meaning of Ancestral Graves as Cultural Heritage in Indonesia

Grave in the Big Indonesian Dictionary means the first meaning is grave and the second meaning is cemetery. The grave is the area of land where the body is buried. Graves certainly cannot be separated from the discussion about the end of the journey of human life on this earth or what is called death. Of course, death varies in ways, times, places and events depending on the deeds of the man himself during his lifetime while on earth.(Subri, 2017)

Ancestor in the Big Indonesian Dictionary means ancestor (the one who is exalted). Ancestors or ancestors are names that are normally associated with parents or ancestral parents (such as grandparents, grandchildren, and so on). Based on the meaning of the words tomb and ancestor when combined into ancestral tombs. Ancestral graves mean the graves of ancestors or parents. This ancestral grave is more emphasized on the graves of ancestors or parents who have a long lineage and have built a community so that they have an identity.

The ancestral graves have an identity so that the community pays tribute to the ancestors in the form of respect activities. Community activities in paying respects are beliefs in the ancestors. Every society has different ways of paying respects to their ancestors. Respect for ancestors which is carried out through activities at ancestral graves is a culture of customary law society. In the culture itself contains a moral value of trust as a tribute to those who created a culture and is applied in a community through tradition.(Robi Darwis, 2017)

The word sacred according to the Big Indonesian Dictionary is sacred and/or sacred. The meaning of the sacred is something that is felt more than what is described. For example, an object contains sacred or profane values, in society there are different views, for example, a manguni bird for people who are not from the Minahasa tribe thinks that the manguni bird is an ordinary animal. But people for Minahasa people are animals that are respected and purified. Religiously the myth of the Manguni bird is a sign of life for the Minahasa people which can be believed to provide good guidance.(Mayske Rinny Liando, 2021) This manguni bird is included in the category of living things, then a sacred object from the Minahasa community, one of which is the waruga. Waruga as a sacred site and cultural identity of the Minahasa people.

One of the sacred objects of the Balinese customary law community is Pratima. Pratima is a symbol of a god/bhatara which is used as a worship tool to worship Ida Sang Hyang Widi Wasa who has been purified through a ceremony in Hinduism.(Farah Nabila putri Setia, 2022) Pratima is a sacred object which in the Hindu religion, this object is a symbol of a god used to worship Ida Sang Hyang Widhi

Wasa, and this object has been purified with a certain ceremony. (Luh Mia Ayu Pratiwi, 2022) After being extolled, the object can only be used and can be said to be a sacred object used as a means to connect oneself with Ida Sang Hyang Widhi Wasa. (Ikram Aditya Syahrul, 2019) Pratima is a statue that has been purified through a ceremony according to Hinduism which is symbolized and used as the stana (Pralingga) of Sang Hya Widi Wasa or used in religious ceremonies. (A.A Ngurah Yusa Darmadi, 2016)

Based on the explanation above, it can be understood that a sacred object is an object that is purified or respected because there are inner feelings and feelings imprinted in his soul and a sense of fear. "This feeling of awe is to attract them to love and want to avoid danger." It should be explained that the difference between sacred and impure objects depends on the person or community that embraces a religion or belief in One Supreme God.

Society is a unit of human life that interacts according to a certain system of customs that is continuous, and which is bound by a sense of shared identity. Continuity is a community unit that has four characteristics, namely:

1. Interaction between its citizens,
2. Customs,
3. Time continuity,
4. A strong sense of identity that binds all citizens.

Indigenous peoples have existed for generations, living peacefully within defined territories mostly in and around forest areas or coastal zones and small islands, controlling and managing their natural environment and the resources they rely on under the supervision of their own customary laws. . This was the status quo for a long time before Indonesian independence on 17 August 1945.

Judging from the historical background, indigenous peoples in the Indonesian archipelago have a historical background of cultural history that is very old and much older than the formation of kingdoms or countries. Historically, members of the customary law community in Indonesia and the ethnic groups that encompass them, are actually migrants from other regions in Southeast Asia. Culturally they are included in the Austronesian cultural area, namely the culture of rice farmers, with community arrangements and ownership that are organized collectively. (Husein Alting, 2010)

The existence of customary law communities existed before the birth of the Indonesian state, these customary law communities have their own customary laws both in the system of governance and in the management of their land and natural resources. The existence of indigenous and tribal peoples is a fact that the state cannot deny, space for protection must continue to be provided to keep up with the times.

The concept of indigenous peoples in Indonesia was introduced by Cornelius Van Vollenhoven who studied more deeply about indigenous peoples. Ter Haar, a student of Van Vollenhoven, gives the notion of indigenous peoples as groups of people who are organized, live in a certain area, have their own power, and have their own wealth in the form of visible and invisible objects, in which the members of each unit experience life in their own way. society as a natural thing according to the nature of nature and none of the members has a tendency to dissolve the bond that has grown or leave it in the sense of breaking away from that bond forever.

In Indonesia, indigenous peoples have distinctive and different characteristics and patterns. According to F.D Holleman in his book *De Commune Trek in Het Indonesischen*, said there are four general characteristics of indigenous peoples, namely:

1. Religious Magic (magisch-religious), indigenous peoples with religious magical character can be interpreted as a mindset based on religiosity, namely the people's belief in the existence of something sacred.
2. Communal (commuun), the principle of communal in adat means prioritizing their own interests, indigenous peoples have the thought that each individual, community member is an integral part of society as a whole. In addition, it is also believed that the attitude of individual interests should be adjusted to the interests of society because no individual is separated from his community.
3. Concrete, the nature of concrete is defined as a pattern of society that is completely clear or real, showing that every legal relationship that occurs in society is not carried out secretly or vaguely, in other words openly.
4. Contan, this cash character implies participation, especially in terms of fulfilling achievements. The nature of cash gives the sense that an action in the form of a real deed, a symbolic deed or an utterance will immediately complete a legal action at the same time when he commits an act according to custom. (Husein Alting, 2010)

The ILO (International Labor Organization) categorizes indigenous peoples as follows:

- 1) Indigenous peoples who have socio-cultural and economic conditions that are different from other groups of people in a country, and whose status is partly or wholly regulated by custom or tradition or by law or by their own special rules.
- 2) Tribes who consider themselves or are considered by others to be indigenous because they are descendants of the indigenous people who inhabited the country since ancient times before the arrival of the colonizers, or before the setting of administrative boundaries as currently in effect and which maintain or strive to maintain, regardless of their legal status, some or all of the features of their social, economic, cultural and political institutions. In this sense, indigenous peoples are also known to have cultures, religions, lands and territories that are separate from other community groups, and lived long before the formation of the modern nation-state.

Recognition of the de jure existence of indigenous peoples is also recognized and ratified in the 1945 Constitution article 28 I paragraph (3) which states, that "Cultural identity and rights of traditional communities are respected in harmony with the times and civilizations". Recognition of the existence of indigenous peoples does not only stop at the constitution, but more than that it is also operationalized in Law Number 39 of 1999 concerning Human Rights, in particular article 6 which reads:

- a. In the context of upholding human rights, the differences and needs of indigenous and tribal peoples must be considered and protected by law, society and the government.
- b. The cultural identity of indigenous and tribal peoples, including their rights to customary land is protected, in line with the times.

North Sulawesi (abbreviated as North Sulawesi) is a province located at the northern tip of Sulawesi Island, Indonesia, with the capital city located in the city of Manado. North Sulawesi is home to the Minahasa ethnic group. The Minahasa tribe lives in the Minahasa Raya area, Minahasa Raya is currently divided into Minahasa Regency, South Minahasa Regency, Southeast Minahasa Regency, North Minahasa Regency, Bitung City, Manado City and Tomohon City. The Minahasa tribe is a customary law community on the island of Sulawesi. One of the Minahasa customary law community ancestral graves is Waruga. Waruga is an ancient grave of the Minahasa people made of two stones in the shape of a triangle and a square.

Maluku is a province that covers the southern part of the Maluku Islands, Indonesia. Its capital and largest city is the city of Ambon. Pelauw is a country located on the north coast of Haruku Island, Central Maluku Regency, Maluku Province. Pelauw Country has the Sacred Tomb of the Soa Tualeka

Marga which is one of the historical relics from the ancestors on Haruku Island. There are indigenous peoples from Negeri Palauw on the island of Maluku.

East Nusa Tenggara is a province in Indonesia which covers the eastern part of the Nusa Tenggara Islands. The island of Sumba is inhabited by the Sumba tribe and is divided into four districts, Southwest Sumba, West Sumba, Central Sumba and East Sumba are part of the East Nusa Tenggara Province. Stone graves containing megalithic traditions are an important material for the Sumba tribe. (Retno Handini, 2019) This stone grave is included in the category of ancestral tombs of the Sumba tribe. The local wisdom of indigenous and tribal peoples in various regions has its own characteristics. In North Sulawesi, there is the Minahasa tribe as the customary law community whose ancestral graves are waruga. To honor the ancestral graves of the Minahasa customary law community, they carry out lumales in waruga. Likewise, in Maluku, Pelauw Country, there is the Sacred Tomb of Marga Soa Tualeka, where they carry out the cakalele tradition.

Law Number 11 of 2010 concerning Cultural Conservation states that Cultural Conservation is a cultural heritage that has important values for history, science, education, religion, and/or material culture in the form of:

1. Cultural Conservation Objects are natural objects and/or man-made objects, both movable and immovable, in the form of units or groups, or parts thereof, or their remnants which have a close relationship with culture and the history of human development.
2. Cultural Conservation Building is a built arrangement made of natural objects or man-made objects to meet the needs of space with walls and/or without walls, and a roof.
3. Cultural Conservation Structure is a built arrangement made of natural objects and/or man-made objects to meet the needs of an activity space that blends with nature, facilities and infrastructure to accommodate human needs.
4. Cultural Conservation Site is a location on land and/or in water that contains Cultural Conservation Objects, Cultural Conservation Buildings, and/or Cultural Conservation Structures as the result of human activities or evidence of past events.
5. Cultural Conservation Area is a geographical spatial unit that has two or more Cultural Conservation Sites that are located close together and/or exhibits unique spatial characteristics.

Ancestral Graves are included in the cultural heritage category. This category can include cultural heritage structures, cultural heritage sites and cultural heritage areas. The category of cultural heritage structure of the ancestral graves is part of the land, the Tomb of Syekh Maulana Maghribi as a Cultural Conservation Structure from Bantul Regency, located on Sentono Hill, Mancingan Hamlet, Parangtritis Village, Kretek District, Special Region of Yogyakarta. The Tomb of Syekh Maulana Maghribi as a Regency Ranked Cultural Heritage Structure based on the Decree of the Regent of Bantul. Furthermore, the criteria for sites as ancestral graves can be seen that there are several ancestral graves scattered in a location where there are objects, buildings, and/or cultural heritage structures, the Waruga Sawangan Complex, Sawangan Village, Airmadidi District, North Minahasa Regency, North Sulawesi Province. The Waruga Sawangan Complex as a cultural heritage site is ranked Nationally based on a Ministerial Decree. Furthermore, the category of cultural heritage area is the Decree of the Minister of Education and Culture of the Republic of Indonesia Number: 260/M/2013 concerning Designation of the Trowulan Geographic Spatial Unit as a Cultural Heritage Area. In this Trowulan geographical unit, there are tombs related to the Majapahit kingdom.

The ancestral graves of indigenous peoples are said to be sacred objects because they have sacred values and are categorized as objects. The sacred values contained in the ancestral graves can be seen from the rituals or activities carried out by the indigenous peoples. Ancestral graves are included in the

classification of cultural heritage objects according to Law Number 11 of 2010 concerning Cultural Conservation.

Legal protection aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other side. Legal Protection of the Ancestral Graves of Indigenous Peoples in Cultural Conservation is protected by Law Number 11 of 2010 concerning Cultural Conservation.

National Cultural System

Article 32 paragraph (1) namely that the State promotes Indonesian national culture is closely related to National Development. National development is a series of sustainable development efforts that cover all aspects of the life of society, nation and state, to carry out the task of realizing national goals as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia. The series of development efforts contain development activities that take place non-stop, by raising the level of social welfare from generation to generation. The implementation of these efforts is carried out in the context of meeting the needs of the present without compromising the ability of future generations to meet their needs.

National culture based on Pancasila is the embodiment of the creativity, work and initiative of the Indonesian nation and constitutes the entire effort of Indonesian people to develop dignity and status as a nation, and is directed at providing insight and meaning to national development in all areas of national life. It is interesting to quote Ki Hajar Dewantara's statement about culture being "the peaks of regional culture". The quote from this statement refers to the understanding of unity being increasingly strengthened, so that singleness is increasingly felt rather than diversity. Its form is in the form of a unitary state, national economy, national law, and national language.

The definition given by Koentjaraningrat can be seen from his statement: "what is unique and of good quality from whatever ethnic group it comes from, as long as it can identify itself and create a sense of pride, that is national culture". This statement refers to the peaks of regional culture and ethnic culture which can create a sense of pride for Indonesians if presented to represent a shared identity. If we trace the elements of culture, according to Koentjaraningrat there are seven elements of culture that can be found in all nations in the world, namely language, knowledge system, social organization, system of living equipment and technology, livelihood system for life, religion and art system. (H. Abdul Manan, 2009) The intersection of culture between one nation and another nation often occurs. It could be that things run smoothly but if acculturation is not managed properly it will give rise to clashes.

Edi Sedyawati said that the culture that is owned by the Indonesian nation until today as a whole can be described as a pile of cultural experiences and cultural development consisting of cultural layers that were formed throughout its history. (Edi Sedyawati, 2012) The existence of a selection of these layers is suggested by the presence of systemic changes in certain periods caused by the process of acculturation.

National culture, namely old and original cultures that exist as peaks in regions throughout Indonesia, while national culture itself is understood as a national culture that is already in a position that has meaning for the entire Indonesian nation. In the national culture there is a unifying element of the Indonesian nation which is already aware of and experiencing national distribution. In it there are elements of national culture and elements of foreign culture, as well as elements of new creations or national inventions.

Development of National Culture is contained in One of the National Development Missions according to the Law of the Republic of Indonesia Number 17 of 2007 concerning the National Long-

Term Development Plan for 2005 – 2025, which is to create a cultured society. Development of National Culture refers to the Community in strengthening the identity and character of the nation and then aims to apply the noble values of the nation's culture.

The Law on the Advancement of Culture places culture as the direction of national development. Because it covers all systems of social life in Indonesia, culture should be placed at the forefront of national life. Culture should not be seen as one of the development sectors, but rather as the goal of all development sectors.

Apart from being a goal, culture is the foundation of development. Culture encourages development by forming the mentality and insight of society which is necessary for increasing economic growth. Culture also empowers development, because it presents attitudes and perspectives that prioritize harmony between humans and their environment. Attitudes and perspectives based on cultural awareness will safeguard development, so that it does not exhaust natural wealth or marginalize the weak for the sake of economic accumulation for a few people.

According to Law Number 5 of 2017 concerning the Advancement of Culture article 1 number (1) "Culture is everything related to creativity, taste, initiative, and the work of the community." Promotion of Culture is carried out based on Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia, and Bhinneka Tunggal Ika.

Cultural Advancement aims to:

- a. develop the noble values of the nation's culture;
- b. enrich cultural diversity;
- c. strengthening national identity;
- d. strengthening the unity and integrity of the nation;
- e. enrich the life of a nation;
- f. improve the image of the nation;
- g. realizing civil society;
- h. improve people's welfare;
- i. preserving the nation's cultural heritage; And
- j. influence the direction of the development of world civilization, so that culture becomes the direction of national development.

In short, the promotion of national culture has an impact on many sectors of life. It influences the personality, resilience, harmony, and welfare of the nation. Therefore, the process of formulating laws agreed on ten principles as guidelines, which are summarized in Article 4 of the Law on the Promotion of Culture, so that efforts to promote culture do not trigger conflict and oppression that threaten the diversity of society, which is the identity of the Indonesian nation. The legal basis for Law Number 5 of 2017 concerning the Advancement of Culture is Article 20, Article 21 and Article 32 of the 1945 Constitution of the Republic of Indonesia.

Conclusion

The Meaning of Legal Protection of Ancestral Graves as Cultural Conservation in the National Culture System in Indonesia, namely cultural heritage of ancestral graves is a tangible cultural heritage but has religious values in the life of indigenous peoples. The regulation of Law Number 11 of 2010 concerning Cultural Conservation emphasizes that the Cultural Conservation of ancestral graves is material. Cultural heritage of ancestral graves can be included in the category of buildings, structures, sites and areas in accordance with Law Number 11 of 2010 concerning Cultural Conservation.

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