A SOCIOLOGICAL INTERPRETATION IN DETERMINING THE STATUS OF CULTURAL RESERVE OBJECT IN THE CULTURAL RESERVE DESTRUCTION CRIME IN SUKOHARJO INDONESIA (A STUDY ON SUKOHARJO DISTRICT COURT’S VERDICT NO. 172/PID.SUS/2022/PN. SKH.)

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ABSTRACT

Purpose: This research aims to find out the implementation of sociological interpretation by the judge in the criminal case of cultural reserve object.

Methods: This study is normative research that is descriptive in nature with case approach.

Results and Conclusion: The result shows that sociological interpretation was made by the panel of judges that examined and decided the criminal case No. 172/Pid.Sus/2022/PN. Skh. through expanding the meaning of Cultural Reserve object, including the Putative Cultural Reserve Object (Indonesian: Obyek Diduga Cagar Budaya or ODCB) that has been enlisted and studied.

Research implications: The source of primary legal material used was the Sukoharjo District Court’s Verdict No.172/Pid.Sus/2022/PN.Skh and the law about Cultural Reserve, while technique of analysis used was deductive (syllogism) one.

Originality/value: Thus, the defendant’s act of destructing the Wall Structure of Baluwarti Palace fence that still has ODCB status at that time has met the element of cultural reserve and the defendant was sentenced.

Keywords: Sociological, Interpretation, Criminal Law, Cultural Reserve.
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1 INTRODUCTION

Conceiving law is inseparable from an imperative of understanding its function. Soerjono Soekanto states that the function of law is, among others, to serve as a social control (Pati et al., 2021). Considering its function as a social control, the existence of law plays an important role in organizing the life of people with diverse and potentially conflicting interests. The law ensures that all interests of individual, group or state can run without conflict. The consciousness that law is an important instrument to achieve certain objectives makes law a device used to organize the people consciously and actively through using legislation made intentionally (Pujiyono et al., 2019).

Legislation is manifested in, among others, the Law or the Act. In relation to the function of law and act, Dana Burchardt states that: “In order to comprehend the nature of law and its mode of operation, the functions that law can potentially and actually fulfill should be taken into account. At the same time, attributing functions to something—including to the law—endorses a standard by which the success or lack of success of something can be judged (Pujiyono et al., 2020).

In the responsive legal theory, Philippe Nonet and Philip Selznick state that the Law or Act is developed by the authorized institution democratically and for certain objective as the response to phenomenon or event occurring or based on public aspiration (Ismi & Hasanah, 2023). The character of legal product reflects the fulfillment of public aspiration, either individual or various social groups, and thereby is relatively able to reflect the feeling of justice in the community (Rukmono et al., 2023). It means that each of laws is developed for certain objectives, including to provide justice and to protect legal subjects, rights, and objects. For example, the Law Number 11 of 2010 about Cultural Reserve is intended to protect the cultural reserve objects existing in Indonesia (Suwadi et al., 2022).

Cited by Veaceslav Mir in their research, Richard and R. Palmer argue on the position of cultural reserve in community development as follows: Cultural heritage and events, as a main part those various socio-cultural characteristics, have a significant role for urban development, as cultural production becomes a major element of the urban economy, affecting both the image of places and urban life in general. (Saputra, 2020).

The legal consequence of the existence of a law is the imposition of criminal sanction (sentence) to those breaking the provision in a criminal verdict through a trialing process first. It is in line with what is stated by Grolier in Adnan Hamid and Hasbullah,” punishment describes the imposition by the competent authorities to revoke the usually painful rights of someone who has violated criminal law, regulations or other norms imposed by a judge with a verdict (Saputra et al., 2023). The judges play a very important role in the trialing process, not
only in setting the course of trial but also in applying the law ending up in a verdict. In undertaking his task and role, a judge can decide all of his verdicts freely without others’ intervention and undertake the task of deciding a case in the court impartially (within the exercise of the judicial function) (Saputra et al., 2021). Nevertheless, in examining and deciding the criminal trial the judges refer to the Public Prosecutor’s indictment containing the acts done by the defendant and the law and regulation or the Act broken (Hutabarat et al., 2023).

The problems arising and faced by the panel of judges in examining and deciding a case filed to them are, among others, related to the unclear provision of a Law in facing an event or action indicted against the defendant. Thus, to solve this, the panel of judges should make legal interpretation. Henry Campbell Black defines legal interpretation as “the art or process of discovering and ascertaining the meaning of a statute, will, contract, or other written document. The discovery and representation of the true meaning of any signs is used to convey ideas” (Suwadi et al., 2023). Such definition indicates that legal interpretation is not only the judge’s way but also the judge’s skill of acquiring the true meaning of a legal document filed to him in a real case. Philipus M. Hadjon and Tatiek Srie Djamtiati in Muslim Andi Yusuf and Dharma Fidyansari state that “a judge can do judicial interpretation and legal discovery because not all statutory provisions are in a clear form so that there is an opportunity for interpretation of Leemten In hetrechvage and norm (Saputra et al., 2023). The rationale for the judge to make interpretation is Article 5 clause (1) of the Law Number 28 of 2009 about the judicial power.

Legal interpretation has some methods: grammatical or language interpretation, teleological or sociological interpretation, systematic or logical interpretation, historical interpretation, comparative interpretation, and futuristic interpretation (Saputra et al., 2022). Those interpretation methods are used when necessary and refer to the case being examined. Teleological or sociological interpretation is defined as an interpreting method that interprets a rule viewed from the intention of drafting a law. (Saputra, Tiolince, et al., 2023) The intended intention is the social objective. Susan S. Silbey mentions about a sociological interpretation of the relationship between law and society. Baso Madiong mentions that it is called sociological interpretation because the public goal in the period when a rule is developed is different from that in the period when the rule is implemented. Thus, sociological interpretation attempts to adapt the original interpretation to the recent one (Nunes et al., 2019; Suprayoga et al., 2023). Utrecht states that sociological interpretation is a guarantee of the judge’s earnestness in making decision, because the decision can realize the law in real circumstance in the society (Matejova, 2023).

The example of case containing sociological interpretation is, among others, the criminal case number 174/Pid.Sus/2022/PN.Skh in District Court of Sukoharjo, Indonesia, concerning the destruction of putative cultural reserve object as governed in the Law Number 11 of 2010 about Cultural Reserve (Law of Cultural Reserve). It is interesting to the author, recalling the act committed by the defendant before the government established the object damaged by the defendant to be Cultural Reserve. Any things related to sociological interpretation made by the Panel of Judges in the case No. 174/Pid.Sus/2022/PN.Skh will be discussed in the next chapters.

2 METHODS

This study is a normative or doctrinal research that is descriptive in nature (Pujiyono et al., 2017). This research used case approach with the source of primary legal material including, among others, the verdict with permanent legal power, the Sukoharjo District Court’s Verdict No. 172/Pid.Sus/2022/PN. Skh. and other relevant legislations such as the Law Number 11 of
2010 about Cultural Reserve. Technique of collecting legal materials used was library research. Technique of analyzing data used was deductive syllogism analysis.

3 RESULTS AND DISCUSSION

3.1 The Case of Position

3.1.1 Body of Indictment

Despite information on the prohibition of breaking down the wall located in the land belonging to the him (the defendant), the defendant MKB (initial) remained to instruct the witness N as the operator of excavator to break down the wall constituting the structure of Baluwarti Fence of Kartasura Palace located in the western side of Kartasura Palace. Then, on April 21, 2022 the witness N as the operator of excavator hired by the Defendant started to break down gradually the fence wall as the Defendant instructed using the excavator repeatedly from the upper part and has broken down about 6 meter long, 1.25 m thick, and 1.70 m tall so that the Structure of Baluwarti Fence of Kartasura Palace in the western side of Kartasura Palace damaged and deformed.

The Defendant’s act, as governed and threatened with sentence in Article 105 jo. Article 66 clause (1) of Law Number 11 of 2010 about Cultural Reserve jo. Article 55 clause (1) number 1 of KUHP (Penal Code).

Article 105 of the Law of Cultural Reserve states that Everyone who damages Cultural Reserve intentionally as mentioned in Article 66 clause (1) and

Article 66 clause (1) of the Law of Cultural Reserve states that Everyone is prohibited from damaging Cultural Research, either entirely or partially, including its unity, group, and/or original location.

a. Main Claim

1. States that the Defendant is legally and convincingly guilty of committing the criminal act of “instructing the destruction of cultural reserve” as governed and threatened with sentence in Article 105 Jo. Article 115 clause (1) letter a of the Law No. 11 of 2010 about Cultural Reserve jo. Article 55 clause (1) number 1 of Penal Code (KUHP);
2. Sentences the Defendant with 1 (one) year and 6 (six) months imprisonment subtracted with the defendant’s temporary detention period;

b. Injunction

Adjudicates:

1. States that the Defendant is evidently guilty legally and convincingly of committing criminal act of instructing the destruction of Cultural Reserve as mentioned in the single indictment of Public Prosecutor;
2. Sentences the Defendant with 1 year imprisonment, and so forth.

The facts revealed in the trial of cultural reserve case with the case register number 172/Pid.Sus/2022/PN. Skh in the District Court of Sukoharjo.

Caralonie Henckels states that “When thinking about legal
certainty, the principle of non-retroactivity is a central consideration. The principle of non-retroactivity operates to preserve the legal effect of past events. Because individuals base their decisions on existing facts and norms, they are entitled to expect that changes should operate only in the future and not affect past decisions.

3.2 The challenge of interpreting the cultural reserve destruction in Indonesia in order to ascertain its status

Considering this and referring to Article 1 number 1 of the Law of Cultural Reserve stating that “Cultural reserve is a cultural heritage that is material in nature in the form of Cultural Reserve Object, Cultural Reserve Building, Cultural Reserve Structure, Cultural Reserve Site, and Cultural Reserve Region on land and/or in the water that should be conserved because they have important values to history, science (knowledge), education, religion, and/or culture through the establishment process”, the fourth element of indictment—cultural reserve either the whole or the part of unity, group, and/or original location is not fulfilled (principle of legality) (Cahyani & Yunani, 2023).

Recalling this, the panel of judge’s following considerations should be cited to find out the interpretation of cultural reserve: a. Considering that as the panel of judges has considered above, the problem is how the treatment of the Putative Cultural Reserve Object (Indonesian: Obyek Diduga Cagar Budaya or ODCB) that has been not been establishedrationally fulfills or does not fulfill the criteria intended in Article 5 of the Law No. 11 of 2020, because in the Law No. 11 of 2010 as explained by the expert in the trial, even some cultural reserve not fulfilling some criteria of cultural reserves are accepted and established to be cultural reserve because they are important to the national culture; b. Considering that the Panel of Judges think that this provision is lex specialis that provide protection to ODCB; in this case the panel of judges interprets sociologically (objective) that the ODCB that in the process of study is treated just like the object that has been established to be Cultural Reserve; in this case legal protection that binds everyone should be given to it. c. Considering that finally a fact is revealed that the study has been conducted and ended with the signing of the Manuscript of Expert Study on the Cultural Reserve in Sukoharjo Regency on April 26, 2022 and then reported to the Regent of Sukoharjo on April 27, 2022 and established by the Regent of Sukoharjo on April, 2022; d. Considering that sociologically (according to sociological interpretation) the objective of cultural reserve finding registration is to study and to find out whether or not the object found is cultural reserve by means of identifying and clarifying object, building, structure, location and geographical space unit filed to be Cultural Reserve (vide Article 31 clause (1) and (2) of the Law No. 11 of 2010).

Considering firmly that the registration of ODCB in the National Registration of Cultural Reserve should be interpreted that the ODCB registered has been in the process of studying toward the process of establishing it to be cultural reserve, so that the registration should be interpreted as the procedure of study and therefore since the date when it got Registration Identity Number, the ODCB should be treated just like the object that has been established as cultural reserve; g. Considering the interpretation on the equal treatments against ODCB and Cultural Reserve established, the phrase “cultural reserve” intended in this element should be interpreted in relation to the treatment against an object as cultural reserved rather than limited in letterlijk to the narrow meaning of cultural reserve; h. Considering that in this element consideration, the Panel of Judges defines cultural reserve broadly as cultural reserve or putative cultural reserve object that has been registered in the national registration of cultural reserve.
Based on the Panel of Judges’ considerations aforementioned, it can be seen clearly that the panel of judges used sociological interpretation in deciding a case, particularly to determine the substance of cultural reserve (Pujiyono et al., 2017). It is noteworthy that previously the Panel of Judges in its consideration has stated that based on the principle of legality if there has been no statement released by the Regent of Sukoharjo related to the establishment of Kartasura Palace’s Fence site as the cultural reserve site and the act of damaging the wall can be proven, it is not cultural reserve but another object is damaged.

In examining a case, the judges have 3 task stages: constituary, qualification, and constituent. (Delina, 2020) Constitutory stage means seeing, recognizing or justifying that an event filed to the court has actually occurred. Qualification means assessing events that are considered to have actually occurred and what or which legal relationship they have, or in other words finding the law regarding events that have been recognized. Lastly, after the judges have justified and qualified, they should construct the constitution.

The judges’ interpretation is used at qualification stage; in this case they should search for or find the law governing the events that have passed through the constitutary stage. In the case studied, the event has been clear, the Defendant has broken down the wall of Kartasura Palace Fence. The problem in a quo case arises in constitutary stage, i.e. Does the wall of Baluwarti Kartasura fence as the registered Putative Cultural Reserve that has been damaged by the Defendant on April 22, 2022 has fulfilled the element of cultural reserve as mentioned in the Law of Cultural Reserve? or in other words Can Article 105 Jo. Article 115 clause (1) letter a of the Law No. 11 of 2010 about Cultural Reserve jo. Article 55 clause (1) number 1 of Penal Code (KUHP) as mentioned in the Public Prosecutor’s indictment underlie the sentence imposed the Defendant’s guilt, although the object damaged has a status of Putative Cultural Reserve object (ODCB).

To find out whether or not the judges need to make legal interpretation on the case filed to them, the judges should know when the they should make interpretation (Pujiyono et al., 2017). In principle, legal interpretation is an approach to interpret some rules of law, in the case where some regulations have developed but could not be applied clearly to concrete events. In other words, interpretation is the judges’ method of conceiving the meaning contained in legal texts to be applied to solve the concrete cases (Delaroche et al., 2022). Regarding this, Habermas states that “the validity of the general norm does not therefore guarantee validity in an individual case. Understood this way, application discourses in legal adjudication concern a norm’s appropriate reference to a situation, not its formal validity” (Szczucki, 2018). Article 5 of the Law Number 48 of 2009 about the Judicial Power (the Law of Judicial Power) stating that “Judges and Judges of Constitutional Court should obligatorily dig, follow, and comprehend legal values and feeling of justice living in the society” (Pujiyono et al., 2017). The Law of Cultural Reserve has stated clearly that to be established as cultural reserve and to get legal protection, the putative cultural reserve object get establishment in juridical manner through the decree of the authorized officials, in this case the district heads previously having passed through registration, study, and ending up in the establishment (Waluyo & Pujiyono, 2017).

Having observed and studying the verdict, the author finds that the judges’ starting points to make legal interpretation are, among others, the facts that 1) the ODCB, the structure of Baluwarti Fence of Kartasura Palace, has been registered and studied, (2) ODCB has been registered and had Registration Identity No. PO2015052700089 since May 27, 2015 and then,
following the implementation of fit-and-proper tests (March 2022), the Decree of Sukoharjo Regency No. 646/270/2022 about the establishment of was published Kartasura Palace’s Fence Site to be Cultural Reserve site in Sukoharjo Regency on April 2022, 3) the provision of Article 31 clause (5) of the Law of Cultural Reserve stating that “Selama proses pengkajian, benda, bangunan, struktur, Atau lokasi hasil penemuan atau yang didaftarkan, dilindungi dan diperlakukan sebagai Cagar Budaya (In the process of studying object, building, structure, or location found or registered is protected and treated as Cultural Reserve”, and 4) based on the expert’s statement informing that some cultural reserves does not meet some of criteria to be cultural reserve, but because they are important to national culture, they are accepted and established to be cultural reserve. Considering this, the panel of judges then formulates a problem concerning how the object with the status of Obyek Diduga Cagar Budaya (ODCB) should be treated.

This is in line with Uthrecht stating that law is a social phenomenon; therefore, each of regulations has social duty, the law certainty within society. Social objective of a regulation cannot always be comprehended from the words formulated. Therefore, the judge should find it. The written law in certain borders can be traced for its purpose, although sometimes it is not easy to apply it to a case in various situations and social condition. The need for the use of sociological interpretation amid grammatical interpretation is suggested by Joseph H. Drake,” …, but the more liberal courts are beginning to recognize that the social needs to be served by their decisions are quite within their competence (Singh, 2002).

In principle, any things related to putative cultural reserve (ODCB) have been governed in the law of Cultural Reserve, but the provisions in the Law of Cultural Reserve do not govern firmly the treatment against ODCB registered and based on the facts and the provision of Article 31 of clause (5) of the Law of Cultural Reserve reading: “In the process of studying object, building, structure, or location found or registered is protected and treated as Cultural Reserve”, the Panel of Judges in the case of a quo expands the meaning of Cultural Reserve Object to include the Putative Cultural Reserve Object that has been registered. Based on the sociological interpretation in comprehending the Cultural Reserve Object the meaning of which has been expanded, the defendant’s act of damaging the structure of Baluwarti Fence of Kartasura Palace that at that time still has a status of ODCB is called the damage against cultural reserve object; thus the substance of Cultural Reserve in the Article indicted is proven. Such condition has ever been touched by Elina Paulino stating that “Legal certainty requires a balance between stability and flexibility” (Hoops, 2018).

In the context of law certainty (principle of legality), the Panel of Judges look for law certainty using sociological interpretation method regarding how the Putative Cultural Reserve Object that has been registered is treated, to find out law certainty on the treatment against the Putative Cultural Reserve Object, in this case the one that has been registered and studied (Ngokkuen & Grote, 2013). Therefore, if the ODCB is damaged, it can be seen clearly that law can be applied and sanction can be imposed. Moreover, the Law of Cultural Reserve contains additional sanctions as mentioned in the Article 115 clause (1) of the Law of Cultural Reserve, the obligation of restoring material, shape, layout, and/or working technique according to the original one on its own responsibility and/or the seizure of profit obtained from criminal action. In the criminal case No. No. 172/Pid.Sus/2022/PN. Skh., additional sentence is also imposed to the defendant, the act of restoring the condition of western-part Baluwarti Fence into the original condition, in the terms of material, shape, layout, and working technique on the defendants’ responsibility under the supervision of Sukoharjo Regency Government.

Legal protection is an act to protect legal subjects with applicable laws and regulations and their implementation can be enforced with a sanction. Considering the argument, the author
thinks that the Sukoharjo District Court’s verdict No. 172/Pid.Sus/2022/PN. Skh. is the form of law protection for Cultural Reserve in which the cultural reserve objects, in principle, have special importance to history, knowledge, education, religion, and/or culture, and have cultural values important to strengthen the national personality. It means that the verdict is in line with the governments’ legal politics in protecting the cultural reserve objects located in Indonesia. In the context of legal politics, Isharyanto states that the state has some objectives to achieve and the attempt to achieve the objective is taken through using law as an instrument to enact and or to implement the Law. Meanwhile, in the context of national legal development, Romli Atmasasmita in Tiara Parengkuan and Fauzi Yusuf Hasibuan, states that “The development of Indonesia national law is implicitly reflects a growing process of social change towards modernization which is packaged in an orderly and continuous legislation process by incorporating socio-cultural aspects that support the intended direction of change”.

The practical implication of the Sukoharjo District Court’s verdict No. 172/Pid.Sus/2022/PN. Skh. is that this verdict can solve legal problems, while its theoretical implication is that the verdict contains sociological interpretation that can be jurisprudence when similar cases occur.

4 CONCLUSION

The Panel of Judges examining and deciding the criminal case No. 172/Pid.Sus/2022/PN. Skh made sociological interpretation through expanding the meaning of Cultural Reserve Object to include the Putative Cultural Reserve Object (ODCB) that has been registered and studied. Thus, the Defendant’s act of damaging the Wall Structure of Baluwarti Kartasura Palace fence on April 22, 2023 that still has a status of ODCB at that time has met the substance of cultural reserve and the Defendant is sentenced according to the Article indicted, Article 105 Jo. Article 115 clause (1) letter a of the Law No. 11 of 2010 about Cultural Reserve jo. Article 55 clause (1) number 1 of Penal Code. The Sukoharjo District Court’s Verdict No. 172/Pid.Sus/2022/PN. Skh is the form of law protection for Cultural Reserve. Theoretically, the implication of the Sukoharjo District Court’s Verdict No. 172/Pid.Sus/2022/PN. Skh containing sociological interpretation on the verdict is that it can be jurisprudence for the similar cases occurring.

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