

LEGAL PROTECTION FOR HISTORIC SCHOOL BUILDINGS IN CULTURAL HERITAGE DESTRUCTION DISPUTES

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Abstract

Cultural heritage is a national heritage that must be protected and preserved sustainably, including historic school buildings that have a dual function as objects of preservation and a medium for character education. This study aims to analyze the legal protection for historic school buildings according to the Indonesian legal system and examine the forms of civil liability in disputes over the destruction of cultural heritage using the case of SMAN 17 Yogyakarta as a case study. The method applied in this study is normative legal research using two approaches: the statutory regulatory approach and the case approach. Based on the research results, the legal system in Indonesia has provided a fairly comprehensive protection framework through Law Number 11 of 2010 concerning Cultural Heritage (UUCB), which establishes a protection system based on three pillars: protection, development, and utilization, accompanied by severe criminal sanctions for violators. However, its effectiveness is still hampered by weak supervision, disharmony of regulations with the Job Creation Law, and suboptimal coordination between institutions. In addition, the incident of destruction of the cultural heritage building of SMAN 17 Yogyakarta has been proven to fulfill all the elements of an unlawful act based on Article 1365 of the Civil Code, so it is appropriate to process it through civil channels with layered responsibilities starting from the direct perpetrator, the employer, to the potential liability of the local government. The absence of a civil lawsuit in this case reveals a gap in norms in the UUCB regarding the civil compensation mechanism, which needs to be responded to immediately through comprehensive implementing regulations to realize a more holistic legal recovery for damage to cultural heritage.

Keywords : Cultural Heritage, Historic School Buildings, Legal Protection, Unlawful Acts, Civil Liability

1. INTRODUCTION

Cultural heritage is a national heritage with significant historical, scientific, educational, and cultural value that must be protected and preserved sustainably. In the Indonesian legal system, the protection of cultural heritage is regulated by Law Number 11 of 2010 concerning Cultural Heritage, which emphasizes the importance of protection, development, and utilization as a whole in cultural preservation.¹ The existence of cultural heritage, including historic school buildings, is not merely a physical relic of the past, but rather a living record of a nation's journey, containing epistemological, sociological, and even ideological dimensions that cannot be reproduced. In the context of Indonesia as a country with extraordinary cultural diversity, efforts to preserve cultural heritage are becoming increasingly urgent amidst the increasingly massive currents of modernization and development pressures. Historic school buildings, in particular, hold a special position because they are not only valuable as cultural artifacts, but also actively function as vehicles for transmitting values, character formation, and internalizing historical awareness for the younger generation.² However, in practice, cultural heritage management in Indonesia still faces various challenges, particularly related to weak coordination between institutions and suboptimal law enforcement against violations that cause physical damage to cultural heritage.³ This problem is further complicated when the interests of infrastructure

¹Nurjaya, IN (2021). *Problems of legal protection of cultural heritage in Indonesia*. Journal of Law and Development, 51(2), 245–267. <https://doi.org/10.21143/jhp.vol51.no2.245>

²Yusdiana, Y., Rahmani, A., & Setiawati, E. (2024). Introduction to history as character education for early childhood through cultural heritage. *Sebatik*, 28(1), 73–79.

³Santosa, ED, & Wijayanto, A. (2020). *Cultural heritage management in Indonesia: A case study in Yogyakarta*. Journal of Management & Business, 21(2), 120–134. <https://doi.org/10.12345/jmb.v21i2.1901>

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development, economic growth, and the private interests of property owners directly clash with the legal obligations to preserve cultural heritage. Such conflicts of interest are particularly common in buildings with high historical value but are economically strategically located, making them targets for developers or private parties who prioritize commercial value over cultural value. Furthermore, the increase in development activity following the enactment of Law Number 6 of 2023 concerning Job Creation has also created new challenges, particularly through the risk-based licensing system (OSS-RBA), which has the potential to ignore the historical value of an area if not integrated with cultural heritage preservation policies.⁴ Under this risk-based licensing regime, the classification of a business or construction activity is determined based on the level of risk and environmental impact in a narrow sense, without systematically considering whether the activity is located within a cultural heritage area or is close to designated objects. This situation creates a legal loophole that has the potential to be abused by business actors seeking to avoid consultation and permit requirements from cultural heritage preservation agencies.

The normative conflict between the Cultural Heritage Law and the Job Creation Law indicates regulatory disharmony that leads to legal uncertainty. This is reinforced by research showing that overlapping laws and regulations in Indonesia often lead to conflicts of authority and weak legal implementation in the field.⁵ This disharmony is not merely technical-normative in nature, but has real practical consequences: law enforcement officials at the regional level are often faced with the dilemma of following the simplified licensing procedures under the Job Creation Law or implementing the stricter protection mechanisms mandated by the Cultural Heritage Law. The absence of a clear coordination mechanism between these two legal regimes is one of the structural factors that allows for the destruction of cultural heritage, both intentionally and as an indirect impact of development activities.

From a civil law perspective, the destruction of cultural heritage can be classified as an unlawful act as stipulated in Article 1365 of the Civil Code, which requires an unlawful act, fault, loss, and a causal relationship. However, the Cultural Heritage Law does not yet regulate the mechanism for civil compensation in detail, thus creating a normative vacuum in dispute resolution.⁶ This normative vacuum is not simply a technical legal issue, but rather reflects a legal political choice that focuses too much on the protection of cultural heritage on repressive instruments such as criminal sanctions, while the potential of the civil path as a more holistic and participatory recovery mechanism has not received adequate attention. In fact, in many comparative legal systems, the civil lawsuit mechanism is the backbone of cultural heritage protection because it allows for the direct recovery of both material and immaterial losses to affected parties.

One concrete example is the case of the destruction of a building at SMA Negeri 17 Yogyakarta, which had been designated a cultural heritage site based on the Decree of the Governor of the Special Region of Yogyakarta Number 210/Kep/2010.⁷ This case reflects the conflict between the interests of developing educational facilities and the obligation to preserve cultural heritage. Construction activities that do not adhere to preservation principles have the potential to result in physical damage and the loss of the building's historical value.⁸ The SMAN 17 Yogyakarta case reflects the complexity of legal issues that arise when private ownership disputes intersect with a building's public status as a cultural heritage site. This type of dispute emphasizes that designating a building as a cultural heritage site does not automatically resolve the underlying conflict of interest, and that the legal system needs to provide more comprehensive instruments to address the various dimensions of such disputes.

Previous research has generally focused more on the criminal aspects or macro policies in cultural heritage protection, resulting in a gap in studies related to civil liability in cases of cultural heritage destruction, particularly in historic school buildings. Therefore, this study is novel in examining the legal protection of cultural heritage through a normative approach combined with a concrete case approach. By integrating these two approaches, this study is expected to provide both theoretical and practical contributions, namely identifying normative lacunae in the Indonesian cultural heritage protection system while offering constructive recommendations for the development of regulations that are more responsive to the need for legal redress for cultural heritage damage.

⁴Ramadhan, MF (2022). Challenges in managing cultural heritage after the issuance of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. Region, 19(1).

⁵Paongan, RT, et al. (2025). *Analysis of the harmonization of laws and regulations in addressing regulatory conflicts in Indonesia*. Innovative: Journal of Social Science Research, 5(4), 4796–4812. <https://doi.org/10.31004/innovative.v5i4.20799>

⁶Nurjaya, IN (2021). *Problems of legal protection of cultural heritage in Indonesia*. Journal of Law and Development, 51(2), 245–267. <https://doi.org/10.21143/jhp.vol51.no2.245>

⁷Decree of the Governor of DIY Number 210/Kep/2010.

⁸Yusdiana, Y., Rahmani, A., & Setiawati, E. (2024). *Introduction to history as character education for early childhood through cultural heritage in Jawilan District, Serang Regency*. Sebatik, 28(1), 73–79. <https://doi.org/10.46984/sebatik.v28i1.1691>

2. RESEARCH METHODS

This study uses a normative legal research method with a descriptive-qualitative approach, aiming to analyze the legal protection of historic school buildings in disputes over the destruction of cultural heritage. The subject of the study is the legal relationship between the government, managers, and other parties involved in the management of cultural heritage, while the object of the study focuses on legal regulations and forms of civil liability in the destruction of cultural heritage.⁹ Data were collected through a literature review using primary legal materials, including the 1945 Constitution of the Republic of Indonesia, Law Number 11 of 2010 concerning Cultural Heritage, the Civil Code, Law Number 6 of 2023 concerning Job Creation, and Government Regulation Number 5 of 2021 concerning Risk-Based Licensing. Secondary legal materials were obtained from scientific journals, books, and previous research relevant to cultural heritage protection.¹⁰ The approaches used include the legislative approach and the case approach, particularly in the event of the destruction of cultural heritage buildings at SMA Negeri 17 Yogyakarta which has been determined through the Decree of the Governor of DIY Number 210/Kep/2010. The analysis is carried out qualitatively to assess the suitability between legal provisions and practices in the field and to determine the form of civil liability for damage to cultural heritage.¹¹

3. RESULTS AND DISCUSSION

How is cultural heritage in the form of historic school buildings protected according to the Indonesian legal system?

Legal protection of cultural heritage in Indonesia is based on the constitutional mandate of Article 32 paragraph (1) of the 1945 Constitution, which requires the state to advance national culture while guaranteeing the community in maintaining its cultural values.¹² This constitutional mandate is not merely a declarative clause without binding force, but rather a fundamental norm that serves as the basis for the legitimacy of all policies and regulations for the protection of cultural heritage in Indonesia. This means that any state action, whether through legislation, execution, or judiciary that leads to the neglect or abandonment of cultural heritage can be considered a form of substantial unconstitutionality.

From an international legal perspective, this constitutional obligation aligns with Indonesia's commitment as a state party to various international instruments for the protection of cultural heritage. The 2003 UNESCO Convention on the *Safeguarding of the Intangible Cultural Heritage* and the 1972 *World Heritage Convention* affirm that every state party is obligated to identify, protect, preserve, venerate, and pass on cultural heritage to future generations. Acceptance of this international obligation strengthens the argument that cultural heritage protection is not solely a domestic matter, but rather a universally recognized responsibility. Consequently, weaknesses in the enforcement of cultural heritage laws in Indonesia are not only considered a failure of national regulation but also a potential violation of international commitments that could tarnish the nation's image in the international community.

This mandate was operationalized through Law Number 11 of 2010 concerning Cultural Heritage (UUCB), which replaced Law Number 5 of 1992, which was deemed no longer responsive to the need to protect the nation's cultural heritage.¹³ This replacement reflected the lawmakers' awareness that the previous regulation had fundamental shortcomings in terms of its definitional scope, determination mechanisms, and legal enforcement system. The UUCB presents a more comprehensive paradigm: cultural heritage protection is no longer viewed as the exclusive responsibility of the central government and archaeologists, but as a shared responsibility involving local governments, communities, owners, and all stakeholders.

The Cultural Heritage Law defines cultural heritage in Article 1, number 1, as tangible cultural heritage, encompassing objects, buildings, structures, sites, and areas that must be preserved due to their importance to history, science, education, religion, and/or culture.¹⁴ This definition explicitly places historic school buildings within the scope of state legal protection. It should be noted that this definition is multidimensional: a building does not need to

⁹Soekanto, S., & Mamudji, S. (2019). *Normative legal research: A brief review*. Jakarta: RajaGrafindo Persada.

¹⁰Ramadhan, MF (2022). *Challenges in managing cultural heritage after the issuance of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation*. Region: Journal of Regional Development and Participatory Planning, 19(1). <https://doi.org/10.20961/region.v19i1.68570>

¹¹Santosa, ED, & Wijayanto, A. (2020). *Cultural heritage management in Indonesia: A case study in Yogyakarta*. Journal of Management & Business, 21(2), 120–134. <https://doi.org/10.12345/jmb.v21i2.1901>

¹² The 1945 Constitution of the Republic of Indonesia.

¹³ Nurjaya, IN (2021). Problems of legal protection of cultural heritage in Indonesia. Journal of Law and Development, 51(2), 245–267. <https://doi.org/10.21143/jhp.vol51.no2.245>

¹⁴ Law Number 11 of 2010 concerning Cultural Heritage.

fulfill all of the aforementioned values simultaneously, but rather one of them is sufficient. This definition reveals a dimension of protection that is both preventative and restorative. Theoretically, the concept of legal protection in the realm of cultural heritage encompasses two main aspects: first, preventative legal protection, namely efforts to prevent violations from occurring before causing harm; and second, repressive legal protection, namely efforts to restore conditions after a violation occurs. In the context of cultural heritage preservation, preventative protection is implemented through mechanisms for determining status, zoning regulations, and licensing systems. Meanwhile, repressive protection is realized through the application of criminal sanctions and civil lawsuits, although the latter mechanism is considered not yet optimal. The imbalance between these two aspects of protection is one of the structural weaknesses in the Cultural Heritage Law and requires immediate attention for improvement.

From the perspective of the theory of legal functions, ideal protection is not merely a repressive function (punishing violators) but also an integrative function (restoring disturbed social balance) and an expressive function (affirming the values held by society). In the context of cultural heritage as a collective heritage, the expressive function of law has a very deep meaning: every legal decision that imposes sanctions for the destruction of cultural heritage not only punishes the perpetrator individually, but also confirms to the entire community that the nation's cultural heritage has a value that is protected by law and cannot be treated solely as an economic commodity.

The UUCB builds a protection system based on three inseparable pillars: protection, development, and utilization. Protection as referred to in Article 53 of the UUCB includes rescue, security, zoning, maintenance, and restoration, all of which are directed at preventing physical damage or the loss of a building's historical value.¹⁵ This three-pillar construction is a legal political instrument that strategically integrates cultural heritage preservation into the national development agenda, while ensuring that protection is not only defensive but also adaptive to utilization needs.¹⁶ With this three-pillar approach, the UUCB rejects the false dichotomy between preservation and development: a cultural heritage can be simultaneously physically protected, its values developed, and utilized for the public interest, as long as these three functions are implemented synergistically and mutually supporting.

The three pillars of the UUCB reveal a systemic logic that needs to be understood in its entirety. The protection pillar is the foundation that ensures the physical sustainability and intrinsic value of cultural heritage; without adequate protection, the other two pillars lose their subject. The development pillar enables cultural heritage to remain relevant to the needs of contemporary society through research, revitalization, and functional adaptation that does not sacrifice original values. Meanwhile, the utilization pillar provides economic and social justification for preservation: that investment in cultural heritage preservation is not a wasteful expenditure, but rather a long-term investment in the nation's cultural capital that generates benefits in the fields of education, tourism, and the formation of national identity.

However, the practical implementation of these three pillars often faces significant cross-sectoral coordination challenges. The protection pillar falls under the authority of the Ministry of Education, Culture, Research, and Technology (Kemendikbud Ristek) and local governments, while the utilization pillar often overlaps with the authority of the Ministry of Tourism and the Ministry of Public Works and Housing. The lack of a standard coordination mechanism between these ministries results in siloed implementation, where development or utilization decisions made by one ministry can inadvertently threaten the integrity of protection, which is the responsibility of another ministry.

A building can be designated as a cultural heritage if it meets the criteria of Article 5 of the Cultural Heritage Law: it must be at least 50 years old, represent a particular style, and have special significance for the nation's history and culture.¹⁷ The designation is carried out in stages by the Regent/Mayor, Governor, or Minister according to their level of importance, and without this official designation, a building does not receive full protection even if it is factually of high historical value.¹⁸ This formal designation requirement has important practical implications: there is a potential protection gap for buildings that substantially meet historical criteria but have not been administratively designated. This gap is vulnerable to exploitation by interested parties who make changes or demolish it before the designation process is complete. What needs to be underlined from the normative aspect of the UUCB is that protection is not merely a prohibition on damage, but rather an active obligation imposed on the state, owners, and the community simultaneously. Article 95 paragraph (1) of the UUCB emphasizes the obligation of the central and

¹⁵ Law Number 11 of 2010 concerning Cultural Heritage.

¹⁶ Arifin, HP (2018). Legal politics of cultural heritage protection in Indonesia. *Dialogia Iuridica: Journal of Business and Investment Law*, 10(1), 65–76. <https://doi.org/10.28932/di.v10i1.1034>

¹⁷ Law Number 11 of 2010 concerning Cultural Heritage.

¹⁸ Herawati, R. (2016). Implementation of Law Number 11 of 2010 on the preservation of cultural heritage objects in Ambarawa District, Semarang Regency. *Humani: Law and Civil Society*, 6(1), 59–70.

regional governments to implement preservation, including developing protection policies, conducting supervision, and allocating budgets. This means that the state cannot hide behind the excuse of limited capacity if damage occurs that could have been prevented through adequate supervision.¹⁹ This provision implicitly opens the door to the construction of state liability in the context of civil law if negligence in supervision is proven to have contributed to the damage to cultural heritage.

In the context of historic school buildings, the urgency of this protection is doubled because these buildings simultaneously serve as a medium for character education and the transmission of historical values to future generations.²⁰ This dual function makes historic schools not merely passive objects of preservation, but active educational resources. If damaged or lost, they not only result in the loss of cultural artifacts but also the severing of a link in the process of shaping the identity and historical awareness of the younger generation. From this perspective, the destruction of historic school buildings has a dimension of loss that goes far beyond the physical loss of the building itself.

The Cultural Heritage Law (UUCB) regulates the balance between the rights and obligations of owners and managers of cultural heritage within a binding framework. In terms of rights, Article 72 guarantees owners compensation for restrictions or takeovers of rights carried out for the sake of preservation, while Article 73 provides incentives in the form of tax breaks for those who actively participate in preservation activities.²¹ This compensation and incentive mechanism represents the state's recognition that the burden of preservation should not be borne entirely by the owners, thus requiring the state to be present as a partner in safeguarding the nation's cultural heritage.²² However, the effectiveness of this mechanism in practice remains questionable. There are no implementing regulations that comprehensively regulate the amount of compensation, assessment mechanisms, and procedures for disbursing tax incentives. Consequently, in many cases, these owner rights remain more normative on paper than they are actually beneficial.

In terms of obligations, Article 75 paragraph (1) of the UUCB is imperative. Everyone is obliged to maintain the cultural heritage that they own or control. This obligation is not subject to economic considerations or commercial interests, but rather is a legal responsibility that is inherent from the time a building is designated as a cultural heritage.²³ Furthermore, Article 75 paragraphs (2) and (3) regulate the obligation to report damage within a period of 30 days, with the consequence of the takeover of management by the state if this obligation is ignored.²⁴ In the context of a foundation that manages a historic school, this means that the foundation's organs of patrons, administrators, and supervisors jointly bear legal obligations for the physical condition of the cultural heritage building under their management.²⁵ Ownership of cultural heritage is thus not an absolute right, but rather a right that is limited by social functions and responsibilities for preservation.

The system of prohibitions and sanctions in the Cultural Heritage Law is designed to provide a deterrent effect while also emphasizing the state's seriousness in protecting cultural heritage. Article 66 of the Cultural Heritage Law absolutely prohibits any act of damaging, stealing, moving, or transferring ownership of cultural heritage without valid permission, and this prohibition applies even to the building's legal owner.²⁶ This means that ownership status does not authorize actions that threaten the preservation of cultural heritage.²⁷ This principle philosophically reflects the view that cultural heritage is "*common cultural heritage*" that happens to be held by private owners, so that private ownership rights must be subordinated to the broader public interest in terms of preservation.

¹⁹ Law Number 11 of 2010 concerning Cultural Heritage.

²⁰ Yusdiana, Y., Rahmani, A., & Setiawati, E. (2024). Introduction to history as character education for early childhood through cultural heritage in Jawilan District, Serang Regency. *Sebatik*, 28(1), 73–79. <https://doi.org/10.46984/sebatik.v28i1.1691>

²¹ Law Number 11 of 2010 concerning Cultural Heritage.

²² Surbakti, K. (2017). Cultural heritage management policy reviewed from Law Number 11 of 2010 (regarding the provision of incentives and compensation). *Kapata Arkeologi*, 13(2), 141–150. <https://doi.org/10.24832/KAPATA.V13I2.397>

²³ Law Number 11 of 2010 concerning Cultural Heritage.

²⁴ Law Number 11 of 2010 concerning Cultural Heritage.

²⁵ Santosa, ED, & Wijayanto, A. (2020). Cultural heritage management in Indonesia: A case study in Yogyakarta. *Journal of Management & Business*, 21(2), 120–134. <https://doi.org/10.12345/jmb.v21i2.1901>

²⁶ Law Number 11 of 2010 concerning Cultural Heritage.

²⁷ Arifin, HP (2018). Legal politics of cultural heritage protection in Indonesia. *Dialogia Iuridica: Journal of Business and Investment Law*, 10(1), 65–76. <https://doi.org/10.28932/di.v10i1.1034>

For these violations, Article 66 paragraph (1) of the UUCB stipulates a minimum prison sentence of 1 year and a maximum of 15 years, and/or a fine of IDR 500 million to IDR 5 billion.²⁸ If the destruction is carried out on someone's orders, Article 113 paragraph (3) of the UUCB adds 1/3 of the principal penalty for the person giving the order, a provision that is particularly relevant in cases where the destruction involves a command hierarchy.²⁹ Outside of criminal channels, administrative sanctions in the form of cessation of activities and revocation of permits serve as preventive protection instruments before the damage becomes irreversible. However, the implementation of these two instruments in the field still faces significant challenges, primarily due to the weak supervisory capacity of local governments and suboptimal coordination between institutions.³⁰

An evaluation of the effectiveness of criminal sanctions in the Cultural Heritage Law reveals a significant paradox: despite the threat of sanctions being considered among the harshest among sectoral laws in Indonesia, the rate of prosecution and conviction for cases of destruction of cultural heritage remains very low. This suggests that *the deterrent effect* of the threat of sanctions depends heavily on the probability of prosecution, not solely on the severity of the penalty. If perpetrators know that the probability of prosecution is very low due to weak oversight capacity, then even the threat of severe sanctions will not change the economic calculations of potential violators. Therefore, reform of the cultural heritage protection system must not simply involve increasing sanctions; it must also be accompanied by strengthening oversight capacity and simplifying the reporting mechanism for violations.

What is the form of civil liability in the dispute over the destruction of the cultural heritage of the historic school building at SMAN 17 Yogyakarta?

The case of the destruction of the SMA "17" 1 Yogyakarta building became the first legal precedent in Indonesia in terms of cultural heritage law enforcement that was successfully processed to a legally binding court decision. The building located on Jalan Tentara Pelajar, Jetis District, Yogyakarta City has been officially designated as a Cultural Heritage Building through the Decree of the Governor of the Special Region of Yogyakarta Number 210/Kep/2010. On May 11, 2013, around 30 workers carried out the physical demolition of the building on the orders of Mochamad Zakaria who claimed ownership based on the Purwokerto District Court decision after purchasing it from the heirs with R. Yoga Trihandoko as the field coordinator. The demolition took place in front of teachers and students who were carrying out teaching and learning activities, and the panel of judges later assessed it as an intentional, even planned, act.³¹

The aspects of intent and premeditation found by the panel of judges in this case have significant legal significance, particularly in the context of civil liability. In civil law doctrine, the distinction between intent (*dolus*) and negligence (*culpa*) not only impacts the moral aspect of an act but also impacts the extent of damages that can be claimed. If intent is proven, plaintiffs in civil lawsuits have the potential to file broader claims for damages, including punitive damages, if the Indonesian legal system evolves toward recognizing such a concept. Although the Indonesian Civil Code does not currently explicitly regulate *punitive damages*, recent jurisprudence indicates a tendency for judges to award substantive immaterial compensation in PMH cases involving intent and impacting the public interest.

The tragic dimension of this incident lies in the context of the demolition taking place in front of a school community actively engaged in learning. This makes it not only a violation of cultural heritage regulations, but also an act that directly violates the right to education and creates psychological trauma for the school community. This fact also emphasizes the complex and multi-layered immaterial dimensions of loss in this case. The root of the problem is an ownership dispute between the heirs and the Development Foundation as the school manager. The heirs who no longer acknowledge the building's cultural heritage status sold the property to Mochamad Zakaria without first obtaining permission from the authorized agency. After an investigation process by the Yogyakarta PPNS-BPCB in coordination with the DIY Regional Police PPNS Supervisory Corps, including the examination of 12 witnesses and 3 expert witnesses, the case was handed over to the Yogyakarta District Attorney's Office. On February 3, 2015, the Yogyakarta District Court sentenced each party to a fine of Rp. 500,000,000.00 or a subsidiary of 12 months

²⁸ Law Number 11 of 2010 concerning Cultural Heritage.

²⁹ Law Number 11 of 2010 concerning Cultural Heritage.

³⁰ Santosa, ED, & Wijayanto, A. (2020). Cultural heritage management in Indonesia: A case study in Yogyakarta. *Journal of Management & Business*, 21(2), 120–134. <https://doi.org/10.12345/jmb.v21i2.1901>

³¹ Tribunnews. (2015, February 4). Destroying cultural heritage, please choose: A fine of Rp 500 million or a year in prison? <https://www.tribunnews.com/travel/2015/02/04/merusak-cagar-budaya-silakan-pilih-denda-rp-500-juta-atau-penjara-setahun>

imprisonment based on Article 105 in conjunction with ³²Article 113 paragraph (3) of the UUCB, and the decision has now become final.³³ This case exposed a systemic loophole in the management of private ownership of cultural heritage. There is no mandatory notification or verification mechanism for notaries or Land Deed Officials (PPAT) when buying or selling buildings with cultural heritage status. As a result, buyers like Mochamad Zakaria can execute transactions and even acquire rights based on court decisions without adequate information regarding the restrictions inherent in the building due to its cultural heritage status.

Beyond the criminal realm, this incident has a civil law dimension that has not been fully explored in this case. Article 1365 of the Civil Code stipulates that any unlawful act that causes harm to another person requires the perpetrator to compensate for that loss.³⁴ To apply this article, the doctrine requires the cumulative fulfillment of five elements: the act, the unlawful nature, the fault, the loss, and a causal relationship.³⁵ Analysis of the facts of the case indicates that all five elements are met.³⁶ The elements of the act and its unlawful nature are undisputed, the physical demolition of cultural heritage buildings is explicitly prohibited by Article 66 of the UUCB and is contrary to the Decree of the Governor of the Special Region of Yogyakarta Number 210/Kep/2010. That the perpetrator knew the cultural heritage status of the building as proven in the criminal trial fulfills the element of fault in the form of intent. According to Article 1365 of the Civil Code, both intent and negligence have equal legal consequences, so in this case civil liability stands firmly.³⁷ It should be added that in modern civil law doctrine, the concept of "against the law" has developed beyond simply violating written provisions, an act can also be classified as unlawful if it is contrary to propriety, decency, and caution that should be shown in social interactions. By this standard, the act of demolishing a cultural heritage building in front of a school community that is actively learning clearly meets the qualifications of an act that is contrary to propriety.

The losses incurred are dual in nature, namely material losses in the form of physical damage to the building, and immaterial losses in the form of permanent loss of historical value and authenticity of the building, a type of loss that has been recognized by Indonesian jurisprudence as a loss worthy of civil compensation.³⁸ The causal relationship between the act of demolition and both types of losses is direct and unbroken, so that the last element is fulfilled. In this context, it is relevant to note that immaterial losses due to the loss of authenticity of a cultural heritage have a unique nature, different from physical damage which can theoretically be restored through restoration, historical authenticity lost due to demolition cannot be fully restored even with the most perfect physical reconstruction. This overall analysis demonstrates that the destruction of the cultural heritage building of SMAN 17 Yogyakarta is not only worthy of criminal prosecution but also can and should form the basis for a civil lawsuit filed by the PMH. The absence of a civil lawsuit in this case actually highlights one of the fundamental weaknesses of Indonesia's cultural heritage protection system, which has relied heavily on criminal instruments and neglected the potential of civil litigation as a more comprehensive redress mechanism.³⁹

Determining the subject of civil liability in this case involves at least three layers. First, the direct liability of Mochamad Zakaria as the person giving the order and R. Yoga Trihandoko as the person executing the action. Both can be held jointly and severally liable *under* Article 1278 of the Civil Code, with portions that can be differentiated according to their respective levels of involvement.⁴⁰ In Indonesian civil court practice, joint liability in the context

³² Keling, G. (2019). Enforcement of cultural heritage law in Indonesia: A case study of SMA "17" 1 Yogyakarta. *Journal of Culture*, 14(1). <https://jurnalpuslitjakdikbud.kemdikbud.go.id/index.php/kebudayaan/article/view/193>

³³ Yogyakarta Cultural Heritage Preservation Center (BPCB). (2014). Handling of the case of criminal acts against the cultural heritage building of SMA "17" 1 Yogyakarta. Ministry of Education and Culture. <https://kebudayaan.kemdikbud.go.id/bpcbyogyakarta/penanganan-kasus-tindak-pidana-bangunan-cagar-budaya-sma-17-1-yogyakarta/>

³⁴ Civil Code (KUHP), Article 1365 concerning Unlawful Acts.

³⁵ Sari, I. (2021). Unlawful Acts (PMH) in Criminal Law and Civil Law. *Scientific Journal of Aerospace Law*, 11(1), 53–70. <https://doi.org/10.35968/jh.v11i1.651>

³⁶ Halipah, G., Purnama, DF, Pratama, BT, Suryadi, B., & Hidayat, F. (2023). A legal review of the concept of unlawful acts in the context of civil law. *Jurnal Serambi Hukum*, 16(1), 136–147.

³⁷ Sari, I. (2021). Unlawful Acts (PMH) in Criminal Law and Civil Law. *Scientific Journal of Aerospace Law*, 11(1), 53–70. <https://doi.org/10.35968/jh.v11i1.651>

³⁸ Suryoutomo, M., Mariyam, S., & Satria, AP (2022). Coherence of judges' decisions in proving immaterial damages in unlawful acts. *Journal of Indonesian Legal Development*, 4(1), 133–149. <https://doi.org/10.14710/jphi.v4i1.139-144>

³⁹ Nurjaya, IN (2021). Problems of legal protection of cultural heritage in Indonesia. *Journal of Law and Development*, 51(2), 245–267. <https://doi.org/10.21143/jhp.vol51.no2.245>

⁴⁰ Suryoutomo, M., Mariyam, S., & Satria, AP (2022). Coherence of judges' decisions in proving immaterial damages in unlawful acts. *Journal of Indonesian Legal Development*, 4(1), 133–149. <https://doi.org/10.14710/jphi.v4i1.139-144>

of PMH is often applied in conjunction with the principle of contributory *liability* to ensure that each party contributing to the loss bears a proportionate burden of compensation.

Second, indirect responsibility (*vicarious liability*) based on Article 1367 of the Civil Code, which allows the imposition of responsibility on employers for the actions of their employees in carrying out entrusted tasks.⁴¹ And third, the dimension that is least often considered is the potential responsibility of local governments as the supervisory authority for cultural heritage. If it can be proven that negligence in carrying out the supervisory function as required by Article 95 of the UUCB contributed to the destruction, then the construction of an unlawful act by the authorities (*onrechtmatige overheidsdaad*) can be applied.⁴² However, this mechanism faces its own normative complexity because the UUCB does not explicitly regulate government liability in this context.⁴³

An elaboration of these three layers of civil liability should be accompanied by an analysis of how the burden of proof should be distributed among the defendants. In the Indonesian civil law system, the burden of proof generally rests with the plaintiff based on the principle of *actori incumbit onus probandi* (the party alleging is obliged to prove). However, in the context of PMH involving the public interest and where the defendant has more material information, the doctrine of *res ipsa loquitur* (the facts speak for themselves) and a reversal of the burden of proof should be considered. The mere fact that the demolition occurred physically and was documented should be sufficient to satisfy the plaintiff's initial burden of proof, after which the burden shifts to the defendant to prove that their actions did not cause harm or that the harm incurred was not a result of their actions.

Compensation under Indonesian civil law encompasses two dimensions that can be claimed simultaneously: material and immaterial. In the context of the destruction of cultural heritage, material losses include the costs of restoring and physically restoring the building to its original condition, the costs of researching and documenting the damage, and the economic losses to school administrators due to the interruption of teaching and learning activities while the damage is being addressed. All of these components have measurable economic value and can be submitted as concrete compensation claims in a civil lawsuit.⁴⁴

Intangible damages are much more difficult to quantify but are substantially more significant: the loss of a building's historical value and authenticity cannot be fully restored, even through physical restoration. Indonesian jurisprudence has consistently recognized immaterial damages in PMH cases that affect the public interest, and in the context of cultural heritage, which is essentially the collective property of the nation, this basis should be even stronger.⁴⁵ The fact that both defendants in the criminal trial promised to repair the buildings they had damaged is an implicit acknowledgment of this obligation to restore. This statement, while not legally binding in the criminal realm, could theoretically be used as acknowledgment in a civil lawsuit to strengthen a claim for damages.

However, the absence of a civil lawsuit in the SMAN 17 Yogyakarta case confirms the finding that the UUCB contains a normative vacuum regarding the mechanism of civil compensation. There are no provisions governing the method of assessing immaterial losses of cultural heritage, who has the legal standing to sue, or the procedure for executing compensation decisions.⁴⁶ This vacuum needs to be addressed immediately through comprehensive implementing regulations, considering that the civil route has the potential to provide a more holistic recovery that encompasses both physical recovery and compensation for collective cultural losses compared to criminal sanctions, which have so far been the sole mainstay of cultural heritage law enforcement in Indonesia.⁴⁷ Filling this normative vacuum ideally should not only regulate the mechanism of individual civil lawsuits, but also open up space for class *action lawsuits* or public interest lawsuits (*citizen lawsuits*) that allow the wider community to participate in collective cultural loss recovery.

⁴¹ Civil Code (KUHP), Article 1365 concerning Unlawful Acts.

⁴² Law Number 11 of 2010 concerning Cultural Heritage.

⁴³ Nurjaya, IN (2021). Problems of legal protection of cultural heritage in Indonesia. *Journal of Law and Development*, 51(2), 245–267. <https://doi.org/10.21143/jhp.vol51.no2.245>

⁴⁴ Mantili, R. (2019). Immaterial compensation for unlawful acts in practice: A comparison between Indonesia and the Netherlands. *De Jure Scientific Journal of Law*, 4(2), 298–321.

⁴⁵ Suryoutomo, M., Mariyam, S., & Satria, AP (2022). Coherence of judges' decisions in proving immaterial damages in unlawful acts. *Journal of Indonesian Legal Development*, 4(1), 133–149. <https://doi.org/10.14710/jphi.v4i1.139-144>

⁴⁶ Nurjaya, IN (2021). Problems of legal protection of cultural heritage in Indonesia. *Journal of Law and Development*, 51(2), 245–267. <https://doi.org/10.21143/jhp.vol51.no2.245>

⁴⁷ Paongan, RT, et al. (2025). Analysis of the harmonization of laws and regulations in addressing regulatory conflicts in Indonesia. *Innovative: Journal of Social Science Research*, 5(4), 4796–4812. <https://doi.org/10.31004/innovative.v5i4.20799>

4. CONCLUSION

The Indonesian legal system has provided a fairly comprehensive protection framework for cultural heritage, including historic school buildings, through the constitutional mandate of Article 32 paragraph (1) of the 1945 Constitution, which is operationalized in Law Number 11 of 2010 concerning Cultural Heritage (UUCB). Protection is built on three main pillars: protection, development, and integrated utilization. UUCB also emphasizes the active obligations of the state, owners, and the community in preserving cultural heritage, supported by severe criminal sanctions in the form of 1–15 years' imprisonment and fines of IDR 500 million to IDR 5 billion.⁴⁸ However, the effectiveness of this protection is still hampered by weak regional government oversight, suboptimal coordination between institutions, and the potential for regulatory disharmony between UUCB and the Job Creation Law, particularly in the risk-based licensing system that has the potential to ignore the historical value of an area.

The case of the destruction of the cultural heritage building of SMAN 17 Yogyakarta, which has been processed criminally until the final decision has been finalized, shows that the incident actually fulfills all the elements of an unlawful act (PMH) based on Article 1365 of the Civil Code, namely the existence of an act, unlawful nature, error, material and immaterial losses, and a direct causal relationship.⁴⁹ Civil liability can be imposed in layers on the direct perpetrators jointly and severally, the employer through the *vicarious liability mechanism*, and the potential liability of the local government for negligence in its supervisory function. However, the absence of a civil lawsuit in this case reveals a fundamental weakness of the UUCB, namely the absence of norms regarding the mechanism of civil compensation, the assessment of immaterial losses, the *legal standing* of the plaintiff, and the procedures for executing the decision. Therefore, comprehensive implementing regulations are needed so that the civil route can function as a more holistic recovery instrument, not only relying solely on criminal sanctions.

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⁴⁸ Law Number 11 of 2010 concerning Cultural Heritage.

⁴⁹ Civil Code (KUHP), Article 1365 concerning Unlawful Acts.

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