



Expiration Regulation of the Investigation of Cultural Heritage Destruction

Shannon Galice Sofyani¹, Aji Lukman Ibrahim².

^{1,2} Faculty of Law, The National Development University Jakarta, Indonesia.

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Corresponding Author:

Shannon Galice Sofyani.
E-mail: Shannon.galice@gmail.com.

Abstract: Cultural heritage is one of Indonesia's wealth that must be maintained and preserved by all components of the nation. Law Number 11 of 2010 concerning Cultural Heritage strengthens efforts to protect and preserve cultural heritage by regulating criminal offences committed against cultural heritage, including cultural heritage destruction. However, investigating criminal offences of destroying cultural heritage sites is inseparable from various problems that can slow down its completion. Therefore, regulating the expiration of the investigation period for cultural heritage destruction is necessary. This research is normative-empirical, in which data is obtained through a literature study and interviews with investigators from the Region X Cultural Preservation Centre. From the research results, it was found that the investigation of the cultural heritage sites destruction still has many obstacles faced. In addition, the expiration of the cultural heritage sites destruction does not yet have a particular regulation and still refers to the Criminal Code.

1. Introduction

Indonesia has a rich cultural legacy. The statement is not just words but has been proven by the existence of cultural relics known as cultural heritage in the past.¹ It should be understood that cultural heritage is a picture of human thought and behaviour in interacting with the surrounding environment, the results of which are combined based on knowledge from the past in achieving the conditions of choice and can be passed down from one generation to another, depicting the values of wisdom.²

Cultural heritage can be characterized as a type of national wealth that is vital to the advancement of science as well as the existence of the state and the nation as a whole.³ Cultural heritage is scattered in various parts of Indonesia, including Central Java and Yogyakarta, which has countless cultural heritage. Some of the heritage sites in the Central Java and Yogyakarta area include Borobudur Temple in Magelang, which is a relic of the Ancient Mataram Kingdom and also the

¹ Jero Wacik, *Aceh: Mozaik Tradisi Untuk Pariwisata* (Banda Aceh: Departemen Kebudayaan & Pariwisata, 2008) 23.

² D. Deslinah, A. Fiadi, and A.P. Harahap, "Kebijakan Pemerintah Dalam Pelestarian Situs Cagar Budaya Di Kabupaten Tanjung Jabung Timur" (Jambi, UIN Sulthan Thaha Saifuddin Jambi, 2022), <http://repository.uinjambi.ac.id/13051/>.

Sangiran Antiquities Site in Sragen, which is a pre-historic relic.

To protect cultural heritage from degradation, both on land and in water, stringent arrangements that can guarantee the existence of cultural heritage itself, including preservation and maintenance activities to maintain, develop, and use the cultural heritage, are required.⁴ However, the preservation of cultural heritage is undoubtedly inseparable from various potential challenges and threats that haunt it, including the need for more community self-awareness in maintaining and preserving the heritage.

Normatively, regulations on protecting and preserving cultural heritage are set out in Law No. 11/2010 on Cultural Heritage (Cultural Heritage Law). The regulation has regulated the criminal provisions for criminal offences against cultural heritage. Despite the criminal provisions, there are still many cases of criminal offences involving cultural heritage. This happens because things included as cultural heritage have an age of tens, hundreds, or even thousands of years ago. Therefore cultural heritage has a nature that is vulnerable to damage and requires special treatment in handling it.⁵ Due to that, cultural heritage objects have a high value.

In Indonesia, especially in the Central Java and Yogyakarta areas, criminal offences against cultural heritage are still rampant, one example is the cultural heritage sites destruction regulated in Article 105 of the Cultural Heritage Law. For example, a case in 2015 destroyed a part of a historic building, namely a school wall, which resulted in 60 per cent of the building being damaged and could no longer be used to carry out the teaching and learning process.⁶ Furthermore, there is also a case that recently occurred, namely the case of the destruction of the Kartosuro Palace Fort, whose perpetrators were later sentenced to 1 year in prison.⁷

Indeed, the enforcement of the cultural heritage sites destruction as a criminal offence, especially in Central Java and Yogyakarta, cannot be separated from the investigation process. There are obstacles and challenges experienced by the civil servant investigators, such as the need for more clues and evidence to reveal examples of cultural heritage site demolition. This is a problem in the investigation process because it can hamper and slow down the disclosure of criminal acts of cultural heritage site destruction.⁸ Whereas, if the investigation takes longer, it will be more challenging to uncover the criminal offence of cultural heritage site destruction and even create new problems because the distance between the occurrence and resolution is exceeded by time. Therefore, ideally, there should be special arrangements regarding the investigation process of the cultural heritage sites destruction and also in detail on the expiration rules in the hope that the in-

³ Indonesia, "Law Number 11 of 2010 Concerning Cultural Heritage" (2010), <https://www.bphn.go.id/data/documents/10uu011.pdf>.

⁴ Hamdan Cherta Yuanda, "Sanksi Terhadap Pelaku Perusakan Cagar Budaya Menurut Hukum Islam" (UIN Raden Fatah Palembang, n.d.), <http://repository.radenfatah.ac.id/17324/>.

⁵ Aji Lukman Ibrahim and Rianda Dirkareshza, "Pemberantasan Kejahatan Transnasional Penyelundupan Benda Cagar Budaya Melalui Hukum Nasional Dan Kerja Sama Internasional," *Justitia et Pax* 36, no. 1 (June 8, 2020): 12, <https://doi.org/10.24002/jep.v36i1.3076>.

⁶ detikNews, "2 Terdakwa Perusakan Cagar Budaya di Yogyakarta Didenda Rp 500 Juta," February 3, 2015, <https://news.detik.com/berita/d-2822349/2-terdakwa-perusakan-cagar-budaya-di-yogyakarta-didenda-rp-500-juta>.

⁷ Bram Damianus, "Perusak Benteng Kartasura Diganjar 1 Tahun Penjara, Wajib Restorasi Seperti Semula," December 22, 2022, <https://radarsolo.jawapos.com/daerah/sukoharjo/22/12/2022/perusak-benteng-kartasura-diganjar-1-tahun-penjara-wajib-restorasi-seperti-semula/>.

⁸ Muhammad Rifai Lubis, "Koordinasi Dan Pengawasan Oleh Polri Terhadap Penyidik Pegawai Negeri Sipil (PPNS) Dalam Proses Penyidikan Tindak Pidana Perusakan Bangunan Cagar Budaya Di Daerah Istimewa Yogyakarta" (Universitas Atma Jaya Yogyakarta, n.d.), <https://e-journal.uajy.ac.id/8161/>.

investigation process will be more effective and efficient as there is now no clarity about the detailed arrangements for handling the cultural heritage sites destruction and the expiration of investigations in the Cultural Heritage Law.

There have been many studies on the cultural heritage sites destruction. There are several similar studies with the themes raised in this article, here are some of the results of these studies. First, David Fernando Padang, Investigation of Criminal Offences According to Law Number 11 of 2010 concerning Cultural Heritage in which, this article discusses the investigation of cultural heritage criminal offences in general.⁹ Second, Iming Imungkasi Devi Suko Putri, The Process of Handling the Cultural Heritage in Surabaya City (Case Study of the Destruction of the Beit Hashem Synagogue Building) discusses the destruction of the Beit Hashem Synagogue building handled by the Surabaya City Culture and Tourism Office.¹⁰

Third, Ahmad Hafidz Jimmy Prasetyo and Pudji Astuti, Implementation of Supervision & Coordination Between the Police and Civil Servant Investigators in Handling Crimes of Theft and Destruction of Cultural Heritage Sites (Case Review of Majapahit Ancient Settlement in Kunitir Village, Jatirejo District, Mojokerto Regency) which discusses the coordination relationship between the police and PPNS in handling cases of criminal damage and theft that occurred in Majapahit Ancient Settlement, Kunitir Village.¹¹ Fourth, Vieren Pinontoan, Harly S. Muaja, and Anna Wahongan, Supervision and Investigation in the Field of Cultural Heritage Preservation Based on Law Number 11 of 2010 concerning Cultural Heritage which explores the process of supervision carried out on the investigation of cultural heritage criminal offences normatively.¹² Fifth, Sinéad Coakley and Pádraig McAuliffe, in Picking Up The Pieces: Transitional Justice Responses to Destruction of Tangible Cultural Heritage discuss the resolution of cultural heritage destruction cases with transitional justice.¹³ From the description above, the author is interested in discussing the need for an expiration regulation in the investigation of cultural heritage destruction.

2. Method

This is a normative-empirical study that employs three approaches: statutory, historical, and conceptual. In this study, the author draws on both primary and secondary data sources. In obtaining data sources, the primary data sources are obtained directly using field studies through the data collection method of interviews with semi-structured interview techniques,¹⁴ while the secondary data sources were obtained through literature studies or document studies. Secondary data sources are further subdivided into three categories: primary legal materials (various laws),

⁹ David Fernando Padang, "Penyidikan Terhadap Tindak Pidana Menurut Undang-Undang Nomor 11 Tahun 2010 Tentang Cagar Budaya," no. 6 (n.d.).

¹⁰ Iming Imungkasi Devi Suko Putri, "Proses Penanganan Perusakan Cagar Budaya Di Kota Surabaya (Studi Kasus Perusakan Bangunan Sinagoge Beit Hashem)," *Novum/ : Jurnal Hukum* 2, no. 1 (n.d.), <https://doi.org/10.2674/novum.v2i1.13067>.

¹¹ Ahmad Hafidz Jimmy Prasetyo, "PELAKSANAAN PENGAWASAN & KOORDINASI ANTARA KEPOLISIAN DENGAN PENYIDIK PEGAWAI NEGERI SIPIL DALAM PENANGANAN TINDAK PIDANA PENCURIAN DAN PERUSAKAN SITUS CAGAR BUDAYA," n.d.

¹² Vieren Pinontoan, Harly S Muaja, and Anna Wahongan, "PENGAWASAN DAN PENYIDIKAN DI BIDANG PELESTARIAN CAGAR BUDAYA BERDASARKAN UNDANG-UNDANG NOMOR 11 TAHUN 2010 TENTANG CAGAR BUDAYA," n.d.

¹³ Sinéad Coakley and Pádraig McAuliffe, "Picking up the Pieces: Transitional Justice Responses to Destruction of Tangible Cultural Heritage," *Netherlands Quarterly of Human Rights* 40, no. 3 (September 2022): 311-32, <https://doi.org/10.1177/09240519221113121>.

¹⁴ Nazir, M., (2003). *Research Methods*. Jakarta: Ghalia Indonesia. Hal. 193-194.

secondary legal materials (scientific journals or books that explain related primary legal materials), and tertiary legal materials (additional legal materials).

This research was conducted in the Balai Pelestarian Kebudayaan Wilayah X coverage area, which covers Central Java and the Special Region of Yogyakarta. The population of this research is investigators from the Balai Pelestarian Kebudayaan Wilayah X. The sample of this research is Harun Aroshid, one of the investigators who has investigated cases of cultural heritage sites destruction. The sampling technique of this research is purposive sampling. The data acquired from this research will be analysed descriptively and qualitatively in order to be analysed.

3. Investigation of Cultural Heritage Sites Destruction by the Cultural Preservation Centre Region X

Criminal investigation is an essential component of the law enforcement process for a criminal offense. The investigation is carried out after the preliminary investigation process of a criminal offence. Law Number 8 of 1981 on Criminal Procedure or KUHAP defines investigation as “a sequence of measures taken by investigators in the case and in accordance with the manner prescribed by law to seek and gather evidence in order to throw light on the criminal offense that happened and to identify the suspect”. The purpose of the investigation is to find out the perpetrator of a criminal offence and also explain the facts of the actions committed by the perpetrator so that it can be proven juridically.¹⁵ The investigation is one part of criminal policy, particularly penal policy, which uses the means of criminal law to tackle crime.¹⁶ This focuses on investigation as a type of criminal law enforcement in a repressive criminal justice system.¹⁷

The inquiry is carried out by investigators who are either state police officers of the Republic of Indonesia (POLRI) or civil servant investigators (PPNS) authorised by law to carry out investigations. Concerning cultural heritage criminal offenses, the Cultural Heritage Law has given PPNS, whose scope and responsibilities are in cultural heritage preservation, independent ability to conduct investigations.

POLRI is the supervisor of PPNS, and in its implementation, POLRI will coordinate and supervise PPNS during the investigation of cultural heritage criminal offences where the coordination and supervision itself will be carried out as soon as PPNS provides a Notice of Commencement of Investigation (SPDP) to the public prosecutor. If necessary, POLRI can also provide investigation assistance to PPNS, which can be in the form of tactical assistance, technical assistance forced effort assistance, and investigation consultation assistance, where PPNS must inform POLRI regarding the request for assistance.¹⁸

¹⁵ Suwari Akhmaddhian, “Penyuluhan Hukum Tentang Prosedur Penanganan Perkara Pidana Di Desa Sangiang, Majalengka,” *Empowerment/ : Jurnal Pengabdian Masyarakat* 2, no. 02 (October 31, 2019): 4, <https://doi.org/10.25134/empowerment.v2i02.2060>.

¹⁶ John Kenedi, “Kebijakan Kriminal (Criminal Policy) Dalam Negara Hukum Indonesia: Upaya Mensejahterakan Masyarakat (Social Welfare)” *Jurnal Al Ijarah: Jurnal Pemerintahan Dan Politik Islam* 2, no. 1 (2017): 18.

¹⁷ Febriyanti Silaen and Syawal Amry Siregar, “Hubungan Kebijakan Kriminal Dengan Kebijakan Hukum Pidana,” *Jurnal Darma Agung* 28, no. 1 (May 20, 2020): 9, <https://doi.org/10.46930/ojsuda.v28i1.455>.

¹⁸ Ahmad Hafidz Jimmy Prasetyo, Pudji Astuti, “Pelaksanaan Pengawasan Dan Koordinasi Antara Kepolisian Dengan Penyidik Pegawai Negeri Sipil Dalam Penanganan Tindak Pidana Pencurian Dan Perusakan Situs Cagar Budaya (Tinjauan Kasus Pemukiman Kuno Majapahit Di Desa Kunitir, Kecamatan Jatirejo, Kabupaten Mojokerto),” *Jurnal Novum*, 4 (4) 2017, <https://static-fip.unesa.ac.id/index.php/28/article/view/24861>.

Article 100 of the Cultural Heritage Law states that investigators have the authority to: “a) receive a report or complaint about criminal conduct involving Cultural Heritage; b) take the initial action at the crime scene; c) order to detain a suspect and conduct an identity check; d) carry out a search and seizure; e) examine and seize evidence of illegal actions against Cultural Heritage; f) collect fingerprints and photograph a person; g) summon and interrogate suspects and witnesses; h) call in an expert as needed for the case examination; and i) write and sign the official report. j) halt the inquiry if there is insufficient proof of a criminal offence involving Cultural Heritage.”¹⁹

As previously stated, the PPNS is in charge of cultural heritage preservation and has jurisdiction over investigating cultural heritage crimes. Actions categorised as cultural heritage criminal offences, one of which is the cultural heritage sites destruction which the PPNS in the field of cultural heritage has the authority to investigate, are regulated in Chapter XI on Criminal Provisions, which contains Article 101 to Article 112 of the Cultural Heritage Law, which can be summarised in the table below:

Table 1. Criminal Provisions Article 101 to Article 112

Article	Punishable actions	Criminal Sanctions
101	Any person is prohibited from transferring the ownership of Cultural Heritage of national rank, provincial rank, or regency/city rank, either in whole or in part, except with the permission of the Minister, governor, or regent/mayor under their level.	Imprisonment of not less than 3 months and not more than 5 years and/or a fine of not less than Rp400,000,000.00 and not more than Rp1,500,000,000.00
102	Deliberately failing to report the discovery of suspected Cultural Heritage Objects, suspected Cultural Heritage Buildings, suspected Cultural Heritage Structures, and/or suspected Cultural Heritage Sites to the competent cultural heritage agency, the Indonesian National Police, and/or related agencies within 30 days of discovery.	Imprisonment for a maximum of 5 years and/or a maximum fine of IDR 500,000,000.00
103	Without the approval of the Government or a Regional Government under their control, no one may search for Cultural Heritage or suspected Cultural Heritage by excavating, diving, or lifting on land or in water.	Imprisonment for a minimum of 3 months, a maximum of 10 years, and/or a fine of at least IDR 150,000,000.00 and a maximum of IDR 1,000,000,000.00.
104	Any individual who intentionally prevents, obstructs, or thwarts efforts to preserve Cultural Heritage	Imprisonment of 5 years and/or a fine of not less than IDR 10,000,000 and not more than IDR 500,000,000.
105	Any individual n who intentionally damages Cultural Heritage, either in whole or parts, from unity, group, and/or from the original location.	Imprisonment for a minimum of 1 year, 15 years, and/or a fine of at least IDR 500,000,000.00 and a maximum of IDR 5,000,000,000.00.
106 paragraph (1)	Any individual who steals Cultural Heritage, either in whole or in parts, from a unit, group, and/or from the location of origin.	Imprisonment for a minimum of 6 months, a maximum of 10 years, and/or a fine of at least IDR 250,000,000.00 and a maximum of IDR 2,500,000,000.00.
106 paragraph (2)	Any individual who collects the proceeds of the theft of Cultural Heritage, both in whole and in parts, from a unit, group, and/or from the location of origin.	Imprisonment of not less than 3 years and not more than 15 years, and/or a fine of not less than IDR 1,000,000,000.00 and not more than IDR 10,000,000,000.00.

¹⁹ Law Number 11 of 2010 on Cultural Heritage.

107	Without the consent of the minister, governor, or regent/mayor at the level, any individual removes Cultural Heritage of national, provincial, or regency/city rank, in whole or in part.	Imprisonment for a minimum of 3 months, a maximum of 2 years, and/or a fine of at least IDR 100,000,000.00 and a maximum of IDR 1,000,000,000.00.
108	Any individual who, without the permission of the Minister, governor, or regent/mayor under the level, separates Cultural Heritage of national rank, provincial rank, or regency/city rank, either in whole or in parts.	Imprisonment for a maximum of 10 years and/or a fine of at least IDR 100,000,000.00 and a maximum of IDR 2,500,000,000.00.
109 paragraph (1)	Any individual who, without the permission of the Minister, brings Cultural Heritage, either in whole or in part, may only be brought outside the territory of the Unitary State of the Republic of Indonesia for research, cultural promotion, and/or exhibition.	Imprisonment for a minimum of 6 months, a maximum of 10 years, and/or a fine of at least IDR 200,000,000.00 and a maximum of IDR 1,500,000,000.00.
109 paragraph (2)	Any person who, without the permission of the governor or regent/mayor under his/her authority, brings Cultural Heritage, either in whole or in parts, may only be brought outside the province or regency/city area for research, cultural promotion, and/or exhibition.	Imprisonment for a maximum of 5 years and/or a fine of not less than IDR 1,000,000.00 and not more than IDR 100,000,000.00.
110	Any person who, without the permission of the Minister, governor, or regent/mayor under their level, changes the spatial function of a Cultural Heritage Site and/or Cultural Heritage Area of national rank, provincial rank, or regency/city rank, either in whole or in part.	Imprisonment for a maximum of 5 years and/or a fine of at least IDR 100,000,000.00 and a maximum of IDR 1,000,000,000.00.
111	Any person is prohibited from documenting Cultural Heritage in whole or in part for commercial purposes without the permission of the owner and/or the authority.	Imprisonment for a maximum of 5 years and/or a maximum fine of IDR 500,000,000.00.
112	Any person, without the permission of the Minister, governor, or regent/mayor under the level, utilises Cultural Heritage of national rank, provincial rank, or regency/city rank, either in whole or in parts, by multiplying.	Imprisonment for a maximum of 5 years and/or a maximum fine of IDR 500,000,000.

Sources: Cultural Heritage Law.

Article 66, paragraph (1) of the Cultural Heritage Law prohibits anyone from damaging cultural heritage. Article 105 regulates the criminal provisions, in which case the cultural heritage sites destruction is a criminal offence. Before investigating the crime of cultural heritage sites destruction, it is necessary first to interpret the meaning of destruction or damage itself. With understanding the meaning of destruction, law enforcement against the cultural heritage sites destruction will be clear and will not be multi-interpreted. As a result, each of Article 66 paragraph (1) and Article 105 of the Cultural Heritage Law, which governs the criminal offense of destroying cultural heritage places, must be interpreted.

One of the ways to interpret the law is through grammatical interpretation. The word destruction in Indonesia has the root word of "rusak" or "damaged" in English, which, according to the Great Indonesian Dictionary or KBBI, it is no longer perfect; in this case, it is no longer good and intact.²⁰ Then, the KBBI interprets destruction as a process or act of damage, which is the cultural heritage destruction. Besides KBBI, the Black Law Dictionary uses the word destruction, "1. The act of destroying or demolishing; the ruining of something. 2. Harm that substantially detracts from the value of property, esp. personal property. 3. The state of having been destroyed."²¹ It is possible

²⁰ Anonim, "Kamus Besar Bahasa Indonesia" (Jakarta: Gramedia Pustaka Utama, n.d.) 34.

²¹ Henry Campbell Black, "Black Law Dictionary," n.d.

to view destruction as destroying or demolishing something. This injury significantly reduces the worth of the item, particularly personal property, as well as the status of having been damaged or destroyed.

According to the KBBI and Black Law Dictionary definitions, the cultural heritage sites destruction is an act against cultural heritage that results in the imperfection of cultural heritage as its original form when it was first discovered or the initial state before undergoing changes or repairs at all.

However, the form of destruction categorised as a criminal offence must be interpreted practically in the field to provide certainty in the law enforcement process so that it has clear boundaries regarding what is and is not included as the cultural heritage sites destruction. It is also known that some cultural heritage found is already in a damaged condition. Therefore, it needs other interpretations to support the law enforcement process of destroying cultural heritage sites. Apart from grammatical interpretation, there are other types, such as extensive interpretation. Extensive interpretation is one of the methods of interpreting the law. This interpretation expands the meaning of what is simply written in the law.²²

Referring to the extensive interpretation of destruction as well as the Cultural Heritage Law, destruction can be interpreted broadly. Destruction can mean a change in the form of cultural heritage so that it loses its authenticity, and this is also mentioned in Article 50, paragraph (1) letter (c) of the Cultural Heritage Law. Then, when discussing physical changes, the restoration or repair of cultural heritage can also be a form of destruction due to the process of changes made to the physical form, and this can indicate that restoration and repair can also be a form of destruction.

Conceptually, extensive interpretation contradicts the principle of *lex stricta*, which prohibits analogies and extensions to written law.²³ However, concerning Article 105 of the Cultural Heritage Law on the cultural heritage destruction, as previously explained, the meaning of destruction is quite broad. It is unknown what kind of destruction can be charged with the article, so it needs to be interpreted narrowly regarding the meaning of cultural heritage site destruction. Meanwhile, the explanation already says "quite clear". Whereas the law should not only regulate the punishment but also, in general, can be a comprehensive rule and be able to become an umbrella that protects the community²⁴ and the existence of this is in line with the principle of *lex certa*, which this principle explains if a law needs to be written clearly and carefully so as not to create confusion.²⁵

The investigator from the Culture Preservation Centre Region X or BPK Wil. X, Harun Aroshid, has investigated 2 out of 3 cases in the BPK Wil. X said that the cultural heritage sites destruction sites that counted as a criminal offence are in the form of damaging cultural heritage with an element of intent to damage it and without permission or other considerations justified by the authorities.²⁶ There are three situations in which there is an element of purpose in the cultural heri-

²² Josef M Monteiro, "Teori Penemuan Hukum Dalam Pengujian Undang-Undang Dan Peraturan Pemerintah Pengganti Undang-Undang," *Jurnal Hukum PRIORIS* 6, no. 3 (November 5, 2018): 5, <https://doi.org/10.25105/prio.v6i3.3198>.

²³ Mario Truu, "The European Court of Human Rights and the Principle of Foreseeability (Lex Certa and Stricta): How to Determine Whether an Offence Is Clearly Defined in Criminal Law," *Juridica International* 31 (October 25, 2022): 100, <https://doi.org/10.12697/JI.2022.31.07>.

²⁴ Dela Khoirunisa, "Pelecehan Seksual Melalui Media Sosial Ditinjau Dari Pasal 27 Ayat (1) Undang-Undang Tentang Informasi Transaksi Elektronik," *Jurnal Lex Renaissance* 7, no. 2 (April 1, 2022): 379, <https://doi.org/10.20885/JLR.vol7.iss2.art11>.

²⁵ Mahrus Ali, "Overcoming the Dilemma between the Clarity and Flexible Norms in Environmental Offenses," n.d., 284, <https://doi.org/10.18860/j-fsh.v14i2.18279>.

²⁶ Harun Aroshid, Interview on the Destruction of Cultural Heritage Sites., May 3, 2023.

tage sites destruction: during or after an armed conflict, intentional acts of damage, and theft of cultural heritage artefacts. These destructions might occur for a multitude of causes.²⁷

Furthermore, Goenawan A. Sambodo, an archaeologist, explained that destroying cultural heritage sites can have a vast meaning. A small form of destruction can be a change in the form of a cultural heritage site from its original condition. In this case, Goenawan A. Sambodo also stated that, in his view, a form of restoration and addition of cultural heritage parts could also be included as destruction if referring to the Cultural Heritage Law.²⁸

According to the Cultural Heritage Law, a cultural heritage site is a place or location that contains cultural heritage objects, buildings, or structures. This means that destroying a cultural heritage is the same as killing a cultural heritage site. In this situation, cultural heritage refers to an object, building, or construction that meets the following criteria: 1) is at least 50 (fifty) years old; 2) symbolises the style of at least 50 (fifty) years; 3) has unique historical, scientific, educational, religious, and/or cultural importance; and 4) has cultural value for building the nation's individuality. Cultural heritage includes objects of alleged cultural heritage or ODCB. ODCB are objects, buildings, or structures that are suspected of fulfilling the criteria of cultural heritage prior to their designation as cultural heritage to become an ODCB; there is a registration process that is regulated in Government Regulation No. 1 of 2022 on the National Register and Preservation of Cultural Heritage.

Because the criminal offence of destroying cultural heritage places might be interpreted in a variety of ways, extra interpretation is required; basically, the expansion of the standard of the criminal offence is allowed²⁹ as long as it is still following the clarity written in the Cultural Heritage Law and from the definition of destruction grammatically and according to the understanding of the sources, it can be concluded that the cultural heritage sites destruction is an act of damaging, destroying, or making incomplete an object, building, or structure either that has been designated as cultural heritage or is still suspected of being a cultural heritage located in a particular location that is originally from the form when it was found or has not undergone changes with the intention or deliberation in carrying out these actions.

Once the definition of destruction has been demarcated, an explanation of the investigation into examples of cultural heritage site demolition can be completed. During the establishment of the Balai Pelestarian Kebudayaan Wilayah X, there were three cases of cultural heritage site demolition, and those still included as ODCB that were handled by the Balai Pelestarian Kebudayaan Wilayah X, including:

²⁷ Shuvra Dey, "A Comprehensive Approach of Transitional Justice to Address the Deliberate Destruction of Cultural Heritage," *Groningen Journal of International Law* 9, no. 2 (May 18, 2022): 215, <https://doi.org/10.21827/GroJIL.9.2.212-238>.

²⁸ S. Sofyani, & A. Ibrahim, (2023). Expiration Regulation of the Investigation of Cultural Heritage Destruction. *Jurnal Cakrawala Hukum*, 14(3). doi: <https://doi.org/10.26905/idjch.v14i3.11279>.

²⁹ Sarah Charman and Emma Williams, "Accessing Justice: The Impact of Discretion, 'Deservedness' and Distributive Justice on the Equitable Allocation of Policing Resources," *Criminology & Criminal Justice* 22, no. 3 (July 2022): 407, <https://doi.org/10.1177/17488958211013075>.

Table 2. Cultural Heritage Destruction Handled by BPK Wil. X

CASE	YEAR	LOCATION	CASE PROGRESSION
The Destruction of SMA 17 "1" Yogyakarta	2015	Yogyakarta City, Yogyakarta Special Region	Inkracht
The Storming of Baluwarti Fort Kartasura	2022	Sukoharjo, Central Java	Inkracht
The Breaking Down of Singopuran Ndalem Fence	2022	Sukoharjo, Central Java	Under Investigation

Sources: Harun Aroshid.

Apart from the cases mentioned above, a new case was reported in 2023, namely the alleged demolition of the ODCB Pendopo Kepatihan Mangkunegaran. Suppose there is a case of cultural heritage site destruction. In that case, whether it has been designated as cultural heritage or is still in the form of an ODCB, it can be investigated under the same article, namely Article 105 of the Cultural Heritage Law.

However, not all instances involving cultural heritage site destruction go to the inquiry stage. Many cultural heritage site damage incidents are handled via restorative justice and familial mechanisms. Settlements that do not proceed to the investigation stage may also be based on considerations based on logical reasoning or thoughts³⁰ of the possibilities that can occur if the case is continued. Furthermore, not conducting an inquiry is regarded as the most excellent method to settle cultural heritage site destruction issues.

The investigation of cultural heritage sites destruction is not much different from the investigation of other criminal offences, which are regulated in the KUHAP, the only striking difference is the investigator in charge where PPNS handles the investigation of the cultural heritage sites destruction from the authorised institution which in this context is BPK Wil. X and the Police, as the frontline of the criminal justice system, have a supervisory function in cases of cultural heritage sites destruction.³¹ In further detail, the PPNS investigation process and its interaction with the Police are governed by the Regulation of the Chief of the National Police of the Republic of Indonesia No. 6 of 2010 concerning Investigation Management by Civil Servant Investigators. The regulation regulates the pattern of technical coordination between PPNS and Police Investigators and regarding supervision by police investigators of the duties and functions of investigations conducted by PPNS.³²

Investigating cultural heritage site destruction includes several stages that are more or less the same as investigating other criminal offences handled by the Police. Before entering the investigation stage, a case of cultural heritage site destruction may start with a report from the community or guards to the Police or directly to BPK Wil. X. The existence of this report is a special requirement for the prosecution of a case of cultural heritage site destruction. There will be no treatment

³⁰ Taufik Rachman, "Dasar Teori Kewenangan Penyidik Maupun Penuntut Umum Dalam Menghentikan Perkara Pidana," *Yuridika* 25, no. 3 (September 26, 2010): 18, <https://doi.org/10.20473/ydk.v25i3.255>.

³¹ S. Sofyani, & A. Ibrahim, (2023). Expiration Regulation of the Investigation of Cultural Heritage Destruction. *Jurnal Cakrawala Hukum*, 14(3). doi: <https://doi.org/10.26905/idjch.v14i3.11279>.

³² Harison Citrawan and Achmad Fikri Rasyidi, "Efektivitas Penegakan Hukum Di Bidang Kekayaan Intelektual Oleh Penyidik Pegawai Negeri Sipil," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 31, no. 2 (June 3, 2019): 180, <https://doi.org/10.22146/jmh.31886>.

of cultural heritage site degradation incidents if there is no report from the community or guards. If the Police receive the report, the Police will then refer the case to BPK Wil. X.³³

After the report, a preliminary investigation will be conducted. In this stage, the investigators are generally carried out also by PPNS consisting of different backgrounds, including archaeology and law that are already familiar in their fields. In this stage, it will be determined if an action is included as a criminal act of cultural heritage site destruction or not by analysing the fulfilment of the cultural heritage site destruction elements, one of which is deliberate. At this stage, a case title is also sometimes held if a suspect is already in the investigation stage. Thus, the suspect can be determined through a determination letter and then in the investigation only to find evidence to illuminate a cultural heritage site destruction case.³⁴

After the elements of the case of cultural heritage site destruction are fulfilled, it will proceed to the investigative stage, with the start of the investigation recognised by the sending of a Notice of Commencement of investigative by PPNS BPK Wil. X to the local prosecutor's office via the Special Criminal Investigation Directorate. At this stage, PPNS conducts witness examinations, seeking and collecting evidence. In the process carried out, an official report is also made. PPNS is given 30 days, as the standard operating procedure by the prosecutor, to conduct an investigation, or the prosecutor will return the file. However, if there is progress and progress, PPNS can continue the investigation by submitting an SPDP for an extension of time. PPNS must also establish communication with the prosecutor's office by discussing any obstacles to implementing the investigation.³⁵

Talking about witnesses and evidence in cases of cultural heritage site destruction, eyewitnesses usually saw the incident because the case occurred in a visible area, which facilitates finding the bright spot of a chance of cultural heritage site destruction.³⁶

The investigation also reveals the perpetrator's motive for a criminal offence of cultural heritage site destruction. From the investigation of the cases that have taken place, generally in circumstances of the cultural heritage site destruction that have reached the stage of the investigation, the main motive of the perpetrators is economic motives and interests, which Harun Aroshid conveys. For example, in the case of the destruction of SMA 17 "1" Yogyakarta, the owner himself did the damage by demolishing the school building by ordering others.³⁷ The same thing also happened in the case of the destruction of the west side of Kartosuro Fort; the main motive of the perpetrator to damage the fort was because the land on which Kartosuro Fort stood was the perpetrator's land, and the perpetrator sold the ground because of economic needs. Besides economic factors, there is also a dearth of public understanding about preserving cultural heritage places, which motivates perpetrators to act.³⁸

However, investigating the cultural heritage site destruction is undoubtedly inseparable from obstacles that can complicate the process, including those related to organisations that can slow down and complicate the investigation process by investigators. Other than that, the obligation to

³³ Harun Aroshid, Interview on the Destruction of Cultural Heritage Sites.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Gendro Keling, "Penegakan Hukum Cagar Budaya Di Indonesia: Studi Kasus Sma 17 '1' Yogyakarta" *Jurnal Kebudayaan*, Volume 14, Nomor 1, Agustus 2019, <https://doi.org/10.24832/jk.v14i1.193>.

³⁸ Harun Aroshid, *Op. Cit.*

report is also one of the obstacles that is not spared in dealing with situations of cultural heritage site damage.³⁹

Based on the description of the research results related to the investigation of the cultural heritage site destruction above, several points can be drawn: First, investigating cases of cultural heritage site destruction still uses the legal basis for common criminal offences based on the KUHAP with authority to investigate held by PPNS. Ideally, the handling of cases of cultural heritage site destruction needs to be formed with specific rules, not only regarding the investigator's authority but in detail from the investigation stage to the investigation, even to a refined form of coordination between the Police and PPNS specifically for cultural heritage criminal offences.

Second, PPNS does not have the same authority as police investigators in handling other criminal offence cases. It should be given the same power as police investigators, which is regulated in KUHAP, so that PPNS can be more flexible in handling a case of cultural heritage site destruction. Because if generalised using KUHAP, the actual issue of cultural heritage site destruction is different from other criminal acts that do not have special laws governing them, especially since the investigation is a crucial part of the law enforcement process.

Third, the administrative process from PPNS to the prosecutor's office is still through the police intermediary, which can have an impact on slowing the performance of PPNS in conducting investigations. It would be better if the administrative process from PPNS to the prosecutor's office is carried out directly without the police intermediary to be more efficient.

Fourth, a unique condition is needed so that a criminal offence of cultural heritage site destruction can enter the settlement stage, namely the existence of a report so that the case cannot be directly handled before there is a report and this becomes a new problem in the investigation of the cultural heritage site destruction because there will be many abandoned cases because there is no report so that the relevant PPNS cannot handle it. Even though there has been a report related to the point of the demolition of ODCB Pendopo Kepatihan Mangkunegaran, there has yet to be a continuation in the handling carried out by the authorities and instead raises new question marks. Fifth, the need for new implementing regulations as a form of penal policy is needed to eradicate cultural heritage site destruction and provide legal certainty in the law enforcement process, knowing that cultural heritage is one of the assets owned by the nation, so it needs to be preserved as well as possible.

4. Ideal Arrangement for the Expiration of the Investigation of Cultural Heritage Site Destruction

Expiration is the lapse of time or grace period in prosecuting a criminal offence that focuses on the severity or lightness of a criminal case.⁴⁰ Eddy O.S. Hiarij cites Jan Remmelink's thoughts on the two bases for the expiration of criminal offences. The first is based on material criminal law under the postulate *pure non necesse est*, which means the punishment is not always necessary. This is due to the passing of such a long period with an extended grace period; the perpetrator of

³⁹ *Ibid.*

⁴⁰ Indah Febriani Kaligis, et al., "Daluwarsa Penuntutan Pidana Ditinjau Dari Pasal 78 Kitab Undang-Undang Hukum Pidana (KUHP)," no. 1 (n.d.): 143.

the crime can change for good. The second is based on formal criminal law, which has a relationship with evidence where the value of evidence can change at any time or no longer has value.⁴¹

Article 78, paragraph (1) of the Criminal Code (KUHP), which is the old KUHP, governs expiration. In the article, it is mentioned about the expiry of the prosecution period with the authority to prosecute removed with the following provisions: "1) All offences and crimes committed by printing shall expire after one year; 2) All offences and crimes punishable by fine, imprisonment and imprisonment for a term not exceeding three years shall expire after six years; 3) All offenses and crimes punishable by imprisonment for more than three years will be expunged after twelve years; and 4) All offences and crimes punishable by death or life imprisonment shall expire after eighteen years".⁴² This article also outlines that the grace period is reduced by one-third if the perpetrator was under eighteen during the offence.

In Law Number 1 of 2023 on the Criminal Code or known as the new KUHP that will take effect in 2026, precisely in Article 136 regulates the provision of prosecution expiration, which is as follows: "1) after the expiry of 3 (three) years for criminal offences punishable with imprisonment of at most 1 (one) year and/or a maximum fine of category III; 2) after the expiry of 6 (six) years for criminal offences punishable with imprisonment of more than 1 (one) year and at most 3 (three) years; 3) after the expiry of 12 (twelve) years for criminal offences punishable with imprisonment of more than 3 (three) years and at most 7 (seven) years; 4) after the expiry of 18 (eighteen) years for criminal offences punishable with imprisonment of more than 7 (seven) years and at most 15 (fifteen) years; and 5) after the expiry of 20 (twenty) years for criminal offences punishable with imprisonment of at most 20 (twenty) years, life imprisonment, or death penalty".⁴³

Investigations have a time limit for case completion calculated from the issuance of a Notice of Commencement of Investigation or SPDP which is divided into: 1) 120 days for investigation of very difficult cases; 2) 90 days for difficult cases; 3) 60 days for medium cases; and 4) 30 days for easy cases. However, the KUHP does not specify the period or time limit for the investigation itself.

Perpetrators of the cultural heritage site destruction as stipulated in Article 105 of the Cultural Heritage Law shall be punished with a minimum of one year and a maximum of fifteen years and/or a fine of at least Rp 500,000,000,000 and a maximum of Rp 5,000,000,000. According to Article 105 of the Cultural Heritage Law, the expiration of prosecution for destroying cultural heritage sites, according to Article 78 of the old KUHP, is twelve years. Meanwhile, under Article 136 of the new KUHP, the expiration of prosecution of cultural heritage sites is eighteen years.

Based on the first discussion, many factors influence cultural heritage site destruction and the time needed to investigate cultural heritage site destruction cases. The next issue is the urgency of an ideal expiry regulation in investigating cultural heritage site destruction. Suppose a special rule on expiry is established in relation to the investigation of cultural heritage site destruction; establishing such a special regulation can have a good impact on the legal protection of cultural heritage

⁴¹ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016) 76.

⁴² Indonesia, "Law Number 1 of 1946 Concerning Regulations on Criminal Law" (1946), <https://www.dpr.go.id/dokjdih/document/uu/814.pdf>.

⁴³ Indonesia, "Law Number 1 of 2023 Concerning Criminal Code" (2023), <https://peraturan.bpk.go.id/Home/Details/234935/uu-no-1-tahun-2023>.

sites from the threat of intentional destruction of cultural heritage, which is of the reasons why a special regulation on expiry is required.

The urgency of the ideal expiration regulation refers to one of the principles of legality, namely *lex scripta*. Although this principle was born in Ancient Roman times, this principle should still be relevant, especially in enforcing the law on criminal acts of cultural heritage site destruction and other cultural heritage crimes. Regulations related to expiration are also crucial as a complementary rule⁴⁴ to eradicate criminal offences of cultural heritage site destruction in the future.

Harun Aroshid, as someone who directly handles cases of cultural heritage site destruction, argues to simply follow what is already stated in the law, namely what is regulated in the KUHP, both old and new, where in the old KUHP as described above.⁴⁵ On the other hand, Goenawan A. Sambodo gave his opinion that it is better not to set a special expiration arrangement for cases of cultural heritage site destruction and other cultural heritage criminal offences in the hope that these cases can find a bright future.⁴⁶

Regarding criminal offences in general, many criminal law figures have given their opinions regarding the provision of expiry. Van Feurbach feels there is no urgency to determine expiry in criminal law. In contrast, Van Hamel, as a Dutch criminal law figure, said that expiry is not suitable to be applied to criminal offences that are serious and committed by professional criminals. In addition, in the UK, expiry is only applied to minor criminal offences. Some countries also do not apply the expiry system in their laws. This goes hand in hand with what Goenawan A. Sambodo said.

Connecting specifically cultural heritage site destruction with the opinions of the two criminal law figures, the critical part of being studied is whether cultural heritage site destruction is a minor or serious criminal offence so that it is necessary or not to provide an expiration arrangement for the criminal act.

The relationship between the severity or lightness of a criminal offence and human memory is that the bigger the case, the longer the human memory of the case will be, and it can be categorised as a more serious criminal offence.⁴⁷

Closely related to human memory, Article 78 of the old KUHP regulates the provisions on expiry on the basis that in pursuing suspects, the human ability to remember will be increasingly depleted. Then traces of evidence will also be increasingly difficult to find, complicating the need to resolve a criminal case.⁴⁸

The addition of an expiration period for prosecution in cases of cultural heritage sites demolition is a positive thing so that no matter how long a case of cultural heritage site destruction is in the handling process before it goes to prosecution, it will still be resolved, and the perpetrator can still be charged with a crime. In addition, Goenawan A. Sambodo also stated his reasons why he felt there was no need for expiry, namely because cultural heritage sites are inanimate objects that certainly will not move anywhere; they are always stationary and therefore, ideally, law enforcement will still be implemented.⁴⁹

⁴⁴ Peter Wahlgren, "From *Lex Scripta* to Law 4.0," n.d., 167, <https://scandinavianlaw.se/pdf/65-10.pdf>.

⁴⁵ Harun Aroshid, *Op. Cit.*

⁴⁶ Sambodo, Interview on The Destruction of Cultural Heritage Sites.

⁴⁷ Novri R. Wenas, "Gugurnya Kewenangan Menuntut Pidana Karena Daluwarsa Berdasarkan Pasal 78 Kitab Undang - Undang Hukum Pidana," *Lex Et SocietatiS* 8, no. 4 (October 20, 2020): 241, <https://doi.org/10.35796/les.v8i4.30929>.

⁴⁸ Bambang Waluyo, *Pidana & Pemidanaan*, 4th ed. (Jakarta: Sinar Grafika, 2014).

⁴⁹ Sambodo, Interview on The Destruction of Cultural Heritage Sites.

However, again discussing the relationship with human memory of the case and the evidence that will be increasingly difficult to find, the existence of a long expiration time or even the absence of expiration will increase the length of the settlement of a case of cultural heritage site destruction even though the object of the victim is inanimate. The longer the settlement of the case of cultural heritage site destruction does not guarantee the preservation, conservation, or legal enforcement of the cultural heritage site itself.

Another thing that reinforces the importance of regulating an expiration period is that cultural heritage site destruction is not just a criminal offence committed against property or inanimate objects, but more than that, cultural heritage site destruction is a crime against people and humanity.⁵⁰ Although not directly real humans as victims, but is a form of violation of cultural values created by humans for other humans, and this does not only apply within the scope of the BPK Wil. X only, but the coverage is all corners of the archipelago.

Based on the descriptions above, several important notes are related to expiration. First, the absence of specific rules governing the current expiry of cases of cultural heritage site destruction is a form of legal vacuum. The importance of establishing a legal umbrella of expiration is so that there is certainty in the settlement of cases of demolition of cultural heritage sites and will indirectly provide a deterrent effect to people who have malicious intent to damage cultural heritage sites. Therefore, a shorter expiry date will help minimise criminal acts against cultural heritage.

Third, the absence of expiry will make it challenging to resolve future cases of cultural heritage sites destruction. This is because it will take more work to find existing evidence. Furthermore, human memory fades over time, complicating future investigations and even making it possible if cultural heritage destruction is allowed to continue without a definitive resolution. Fourth, cultural heritage as an object or property should not make it unlawful to expire because, as is known, cultural heritage is one of the wealth owned by the nation and has a value that is more than just a number. The existence of cultural heritage should not be left unattended but also needs to be protected from criminal offences that may occur against the object.

5. Conclusion

The investigation process in cultural heritage sites demolition cases, especially in the coverage area of BPK Wil X, has not happened much because there are only 3 cases that have reached the investigation stage, which is the case of the destruction of SMA 17 "1" Yogyakarta. Then, related to the requirement for reports from the public and guards who should not be required to report in advance but can directly intervene in resolving the case. Furthermore, the pattern of related PPNS relations with the police must be regulated so that they do not overlap and PPNS can deal directly with the prosecutor's office without intermediary police. Lastly, regarding the obstacles experienced by PPNS BPK Wil X in handling cases of cultural heritage site destruction, which are more constraints related to organisational structure and indicate a need for more structural coordination in handling cases of cultural heritage site destruction. The expiration period for prosecuting cultural heritage site destruction cases in the old KUHP is shorter than in the new KUHP. Although the

⁵⁰ Patty Gerstenblith, "The Destruction of Cultural Heritage: A Crime Against Property or a Crime Against People?", 15 *J. Marshall Rev. Intell. Prop. L.* 336 (2016), n.d., 58.

expiry date in f cultural heritage sites destruction cases or other cultural heritage criminal offences still refers to the KUHP, it is possible to conclude that there is a legal void related to the expiry date as a complementary rule in efforts to eradicate cultural heritage criminal offences. From this, ideally, the expiration of the investigation of cultural heritage destruction should be shortened to 2 years.

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