

## THE CONCEPT OF LICENSING AUTHORITY OF THE ARCHITECTURAL WORK MODIFICATION OF CULTURAL HERITAGE BUILDINGS

M.G. Endang Sumiarni,<sup>1</sup> Yustina Niken Sharaningtyas,<sup>2</sup> Sefriani,<sup>3</sup>  
and Y. Sri Pudyatmoko<sup>4</sup>

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### Abstract

*This research aims to identify the licensing authority over architectural works and modification of designated Cultural Heritages. In addition, this research examines the antinomy of legal concepts, including the antinomy of the legal concept of a licensing authority, the antinomy of the legal concept of modification of creation, and the antinomy of the legal concept of cultural heritage. With normative research, this study reveals that there is no legal certainty, between the local and central government, concerning licensing authority to cultural heritage building adaptation. There is no such a unitary system or firm and clear SOPs, which has resulted in the demolition and destruction of cultural heritage buildings. There are differences of opinion regarding the authority to permit the alteration of architectural works of cultural heritage buildings that have been stipulated. Permits for the restoration of cultural heritage buildings are obtained not through a building permit but through BPPM DIY (Licensing and Investment Service). These permits include restoration permits, adaptation permits, and development permits, especially for revitalization and utilization. There is no balance between moral and economic rights of the owner of the cultural heritage building. The preservation is more likely to emphasize moral rights but still overlooking the economic rights of the creator/owner.*

**Keywords:** *licensing authority, architectural work, adaptation, cultural heritage building.*

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<sup>1</sup> Lecturer, Faculty of Law, University of Atma Jaya Yogyakarta. E-mail: endang.sumiarni@uajy.ac.id

<sup>2</sup> Lecturer, Faculty of Law, University of Atma Jaya Yogyakarta. E-mail: niken.sharaningtyas@uajy.ac.id

<sup>3</sup> Lecturer, Faculty of Law, Universitas Islam Indonesia, Yogyakarta. E-mail: sefriani@uii.ac.id.,  
Corresponding Author

<sup>4</sup> Lecturer, Faculty of Law, University of Atma Jaya Yogyakarta. E-mail sri.pudyatmoko@uajy.ac.id

## A. Introduction

The fourth line of the Preamble of 1945 Constitution of the Republic of Indonesia (UUD 1945) specifies four objectives of the state.<sup>5</sup> Article 32, Section 1, UUD 1945 mandates “the state to advance Indonesian national culture amongst the world civilization by ensuring the freedom of society to preserve and evolve their cultural values.” Indonesian culture, with its noble values, must be preserved to reinforce Pancasila, improve the quality of life, strengthen the national identity and pride, solidify the national unity, and improve the welfare of society as the life direction of the nation.<sup>6</sup>

In response, laws and legislation concerning tangible cultural heritage have been enacted, one of which is Law No. 11 of 2010 on Cultural Heritage. Referring to Article 38 of Law No. 28 of 2002 on Buildings. It prioritizes the preservation of cultural heritage—without altering the value and/or character as well as moral and economic rights of the creator/owner—by protecting, developing, and utilizing the structures. The development and utilization can be accomplished under the license of authorized officers according to the Cultural Heritage Building rank. Heritage management as a cultural practice has long been primarily about conserving the fabric of the past for future generations. Although it has been more concentrated on the tangible and aesthetic dimensions of heritage, newer approaches aim to be more holistic and development minded. In this context, it is very important to define ways to deal with development and change.<sup>7</sup>

Each Cultural Heritage Building possesses its own distinctive architectural style. An architect’s rights are protected by law, particularly Law No. 28 of 2014 on Copyright. Article 40 (h) of this statutes states architectural work is one of the protected inventions in line with legal regime of copyright providing exclusive legal protection to the creators as moral and economic rights. The creators own eternally embedded moral rights, including rights to retain privileges when their inventions modified. However, copyright law does not specify from whom the modification<sup>8</sup> permit must be obtained—let alone the sanctions to the architect’s moral rights violators.

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<sup>5</sup> Zaki (Ed.), *UUD 1945 dan Amandemennya, Plus Sejarah Kemerdekaan Republik Indonesia* (Second Hope 2014), 11.

<sup>6</sup> Law No. 11 of 2010 on Cultural Heritage, art. 75.

<sup>7</sup> Loes Veldpaus, ‘Heritage management and sustainable development in perspective: theory, law, and practice’, (2015) 5 (3) *Journal of Cultural Heritage Management and Sustainable Development*.

<sup>8</sup> Law No. 28 of 2014 on Copy Rights, art. 5, Sec. 1(e) asserts the term "modification" of the invention; the Explanation section of art. 5 Sec. 1(e) defines “the modification of Invention” as the alteration to the Invention.

Preliminary studies have revealed that adaptation of Cultural Heritage Buildings could be performed under the permission of authorized institutions relevant to the heritage rank, although it does not recognize the concept of law on invention modification. (In fact, some of the Cultural Heritage Buildings in the Province of the Special Region of Yogyakarta (DI Yogyakarta)—Hotel Tugu, Mardiwuto, the old quarter of Senior High School 17 (SMA 17), and Dalem Brontokusuman—have been architecturally modified. According to the Law on Cultural Heritage, modifying heritage building is an act of vandalism and/or adaptation and is subject to criminal penalties.) In addition, some of the buildings' designers are no longer known. Thus, there is a legal concept antinomy of licensing authority among the copyright legal regime, cultural heritage legal regime, and law-on-building legal regime.

This research on cultural heritage buildings is urgent in Indonesia because such structures are very rare, even though cultural heritage is one of the nation's identities. This research is very important because the state has protected intellectual property rights in the form of architectural works, especially cultural heritage buildings. In practice, the licensing authority deviates from the underlying facts. Thus, this research is important because, after studying *the ius constitutum*, we can formulate *the ius constituendum* in order to find a solution for licensing authorities to protect architectural works in cultural heritage buildings with a balance of moral rights and economic rights while prioritizing the principle of preserving cultural heritage.

## **B. Problem Formulations**

The problem formulations are why is the permission granted for modification even where such modifications are against the moral rights of the creator and the basic principles of the preservation of designated Cultural Heritage Building? and what are the arguments to modification licensing of a Cultural Heritage Buildings, and have they succeeded in balancing moral and economic rights of the creator?

## **C. Methodology**

This qualitative<sup>9</sup> study applies normative legal research, with laws and regulations as focal points, which, referring to Whitney (in Moh. Nazir),<sup>10</sup> is fact research with precise interpretation.<sup>11</sup>

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<sup>9</sup> F. Sugeng Istanto, *Penelitian Hukum* (Ganda 2007), 9.

<sup>10</sup> P.M. Hadjon, 'Pengkajian Ilmu Hukum Dogmatik', (2017) 6 *Yuridika*; Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Bayu Media Publishing 2005); Peter Mahmud Marzuki, 'Penelitian Hukum', (2011) 16 (1) *Yuridika*.

The research is approached using the following elements of legal theory:<sup>12</sup> The “sociology of law” to explain legal practices; the reason why such practices conducted, influencing factors, and backgrounds.<sup>13</sup> Max Weber calls such an approach an interpretative understanding.<sup>14</sup> The element of “the politics of law” is the deliberation of legal substance to enforce and to which direction the law will be expanded.<sup>15</sup> In “the politics of law,” the legal explanation is explored. The “philosophy of law” examines moral rights and preservation principles. Normative legal research requires secondary data—primary legal materials (i.e., laws and legislation) and secondary legal materials as legal and non-legal opinion (e.g., books, magazines, journals, papers, research results, thesis, newspaper, and the Internet).

Through deductive reasoning, the primary legal materials are described, systematized, and examined whether or not they contain antinomy.<sup>16</sup> Following these systematizations, the principles of “legal reasoning” and “validity of laws and legislation” are applied. Furthermore, by referring to the legal norms as a legal basis, grammatical, teleological, and anticipative interpretation are performed.<sup>17</sup>

## **D. Results and Discussion**

### **1. Modification of Architectural Works of Cultural Heritage Buildings**

#### **a. The Definition of Architectural Work Modification**

In order to understand the legal significance of the actions, it is important to examine the etymology of the words. “Modification” (*pengubahan*) comes from “to modify” (*ubah*), meaning “to become different”; (different) from before. Modification is a process, a means, and an act of changing (something).<sup>18</sup> The Great Dictionary of the Indonesian Language<sup>19</sup> defines “works” (*karya*) as (1) job; (2) the result of an action; product; creation (particularly associated with composition).

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<sup>11</sup> Moh. Nazir, *Metode Penelitian* (Ghalia Indonesia 2003), 16.

<sup>12</sup> Philipus M. Hadjon, ‘Pengkajian Ilmu Hukum Dogmatik (Normatif)’, (1994) IX (6) *Yuridika*, 2.

<sup>13</sup> Satjipto Rahardjo, *Ilmu Hukum* (Citra Aditya Bakti 2014), 372.

<sup>14</sup> Max Weber, *On Law in Economy and Society* (Clarion Book 1954), 1.

<sup>15</sup> E. Sundari and Endang Sumiarni, *Politik Hukum & Tata Hukum Indonesia* (Cahaya Atma Pustaka 2005), 7.

<sup>16</sup> Hans Kelsen, *General Theory of Law and State* (translated by Raisul Muttaqien, edited by Nurainun Mangunsong, S.H., M.Hum. Nusamedia & Nuansa 2006), 179.

<sup>17</sup> H. Franken, *InLeiden tot de rechtswetenschap* (Gouda Quint 1983), 139; J. Gijssels and van Mark van Hoecke, *Wat is Rechtsteorie?* (Tjeenk Willink 1982), 168.

<sup>18</sup> The word ‘ubah’ (‘change’, ‘alter’ or ‘modify’) in Kamus Besar Bahasa Indonesia (The Great Dictionary of Indonesian Language) <n.d.<https://kbbi.web.id/ubah>> .

<sup>19</sup> Department of Education and Culture, *The Great Dictionary of the Indonesian Language* (2<sup>nd</sup> Ed., Balai Pustaka 1995).

“Architecture” is from the Greek’s—“*arche*” and “*tektoon*.” *Arche* means original; prominent; initial. *Tektoon* refers to something standing strong; does not collapse, stable, etc.<sup>20</sup> The legal regulation on architectural works can be found in Law No. 28 of 2014 on Copyright. Article 40 (1) asserts there are 23 types of protected creations from the field of science, art, and literary, one of which is architectural work. The legal definition of Article 40 (1) letter h explains “architectural work” is associated with building’s physical appearance, arrangement, blueprint, technical image, and model or mockup.<sup>21</sup> Creation is what created or the result of the act of creating.<sup>22</sup> Every product in the field of science, art, and literary resulting from inspiration, ability, thought, imagination, adroitness, skill, or expertise expressed through tangible forms is a creation.<sup>23</sup> Creations are afforded legal protection in accordance with copyright regime.

A copyright, as stated in Article 1 point (1) of Law No. 28 of 2014 is “... the exclusive right of the creator emerging automatically in accordance with the declarative principles after a creation is materialized in tangible form without reducing limitations in accordance with laws and legislation.”<sup>24</sup> It consists of both moral and economic rights.<sup>25</sup> These moral principles are adapted by countries practicing Continental European legal system, while the economic principles originate from countries adopting Anglo-Saxon or common law legal system.<sup>26</sup> Copyright is a part of Intellectual Property Rights (HKI).<sup>27</sup> People are prohibited from using the rights without the owner’s permission.<sup>28</sup> The concept of intellectual property rights has been discussed in Agreement Establishing The World Trade

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<sup>20</sup> Y.B. Mangunwijaya, *Wastu Citra: Pengantar ke Ilmu Budaya Bentuk Arsitektur; Sendi-sendi, Filsafatnya, beserta Contoh-contoh Praktis* (Gramedia Pustaka Utama 1995), 327.

<sup>21</sup> The legal definition of article 40, point (1) letter h Law No. 28 of 2014 on Copyright.

<sup>22</sup> Department of Education and Culture (n 19).

<sup>23</sup> Law No. 28 of 2014 on Copyright, art. 1 Sec. 3.

<sup>24</sup> When we trace back into the history, it turns that the regulation on Copyright has existed since the era of Dutch East Indies, namely on Auteurswet 1912 STB No. 6000 which was the product of Dutch East Indies’ government. The Directorate General of Intellectual Copyright, Department of Law and Human Rights of the Republic of Indonesia in collaboration with Japan International Cooperation Agency, *The Intellectual Copyright Guideline Book*, 2006.

<sup>25</sup> Law No. 28 of 2014 on Copyright, art. 3.

<sup>26</sup> Bambang Pratama, ‘Prinsip Moral sebagai Klaim pada Hak Cipta dan Hak untuk Dilupakan (Right to be Forgotten)’, (2016) 2 (6) *Veritas et Justitia*.

<sup>27</sup> Ansori Sinungan, *Perlindungan Desain Industri: Tantangan dan Hambatan dalam Praktiknya di Indonesia* (Alumni 2011), 1.

<sup>28</sup> Harsono Adi Sumarto, *Hak Milik Intelektual Khususnya Paten dan Merek* (Akademika Pressindo 1990), 1.

Organization.<sup>29</sup> HKI is the acknowledgment and recognition to an individual or legal body for intellectual invention/creation by granting special rights, socially and economically,<sup>30</sup> and the legal protections granted to an individual's intellectual property has expanded to a legal institution.<sup>31</sup> As argued by Gatot Soepramono,<sup>32</sup> it is common that an individual does not only use his/her creation for his/her own benefits but also for other's. It is obligatory for the user to respect the creation, a necessity which cannot be ignored.<sup>33</sup> The actualization of the creators' rights is very important to guarantee protection to their works.<sup>34</sup>

## b. Cultural Heritage Buildings

The Great Dictionary of the Indonesian Language<sup>35</sup> defines "cultural heritage" as an area related to sustainability of societal life and way-of-life is protected by Law from extinction. The term cultural heritage stands for the protected area to preserve plants, and animals. On the perspective of science, it is an important cultural and historical source which needs to be preserved.<sup>36</sup>

According to Article 1 point 1 of Law No. 11 of 2011, cultural heritage is tangible cultural heritage as a Cultural Heritage Property, Cultural Heritage Building, Cultural Heritage Structure, Cultural Heritage Site, and Cultural Heritage Area on land and/or water deserving of preservation, through the appointment process, due to historical, scientific, educational, religious, and/or cultural significance. Cultural heritage preservation is associated with retaining information to understand its role in society (social), the background of beliefs (ideology), and the ability (of the creator) to create it.<sup>37</sup> The Cultural Heritage Building encompasses

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<sup>29</sup> Achmad Zen Umar Purba, *Hak Kekayaan Intelektual Pasca TRIPs* (1<sup>st</sup> ed, Alumni 2005), vii; Rachmadi Usman, *Hukum Hak Kekayaan Intelektual: Perlindungan dan Dimensi Hukumnya di Indonesia* (Alumni 2003), 1.

<sup>30</sup> Ismail Saleh, *Hukum dan Ekonomi* (Gramedia Pustaka Utama 1990), 45.

<sup>31</sup> Andriana Krisnawati and Gazalba Saleh, *Perlindungan Hukum Varietas Baru Tanaman dalam Perspektif Hak Paten dan Hak Pemulia* (Raja Grafindo Persada 2004), 13-14.

<sup>32</sup> Cut Nurita, 'Bentuk Perlindungan Hukum terhadap Hak Cipta atas Lagu' (2017) 5 (5) *Jurnal Responsive*, 64-75; Hulman Panjaitan and Wetmen Sinaga, *Performing Right Hak Cipta atas Karya Musik dan Lagu serta Aspek Hukumnya* (Ind Hill Co. 2011), 140.

<sup>33</sup> Gatot Supramono, *Hak Cipta dan Aspek-aspek Hukumnya* (Rineka Cipta 2010), 2.

<sup>34</sup> Zulvia Makka, 'Aspek Hak Ekonomi dan Hak Moral dalam Hak Cipta', (2016) 1 (1) *Jurnal Akta Yudisia*, 3.

<sup>35</sup> Department of Education and Culture (n 19), 165.

<sup>36</sup> Yadi Mulyadi, 'Museum Komunitas Alternatif Pelestarian Cagar Budaya Berbasis Masyarakat', (2012) VI (1) *Jurnal Museografi*, 3.

<sup>37</sup> Junus Satrio Atmodjo, 'Pemeringkatan Cagar Budaya: Prinsip, Metode, dan Manfaatnya' (unpublished paper, N/A), 1.

old and native cultural buildings, the remnant of the past.<sup>38</sup> Article 5-11, Chapter III of Law No. 11 of 2010 specifically regulate the criteria<sup>39</sup> and the elements of cultural heritage.<sup>40</sup> The cultural heritage development can be performed by research, revitalization, and adaptation. Adaptation, according to Article 1 point 32 of Law on Cultural Heritage, is an effort to develop the cultural heritage for contemporary needs by performing limited modification without harming its important values or segments.

## 2. The General Overview of the Designated Cultural Heritages

As per December 2018, there are 289 heritage buildings in DI Yogyakarta. Some of them have officially been designated, whereas some others have not. This research examines the data of four designated Cultural Heritage Buildings, namely Hotel Tugu (national ranking), Mardiwuto Hospital (national Ranking), SMA 17 (provincial ranking), and Dalem Notokusuman Heritage Building (city ranking). All of which have undergone architectural modification.

### a. Hotel Tugu

Hotel Tugu, designated Cultural Heritage by Minister of Education and Culture' Decree No. 013/M/2014, is now very poorly maintained and does not resemble a national-ranking heritage, although situated right in the centre of Yogyakarta, near "the philosophical imaginary line"<sup>41</sup> between Yogyakarta Royal Palace (Kraton Yogyakarta) and Pal Putih Statue (Golong Gilig).

It is historically significant.<sup>42</sup> Built in the early 20th century during Sultan Hamengku Buwono VII's era (1877-1921), Hotel Tugu was initially named NV

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<sup>38</sup> Endang Sumiarni and Y. Sri Pudyatmoko, *Arti Penting Kawasan Cagar Budaya Bagi Jati Diri Bangsa Menurut Perimbangan Hakim: Studi Kasus Putusan Pengadilan Tata Usaha Negara Jakarta Nomor 29/6/2014/PTUN.JKT* (Internal Research Report of Monodisciplinary Group of Universitas Atma Jaya Yogyakarta 2015), 26.

<sup>39</sup> Law 11 of 2010 on Cultural Heritage, art. 16-19.

<sup>40</sup> Endang Sumiarni and Veronica Handayani, *Penilaian Cagar Budaya sebagai Aset Negara* (Cahaya Atma Pustaka 2016), 18.

<sup>41</sup> The Cultural Heritage Area of Philosophical Axis is a Cultural Heritage Area symbolizing an imaginary line consisting of three points, namely the Krapyak Stage (Panggung Krapyak), Yogyakarta Royal Palace (Kraton Yogyakarta), and Pal Putih Statue (Tugu Jogja). The buildings are firmly bound to one another so that their existence is important to the people of DI Yogyakarta. The area of the Cultural Heritage of Philosophical Axis is the illustration of the process of human life (Panggung Krapyak-Pal Putih), the way to perfection for the human to go back to The Creator (Pal Putih-Royal Palace), and the illustration of settled adult human life and the everlasting afterlife (Royal Palace). See Umar Priyono, et al., *Buku Profil Yogyakarta: "City of Philosophy"* (The Cultural Agency of Yogyakarta 2005), 48.

<sup>42</sup> 'Hotel Tugu Yogyakarta, Saksi Sejarah yang Terabaikan', (liputan6.com), accessed 4 December 2018; 'Nilai Sejarah Besar, Saatnya Hotel Tugu', (krjogja.com), accessed 4 December 2018.

Grand Hotel de Djogdja, before rebranded as NV Narba. In 1949, it hosted the meeting between Indonesia and the Committee of Good Offices for Indonesia<sup>43</sup> which preceded the following 1949 Round Table Conference in Den Haag. Constructed simultaneously with Tugu Railway Station, around 1880s,<sup>44</sup> it became a transit point for Dutch's officials.<sup>45</sup> When the First Dutch Military Aggression occurs on December 18, 1948,<sup>46</sup> Hotel Toegoe was the headquarters of Colonel van Langen's<sup>47</sup> *Tijger Brigade*.

The architectural style is considered New Indies,<sup>48</sup> a transitional design quite popular in early 20th-century Indonesia. The designer, however, is hitherto unknown. From the late 19<sup>th</sup> to mid 20<sup>th</sup> century, the *Dutch Revival* was quite popular and adopted by Dutch in Indonesia. Mixed with local/traditional architecture, Dutch Revival evolved into New Indies. The Javanese traditional style and pre-20th-century European's appears in several segments. The gothic style decorates large doors and windows as well as stained glass on the hall door and window. The arched doors have Romanesque features.

It has changed hands repeatedly. In 2014, when the owner was about to renovate it, it was known that the back side of the building was severely damaged and no longer inhabitable. The damaged section was eventually demolished, and a new building stood. The construction has gone against the Archeological Remnant Preservation Body of DI Yogyakarta which does not recommend the modification of facade and the addition of buildings.<sup>49</sup>

## **b. Mardiwuto Hospital**

Mardiwuto Hospital (Dr. Yap's Eye Hospital) was designated as a Cultural Heritage Building by the Regulation of Minister of Education and Tourism No. PM.25/PW.007/MKP/2007.<sup>50</sup> It was built by Sultan Hamengkubuwono VIII on

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<sup>43</sup> 'Hotel Tugu Yogyakarta, Saksi Sejarah yang Terabaikan' (n 42).

<sup>44</sup> 'Hotel Tugu Yogyakarta, Saksi Sejarah yang Terabaikan' (n 42).

<sup>45</sup> 'Hotel Tugu Yogyakarta, Saksi Sejarah yang Terabaikan' (n 42).

<sup>46</sup> Julius Pour, *Doorstoot Naar Djokja: Pertikaian Pemimpin Sipil dan Militer* (Kompas 2009), 171.

<sup>47</sup> Julius Pour (n 46), 115.

<sup>48</sup> The Preservation of Historical and Archeological Remnants, *Laporan Pendataan Bangunan Indis (Hotel Toegoe)*, 18-26 November 1999 (The Preservation of Historical and Archeological Remnants 1999).

<sup>49</sup> Team of Authors, *Identifikasi Bangunan Cagar Budaya Hotel Toegoe Yogyakarta* (BPCB DIY 2012).

<sup>50</sup> Febriana F.R. et al., 'Kasus Cagar Budaya Bangunan Mardiwuto (RS Dr. YAP)', (Paper on the Law of Cultural Heritage and the Ethics of Management, The Faculty of Cultural Science Universitas Gadjah Mada, 2018).



November 21, 1922, as stated on the inscription on the veranda: “*DE EERSTE STEEN GELEDG DOOR Z.H HAMENGKOE BOEWONO VIII OP DEN 21 STEIN NOV 1922.*”

The history of Mardiwuto began when Yap Hong Tjoen and his colleagues, of Chinese and Dutch descent in Indonesia, founded, in Batavia, through Mr. A.H. van Ophuijsen’s notarial act, *Centrale Vereeniging tot bevordering der Ooghelkunde in Nederlandsch-Indie* (CVO) (the Central Organization for the Advancement of Eye-Health Science in Dutch East-Indies). The establishment was broadcast on *Javasche Courant No. 96*, November 30, 1920. Dr. Yap raised fund to build the hospital on a 2,955 m<sup>2</sup> land on Teuku Cik Di Tiro St., Yogyakarta. The hospital, *Prinses Juliana Gasthuis voor Ooglijdes*, was then managed by Dr. Yap. In 1926, he launched a foundation (*stichting*), *Vorstenlandsch Blinden Instituut* (Yayasan Mardiwuto).<sup>51</sup>

Bale Mardiwuto consists of four closed wards, two open wards, and one social organization office serving Mardiwuto (the official residence or *rumah dinas*). It features a colonial style, adjusted to the tropical climate. The steep-sloped roof and the wooden, butterfly-leaf windows are high and decorated with small towers as the ventilation.

After experiencing financial difficulties, the foundation decided to develop the hospital area into a shopping complex to help fund the operation of the Dr. Yap Prawirohusodo Foundation.<sup>52</sup> The plan involved the deconstruction and removal of Bale Mardiwuto. The adaptation was granted by the Director of Archeological Remnants (recommendation No. PW.007/0229/DIR.IV/SP/II/2010, dated 8 February 2010, concerning the recommendation of the construction of *Ruko Yap Square*).<sup>53</sup> All of Bale Mardiwuto were removed.

### c. SMA 17 Yogyakarta

SMA 17 Yogyakarta was designated as a Cultural Heritage by the Gubernatorial Decree of DI Yogyakarta No. 2010/KEP/2010.<sup>54</sup> In the 1920s, it was the dormitory (*internaat*) for Boedi Oetomo Yogyakarta, the first movement-

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<sup>51</sup> Anonym, ‘Laporan Pendataan Bale Peninggalan Purbakala Yogyakarta’ (Unpublished Paper, 1999).

<sup>52</sup> Enny Sukasih, ‘Penanganan Hukum terhadap Perusakan Bangunan Cagar Budaya’ (unpublished thesis, Universitas Gadjah Mada, 2016).

<sup>53</sup> Anonym, ‘Laporan Pendampingan Teknis Pembangunan Kembali Kompleks Eks Mardiwuto’ (unpublished report of Archaeological Remnant Preservation Office of Yogyakarta, 2010).

<sup>54</sup> Joy Jatmiko Abadi, et al., ‘Identifikasi Perusakan Cagar Budaya: Study Kasus Bangunan Cagar Budaya SMA 17 Yogyakarta’ (Unpublished thesis of Universitas Gadjah Mada, 2018).

organization playing a significant role in Indonesian history. During the Japanese occupation, it was an army post. After the Independence, it became the student army dormitory. Since 1955, it was used by SMA 17 "I" and SMP 17 "II"; the surrounding buildings were the Student Army's Brigade 17's dormitory.

Occupying part of the Sultan's Ground, the European-Javanese Indies-style building consists of main building, dormitory, and bathrooms. Now, the main building is still intact. The demolition has occurred to the north side of the building, part of SMA 17 "I" Yogyakarta, namely a chemistry-biology lab, two (2) classrooms, and computer room, the Student Association room, and library. To the south side, there are two (2) classrooms, a prayer room, and storeroom.

#### d. Dalem Notokusuman

Dalem Notokusuman was designated a Cultural Heritage Building by Yogyakarta Mayoral Decree No. 142 of 2017.<sup>55</sup> It is a Javanese-traditional aristocratic residence (*Dalem Kepangeranan*) featuring complete layout—*gledegan, regol, pendopo, pringgitan, dalem ageng* with *gendok kiwo* and *tengen, seketheng, gadri*, and *pawon*. All of which are inside a fortress and the attributes refer to a palace (*keraton*).<sup>56</sup> Uniquely, it is the only *dalem* equipped with a segment called *Gandok Wingking* (Backside).

It was initially a residence for Kraton Yogyakarta's noblewoman, GBRAy Brontokusumo, the eighth daughter of Sultan Hamengkubuwono VII and Queen GKR Kencana. Traditionally, Sultan always gives *dalem* to his daughters.<sup>57</sup> After the death of GBRAy Brontokusumo, the residence became an Indonesian army barracks. The front yard was borrowed by President Soekarno to build the Museum of Struggle (Museum Perjuangan).

Dalem Brontokusuman contains many important values. It housed valuable knowledge of how people from the past constructed buildings. Culturally, it has many embedded philosophical values. Unfortunately, the *pendopo* of Dalem Brontokusuman was destroyed by the May 2006 earthquake, leaving only the floor.

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<sup>55</sup> The Cultural Agency of Yogyakarta City, 'The Appointing of Cultural Heritage Area (KCB)', Cultural Heritage Building (BCB) in the Region of Yogyakarta City.

<sup>56</sup> BPCB DIY, 'Selayang Pandang Dalem Brantokusuman (Pugeran)', (kebudayaan.kemdikbud.go), <https://kebudayaan.kemdikbud.go.id/bpcbyogyakarta/selayang-pandang-dalem-brantokusuman-pugeran/> accessed on 4 December 2018.

<sup>57</sup> Albertus Indratno, 'Kapan Lagi? Ini 10 Tempat di Jogja yang Dinamai Berdasarkan Kediaman Putra-putri Raja (4)' (gudeg.net), <https://gudeg.net/read/8844/kapan-lagi-ini-10-tempat-di-jogja-yang-dinamai-berdasarkan-kediaman-putra-putri-raja-4.html> accessed on 4 December 2018.

It may well be argued that only around 50% of the original structure remains. The restoration has been performed by the Local Government of DI Yogyakarta. The original was demolished and a new, almost-identical building, decorated with similar ornaments, was constructed.<sup>58</sup>

### 3. The Concept of the Licensing Authority

#### a. The Definition of Concept

“Concept” comes from the Latin word “*conceptum*,” meaning “something understood.” In The Classical Theory of Concept Aristotle argues concept is the main constituent of human’s scientific knowledge and philosophical thinking.<sup>59</sup> Concept, with its own distinctive characters,<sup>60</sup> is the primary research element. When the problems and theoretical frameworks are vivid, the facts connected to the points of interest and the concept—the brief definition of a group of facts or the phenomena—are usually already known.<sup>61</sup> The concept is a set of theories related to an object, conceived by categorizing and placing similar objects into certain groups.<sup>62</sup> Bruggink developed the classification of a definition based on the origin of the *definien*—lexical, precision, and stipulative.<sup>63</sup> A lexical concept is common in legal formulation, whereas stipulative concepts constitutes new elements.<sup>64</sup>

#### b. Licensing Authority

The authority, through *attributie*, is granted by the government by delegation (*afgeleid*). The delegation takes form in *delegatie* and *mandaat*.<sup>65</sup> The government obtains and diverts its authority in several ways—*attributie*, *delegatie*, and

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<sup>58</sup> Ristu Hanafi, ‘Hampir Roboh karena Gempa, Ndalem Brontokusuman Mulai Dipugar Gunakan Danais’, (jogja.sorot.co) <https://jogja.sorot.co/berita-48397-hampir-roboh-karena-gempa-ndalem-brontokusuman-mulai-dipugar-gunakan-danais.html>. accessed on 4 December 2018

<sup>59</sup> ‘Pengertian konsep menurut ahli’, (Scribd), <https://www.scribd.com/document/375331122/Pengertian-konsep-menurut-ahli-docx> accessed on 4 December 2018

<sup>60</sup> ‘Pengertian konsep menurut ahli’ (n 59).

<sup>61</sup> Koentjaraningrat, *Metode-metode Penelitian Masyarakat/Redaksi Koentjaraningrat 1997* (Gramedia Pustaka Utama 1997), 32; Ischak, et al., *Pendidikan IPS SD* (Universitas Terbuka 2004).

<sup>62</sup> Husein Umar, *Metode Riset Ilmu Administrasi* (Gramedia Pustaka Utama 2004), 51.

<sup>63</sup> Bruggink, *Refleksi tentang Hukum* (Citra Aditya Bakti 1999), 82-83.

<sup>64</sup> Philipus M. Hadjon (n 12).

<sup>65</sup> Made Ayu, ‘Pengelolaan Subak oleh Pemerintah Daerah Provinsi Bali sebagai Warisan Dunia dalam Melestarikan Nilai-nilai Kearifan Lokal’ (Master’s Thesis, Universitas Atma Jaya Yogyakarta, 2017), 64-66. Ibrahim R., ‘Peranan Strategis Pegawai Negeri Mewujudkan Pemerintahan yang Demokrasi’, (in The Adjunct Professor Inauguration Speech of Law Faculty of Universitas Udayana, 2005), 9.

*mandaat*.<sup>66</sup> Although essentially originating from attribution and delegation, the authority is also obtained through mandate.<sup>67</sup>

For Spelt and ten Berge, a license is an approval from the authority based on the legislation and rules to, on special occasions, taking a side route from legal prohibitions (license on the narrow scope).<sup>68</sup> Therefore, certain limitations could be specified.<sup>69</sup> One cannot perform an act unless permitted.<sup>70</sup> For Van der Pot, a license is a decision granting a permit to actions principally not prohibited by the regulator.<sup>71</sup> As stated by Prajudi Atmosudirdjo, license (*vergunning*) is the dispensation from legal prohibition. The statutory provisions usually read, "It is prohibited without a permit ... (to perform) ... etc." The prohibition is followed by details on requirements, and criteria, as well as procedures and technical directions for relevant state administration officials.<sup>72</sup> Utrecht argues the act of the state administration is called license (*vergunning*) when the regulators do not forbid an action, allowing it as long as done as specified, then.<sup>73</sup>

The Regulation of the Minister of Home Affairs No. 20 of 2008 on Organizational and Working Procedural Guidelines of Local Integrated Licensing Service defines a license as a document issued by a local government according to local regulations or other rules as legal proof legitimizing or allowing a person or organization to engage in certain business activities. Emphasizing written permission (a document), licenses do not essentially include spoken permit. Spelt and ten Berge see the motives behind the enforcement of license system could be the will to direct (control/"*sturen*") certain activities, to avoid danger to environment, to protect particular objects, to share rare objects, and to direct by sorting out people and activities.<sup>74</sup> As a government's decision, license possesses certain urgency.<sup>75</sup>

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<sup>66</sup> H.R. Ridwan, *Hukum Administrasi Negara* (Raja Grafindo Persada 2006), 105.

<sup>67</sup> Philipus M. Hadjon et al., *Pengantar Ilmu Administrasi Negara* (Gadjah Mada University Press 1993), 128.

<sup>68</sup> Spelt and ten Berge, *Pengantar Hukum* (edited by Philipus M. Hadjon, Penerbit Yuridika 1993), 2-3.

<sup>69</sup> Philipus M. Hadjon (n 19), 3.

<sup>70</sup> Y. Sri Pudjatmoko, *Perizinan: Problem dan Upaya Pembinaan* (Penerbit Grasindo 2009), 7.

<sup>71</sup> Van der Pot, as quoted in Utrecht and Moh Saleh Djindang, *Pengantar Hukum Administrasi Negara Indonesia* (8<sup>th</sup> Ed., Penerbit dan Balai Buku Ichtar 1985), 143.

<sup>72</sup> Prajudi Atmosudirdjo, *Hukum Administrasi Negara* (Ghalia Indonesia 1983), 94.

<sup>73</sup> Utrecht as quoted in Adrian Sutedi, *Hukum Perizinan dalam Sektor Pelayanan Publik* (Penerbit Sinar Grafika 2015), 167.

<sup>74</sup> Spelt and ten Berge (n 68), 4.

<sup>75</sup> Y. Sri Pudjatmoko (n 70), 22-24.

#### **4. The Licencing Authority of the Architectural Work Modification of Designated Cultural Heritage Building**

The research has uncovered different opinions concerning the licensing authority over cultural heritage building modification, in which case is not through the agency which issues the Building Construction License (*Izin Membangun Bangunan*, 'IMB') but through the Investment Coordinating Board of Indonesia (*Badan Koordinasi Pasar Modal*, 'BKPM') of the Special Region of Yogyakarta. The licenses include restoration licenses, adaptation licenses, development licenses, all particularly associated with revitalization and utilization. Technical licenses are issued by the Cultural Agency of Yogyakarta City.

The adaptation permit can be obtained through IMB and restoration licenses. IMB is issued by BKPM Agency of Yogyakarta City, based on the recommendation from City Cultural Agency, Provincial Cultural Agency, and Public Works Agency (*Pekerjaan Umum*, 'PU'). The City and Provincial Cultural Agency examine the design and architectural aspects, whereas Public Works Agency examines general aspects e.g., the material and construction. Issuing the restoration license of heritage building is the authority of the BKPM of Special Region of Yogyakarta. However, the City Licensing Agency does not necessarily discriminate between the application of an ordinary building and cultural heritage building, although it will ask for the recommendations from City and Provincial Cultural Agency.

It is our opinion that some of our sources do not yet comprehend the definition of cultural heritage, let alone the criteria and the types. However, when discussing the types of cultural heritage, the legal basis for such identification is paramount. They assume heritage building as cultural heritage property, which is true if they still base their argument on the outdated Law No. 5 of 1992.

Furthermore, there is still no common understanding of the modification licensing of cultural heritage buildings. The informants from various institutions rest in the knowledge that the licensing process is like that of ordinary buildings, resulting in the confusion or ambiguity on the procedure. It is a common practice that modification license of cultural heritage building is issued by the institution irrelevant to the building's rank, although Article 41-49 of the Law on Cultural Heritage regulates the authorized licensing officials. If a building was ranked regency/city, the authorized official was mayor/regent; provincial, the governor; national, the minister. Each

authorized institution must adapt to the regulation. In addition, they must seek the relevant agency's recommendation.

There is also confusion over the authority of Cultural Heritage Preservation Board (BPCB), particularly BPCB of DI Yogyakarta, as a central government institution stationed in regions. The BPCB is authorized to recommend to the national heritage building adaptation, as asserted on Article 96 of Law on Cultural Building. However, since there is no limit on its authority, BPCB of DI Yogyakarta has become a board producing recommendation to city and provincial level heritage.

The research has revealed that in 2016, there were 59 cultural heritage building candidates examined by the city mayor. In reality, only six buildings were successfully examined—3 buildings have already designated and the rest still waiting for the result. It is our opinion that the authorized institutions have not yet fully understood and had strong commitment to heritage preservation. The argument is supported by the fact that the assessment process depends on the intention of the owner. It goes against Article 114 of Law on Cultural Heritage stating that the authorized official on the preservation of cultural heritage must perform the preservation of cultural heritage.

The Local Regulation of Yogyakarta City No. 2 of 2012 on Buildings dictates that "[e]very person or organization which will build anew, modify, expand, reduce, and maintain buildings must first have Building Construction License (IMB) from the mayor or designated officials. IMB is issued by the mayor or the designated officials." In order to obtain the IMB, the applicant must fulfil certain requirements—administrative and technical. It also regulates that buildings situated on the cultural heritage sites and the river perimeter line require a recommendation/certificate from relevant authorized technical institution. The authorized institution to license nationally-ranked heritage needs a recommendation from BPCB; the provincially-ranked cultural heritage building must obtain a recommendation from Cultural Agency of DI Yogyakarta; the city-ranked cultural heritage must get a recommendation from Cultural Agency of Yogyakarta City. The recommendation must also be obtained from the Public Works, Housing, and Settlement Area Agency, which examines the perimeter, building area coefficient, green open-space coefficient, construction, and materials. It does not only apply to the cultural heritage but also suspected cultural heritage and other buildings requiring IMB. Moreover, it also applies to buildings in

designated cultural heritage areas. The construction and renovation on a Cultural Heritage Area need a license and recommendation from authorized institution.

Referring to Local Regulation of Yogyakarta City No. 5 of 2016 on the Establishment and the Arrangement of the Regional Apparatus of Yogyakarta City (which revokes Local Regulation of Yogyakarta City No. 10 of 2008 on the Establishment, Arrangement, Position, and Primary Job of Regional Agency), The Type-A Investment and Licensing Agency administers government affairs on investment and one-door integrated licensing service. The Type-A Cultural Agency manages governmental cultural affairs. The Regulation of Special Region of DI Yogyakarta No. 3 of 2015 on Local Government Institutions of DI Yogyakarta asserts that the Cultural Agency administers the affairs of the Local Government in the field of culture, deconcentrating and assisting delegated by the government in protecting, maintaining, developing and utilizing the culture of Yogyakarta to strengthen the people's character and identity. Equipped with the Consideration Council of Cultural Heritage Preservation (DP2WB) and the Expert Team of Cultural Heritage which issue recommendations for the licensing process, the Cultural Agency of DI Yogyakarta plays a pivotal role in Cultural Heritage preservation. Meanwhile, Provincial Cultural Agency gives legal opinion/recommendation to restoration and preservation. BPCB, Investment and Licensing Service Agency of Yogyakarta City, Cultural Agency of Yogyakarta City, and Cultural Agency of DI Yogyakarta also holds authority over Cultural Heritage preservation. Referring to Minister of Education and Culture's Decree No. 52 of 2012, BPCB protects, develops, utilizes, and facilitates cultural heritage preservation on its work sites. The Minister of Education and Culture' Decree No. 28 of 2013 regulates the Details of the Tasks of Cultural Heritage Preservation Agency. Certainly, the BPCB has considerable tasks and authorities related to Cultural Heritage. In practice, there are different understandings concerning the board's authority. Local government institutions regard BPCB as central government body authorized only over national-ranked Cultural Heritage. Contrarily, BPCB argues their authority is not limited to national-ranked Cultural Heritage preservation. The differences in understanding can result in problems related to the limitation of authority which potentially affect practical matters. There are several cases when the local government institution has issued license according to their authority as designated by the regulation but then there's opinion and act from BPCB revoking it. The limitation

and the use of the authority of an institution must be clear as well as the relationship between the institutions. In case there are differences in the interpretation, the resolution must also be clear. The license issued by an institution cannot be revoked by other bodies. Each institution plays their own role e.g., giving a recommendation, conducting coordinating meetings, or validating.

The orderliness in issuing permits (*vergunning, permit*), license (*licentie*), and concession (*concessie, concession, grant, charter, claim, franchise*) is the hardest challenge for good public governance. As for Indonesia, where the administrative decisions are the biggest source of corruption, collusion, and nepotism (KKN), a good resolution must be sought, a win-win solution for every stakeholder, by learning from other countries having successfully overcome the problems.<sup>76</sup> Prajudi Atmosudirdjo argues it was one of the reasons why, in Indonesia, before 1942, generally only the Dutch officials given the authority to issue essential permits, licenses, and concessions. Licencing contains government strategic and economic-political aspects. The state economy could collapse due to the rampant KKN and poorly controlled licensing. Authority, however, is often likened to power. On the Great Dictionary of the Indonesian Language, power is often equated with authority, as rights and power to act, to make a decision, rule, and delegate responsibility to other person/bodies.<sup>77</sup> Stout, as cited by Ridwan H.R., argues that power is a term originating from governmental organization law, as all of the rules related to the acquisition and the use of government power in public law is subject to legal public relations.<sup>78</sup> For Bagir Manan, as cited by Nurmayani, power in legal language is not similar to control. Control only implies the right to act and not to act; power simultaneously contains both rights and obligations.<sup>79</sup>

Normatively, Article 1 point 5 of Law No. 30 of 2014 on Local Government dictates that Authority is the rights possessed by a Body and/or Government Officials or other state administrators to decide and/or action in state administration. Article 1 point 6 Law No. 30 of 2014 dictates that Government Authority is the power of a Body and/or Government officials or other state administrators to act in public legal domain.

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<sup>76</sup> Rukiah Handoko, 'Prinsip-prinsip Hukum Governance Publik yang Baik', (2002) 32 (2) Jurnal Hukum dan Pembangunan.

<sup>77</sup> "Wenang" ('authorise'/'authority') in Kamus Besar Bahasa Indonesia <n.d. <https://kbbi.web.id/wenang>> .

<sup>78</sup> H.R. Ridwan, Hukum Administrasi Negara (Raja Grafindo Persada 2013), 71.

<sup>79</sup> Nurmayanti, Hukum Administrasi Daerah (Universitas Lampung 2009), 26.

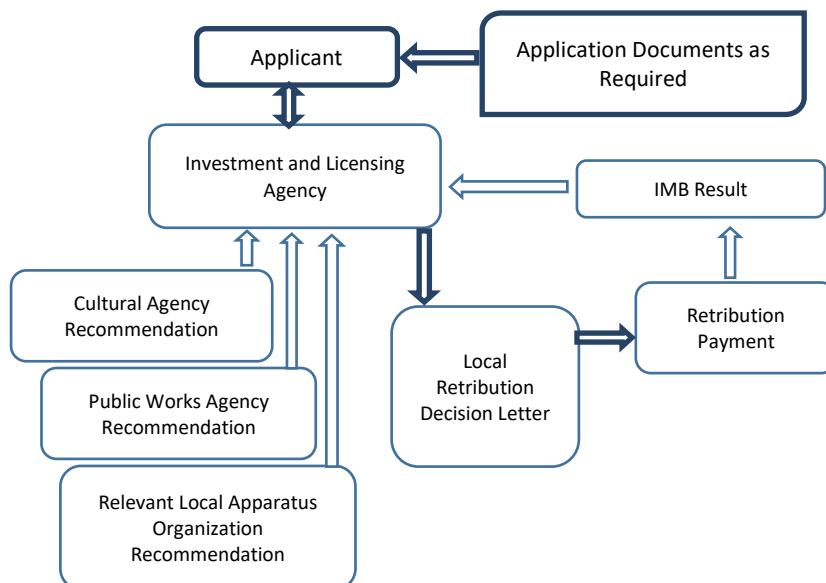


IMB is a government decision (State Administrative Decision). Article 52 Law No. 30 of 2014 asserts:

1. The conditions of the validity of the Decision are:
  - a. Designated by authorized officials;
  - b. Made in accordance with the procedure; and
  - c. The substance is in accordance with the object of the Decision.
2. The validity of the decision as stated in Section 1 is based on the stipulation of laws and regulations and AUPB.

The provisions clearly mandate that the first requirement of a government decision's validity is the authority. Therefore, the government organs which can issue the license are the ones with the inherent authority. The Investment and Licensing Service Agency of Yogyakarta City is the agency issuing the license. The Cultural Agency of Yogyakarta City, the Cultural Agency of DI Yogyakarta, and BPCB are the agencies producing the recommendation, so is the Public Works, Housing, and Settlement Are of Yogyakarta City, particularly concerning the issuance of IMB. It is obvious that the roles are more likely related to the fulfilment of the license issuing procedure. As stated by the Local Regulation of Yogyakarta City No. 2 of 2012, the recommendation from the agencies is required. Concerning IMB, their positions are the recommendation granter (legal opinions).

Figure 1. The Issuing Procedure of IMB in PDMP Yogyakarta City<sup>80</sup>



It is our opinion that uncertainties persist in licensing authority distribution. A unitary licensing system has not yet existed. It is obvious how local governments interpret

<sup>80</sup> Processed from various sources.

the regulations differently. There is no clear-cut licensing SOP. There are also uncertainties between the role of central and local governments, particularly their authorities. Subsequently, BPCB is always intervened. There are also parties arguing that licensing process of Cultural Heritage Building is the same as that of ordinary buildings. Nonetheless, it is important for the government and those managing cultural heritage to have a deeper understanding of economic, political, and social aspects of cultural heritage management.<sup>81</sup>

#### **5. The License is Given although the Building Modifications are against the Moral Rights of the Creator and the Basic Principles of Designated Cultural Heritage Preservation**

Cultural Heritage Building restoration in Yogyakarta City refers to Local Regulation No. 6 of 2012 on Preservation of Cultural Heritage and the Gubernatorial Regulation of the Special Region of Yogyakarta No. 23 of 2013 on Cultural Heritage Preservation. According to article 23 of Gubernatorial Decree of DI Yogyakarta No. 62 of 2013, a Cultural Heritage Building or Structure restoration can be performed by the owner and/or the party controlling it after obtaining restoration license from the Government, the Local Government, City/Regency Government in accordance with their authority, and recommendations from the Cultural Heritage Council (DWB).

In making recommendations, the DWB tolerates architectural design modification as dictated on Local Regulation of the Special Region of Yogyakarta No. 6 of 2012. Feasibility and technical studies must be performed to examine to which extend the modification could be and is allowed to be done as well as by which means and methods. Article 40, Section 3-6 of Local Regulation No. 6 of 2012 classifies Cultural Heritage Building and Structure into Class I (the restoration regulation is very strict and very limited; 80% authentic), Class II (very strict but limited layout modification is possible; at least 50% authentic), and Class III (strict scrutiny and the modification of element and layout is possible; maximum 50% authentic). To decide if it could be modified, the Cultural Agency of DI Yogyakarta refers to regulations and actual conditions of buildings or structures. If the existing conditions have changed significantly then the modification would be allowed; if it was still intact it would be preserved. (Usually, the most important consideration is the

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<sup>81</sup> William Logan, 'Cultural Diversity, Cultural Heritage and Human Rights: Towards Heritage Management as Human Rights-based Cultural Practice' (2012) *International Journal of Heritage Studies*, 1-14.

facade (the front side) of the building.) Essentially, if the Cultural Heritage Council gives the recommendation, authorized agencies will produce license.

Among many cultural heritage buildings in Yogyakarta, there are those whose architectural work has been totally adapted or modified. It illustrates how easy the license is granted by agencies—which eventually lead to the demolition and/or alteration of original design. It also reveals a unitary system and procedure operating system have not yet existed. More problematically, relevant agencies interpret regulations differently, particularly about modification limitations.

#### **6. The Arguments to Modification License of Architectural Work of Designated Cultural Heritage Buildings Has Maintained the Balance between Moral and Economic Rights of the Creator**

The legal regulation on architectural works exists on article 40, point (1) letter h of Law No. 28 of 2018 on Copyright. It asserts that architectural work is one of the creations protected by law. The legal definition of article 40-point (1) letter h explains "architectural works" includes the physical appearance, layout, blueprint, technical image, and model or mock-up.<sup>82</sup>

Moral Rights are non-transferable or unable to be diverted, as stated on the Article 5 of Law No. 28 of 2014 that Moral Rights as defined on the Article 4 are the rights embedded eternally to the creator to:

- a. Include or exclude his/her name on the copy of his/her creation which is used in public;
- b. Use his/her original name or alias;
- c. Modify his/her creation in accordance with the propriety in society;
- d. Change the title or sub-title of his/her creation; and
- e. Retain his/her rights in case there is a distortion, mutilation, modification to his/her work, or things inflicting a loss to his/her dignity or reputation.

Economic rights are the creator's rights to enjoy the economic benefits from his/her creations. The regulation on Copyright Law gives discretion for a creator to transfer his/her interest in the creation to other people due to the transferable nature of economic rights. The actualization of the creator's moral and economic rights is very important to guarantee protection to the creator (author) of a work expressed through art, literary, computer program, or portrait works.<sup>83</sup>

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<sup>82</sup> The legal definition of article 40, sec. 1 of Law No. 28 of 2014 on Copyright.

<sup>83</sup> Zulvia Makka, 'Aspek Hak Ekonomi dan Hak Moral dalam Hak Cipta' (2016) 1 (1) Jurnal Akta Yudisia, 3.

This research shows many Cultural Heritage Building owners still believe Cultural Heritage status as something to be afraid of. Many assume the value will decrease. Some others believe it will be hard to sell or to modify the house. Moreover, public thinks there is no significant consequences or incentives from the government. The government is not thought of as *bersembodo* (do their responsibility), as they often forbid the Cultural Heritage utilization yet provide no other alternatives.<sup>84</sup> To support the economic rights of the Cultural Heritage Building owners, the government has regulated that the cultural heritage buildings are not subject to Land and Building Tax (PBB) (Article 77 Section 3 letter c of Law No. 28 of 2009 on Local Tax and Retribution).

For the informants, one of the important things about a cultural heritage is the benefit value.<sup>85</sup> Contrarily, the government often forbids several Cultural Heritage utilization concepts due to the differences in understanding the preservation concept. There are those who see that Cultural Heritage is not allowed to be modified at all and the utilization must follow its initial function. On the other hand, there are those who believe cultural heritage building can be adjusted so the owner can get benefit.

Essentially, the utilization of cultural heritage building is not forbidden. It must however follow the requirements in line with the main objectives of the preservation. According to Article 85 Section 1 of Cultural Heritage Law, the utilization of Cultural Heritage is allowed for educational, tourism, social, religious, technological, and cultural purposes. If the modification applied, the construction should still maintain the architect's moral rights by retaining the building's characters and authenticity. The adaptation of cultural heritage will then balance the creator's/owner's moral and economic rights.

Therefore, two problems arise. On the one hand, in practice, there are those putting emphasis on moral rights (pro-preservation party). Consequently, the original architectural style is retained, particularly the authentic facade. On the other hand, the stakeholders often overlook that moral rights embedded on the Cultural Heritage Buildings must be balanced with the economic rights. The buildings can still be used and, if needed, can be optimally supported and facilitated by relevant institutions. For instance, the cultural heritage area, such as Kotagede, Imogiri, etc., can be used for educational, historical, and economic tourism purposes. However, such cultural

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<sup>84</sup> Eko Suryo Maharsono (The Chief of Cultural Heritage Agency of Yogyakarta City), interviewed by authors.

<sup>85</sup> Eko Suryo Maharsono (n 84).

heritage area faces problems, e.g., lack of parking area, which occurs due to the fact that it is an old area planned and built-in accordance with the past conditions. In our opinion, the local government should facilitate the area by building a parking lot. It could as well empower the locals. Tourists will more likely hire pedicab, *andong*, or (rent a) bike than walking. Moreover, the local government can facilitate and mentor the locals (to improve their economy through selling authentic local culinary or souvenir) and home industries (e.g., the government can help market the silver products of Kotagede). Without having to alter the authentic characteristic or the facade of the cultural heritage building, it would result in the balance between moral and economic rights of heritage's architectural works. Of course, nurturing a legal culture requires the involvement of all stakeholders, including law enforcement, the community, professional associations, legal education institutions, and community members<sup>86</sup>, in this case the preservation of cultural heritage buildings.

#### **E. Conclusion**

The licensing authority to the cultural heritage building adaptation has not yet had a unitary system because each local government agency has different standard operating procedure and interpretation to the regulations. There are differences of opinion regarding the authority to permit the alteration of architectural works of cultural heritage buildings that have been stipulated. Permits for the restoration of cultural heritage buildings are obtained not through a building permit but through BPPM (Licensing and Investment Service). These permits include restoration permits, adaptation permits, and development permits, especially for revitalization and utilization. There are two kinds of adaptation permits: IMB (building permits) and restoration permits. IMB is available through the BPPM, with recommendations from the City Culture Office, Provincial Culture Office, and Public Works Office. The Municipal Culture Office and the Provincial Culture Office look at it from a design and architectural standpoint, while the Public Works Office looks at it from a more general standpoint, including materials and construction. Permits for the restoration of cultural heritage buildings are under the authority of the Licensing and Investment Service of Special Region of Yogyakarta.

The application to the City Licensing Service makes no distinction between ordinary buildings and Cultural Heritage Buildings. For cultural heritage buildings, the licensing

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<sup>86</sup> Kuku Santiadi, 'Expanding Access to Justice Through E-Court in Indonesia' (2019) 1 (1) Prophetic Law Review, 75.

service involves the municipal culture office and the provincial culture office to provide recommendations. In addition, there is vagueness in authority between local and central government (BPCB). In fact, the license is still granted although the adaptation is against the principles of adaptation and cultural heritage preservation, e.g., by destroying or demolishing the authentic building.

Permits are granted even though changing the shape of the building is contrary to the moral rights of the creator and the basic principles of preservation of cultural heritage buildings that have been stipulated. Of the many Cultural Heritage Buildings in the city of Yogyakarta, based on the data obtained, there are adaptations and even total changes to the architectural work of the Cultural Heritage Building designers by tearing down the original buildings. Most architects and creators of architectural works in cultural heritage buildings and their heirs do not understand that they have economic rights and moral rights over architectural works in buildings. As a result, there is no balance between moral and economic rights on the architectural works of the cultural heritage buildings. The moral rights are still retained as proven by the fact that, whenever a modification is to be applied, the permission from the building owner is still considered. However, in terms of economic rights, there is still vagueness in the regulation of cultural heritage building adaptation.

We suggest there should be a special measure from the local government so that there is legal certainty in each relevant agency holding the authority to issue adaptation license to cultural heritage building. Policies also should be formed by the regional government, both provincial and district/city, with strict legal certainty. Awareness is urgently needed among all those who control and/or own cultural heritage; that is cultural heritage can be used, but preservation should take precedence. The moral rights and economic rights of creators of architectural works should be balanced by policies established by provincial and district/city regional governments.

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