

# THE RIGHTS AND OBLIGATIONS OF THE STATE IN THE RESTORATION OF CULTURAL HERITAGE: A REVIEW ON INTERNATIONAL LAW AND THE PRACTICE OF INDONESIA

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## Abstract

*This article will focus on Indonesia's effort based on international law to restore its cultural heritage. The problem about cultural heritage retention in international law is always related to two conflicting interests. On one hand, there are many developed states that try to keep abundant cultural heritages from all over the world. On the other hand, there are developing states that try to protect and even restore their cultural heritage during post-independence period. Indonesia is one of developing states that possess abundant cultural heritage. Unfortunately, Indonesia has not been able to fully maximize its right of restoration that is recognized in international law.*

## I. INTRODUCTION

In international law, restoration of cultural heritage is increasingly recognized and its practice is appreciated. Restoration of cultural heritage is related to the heritage which was taken in colonial era<sup>1</sup> as well as heritage which was moved through illicit export.<sup>2</sup> Here are several facts that become the basis of those things. First, in the World War II, Hitler had ambition to build a big museum in Linz that contains best cultural heritage in the world.<sup>3</sup> A Department was even built to prevent and retain the cultural heritage that came from other states; *Einsatzstab*

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<sup>1</sup> The removal of cultural heritage, thus resulted in countries that fall victim to it as early as possible to make national legislation to make the export of heritage objects became illegal. Such practices undertaken by Turkey in 1874 and Egypt in 1879. cf. Craig Froster, *International Law and the Protection*, (New York: Routledge, 2010), p. 134.

<sup>2</sup> Craig Froster, *Ibid.*, p. 161

<sup>3</sup> Which he said mainly from Europe, Hitler is a figure adored classical art. But on the other hand Hitler showed hostility towards modern or contemporary artwork. Bonnie Czeglédi, *Crimes Against Art: International Art and Cultural Heritage Law*, (Toronto: Thomas Reuters Canada Limited, 2010), p. 121.

*Reichsleiter Rosenberg* was established to steal and manage the best cultural heritage from Europe and the rest of the world.<sup>4</sup>

There is common understanding among states to restore Nazi's stolen objects in the World War II to Jewish people and other states, with the adoption of *1998 Washington Conference Principles on Nazi Confiscated Art* and followed by *Parliamentary Assembly of the Council of Europe* announced similar resolution.<sup>5</sup> Regulations regarding Restoration mechanism clearly accommodate Restoration to individual or communities and tend to proactively push Restoration.<sup>6</sup>

Second, the common understanding can be seen from the establishment of *1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property*. Third, the common understanding can also be seen from restoration effort done by United States of America, Australia, and United Kingdom in restricting illicit cultural heritage import from Iran with the intention to restore them. This happened after Iraq became the victim of cultural heritage stealing and smuggling when United States' leader invaded its territory in First Gulf War 1990 and Second Gulf War 2003.<sup>7</sup> Restoration of cultural heritage in Iraq's case is supported by United Nations through United Nations Security Council Resolution No. 1438.<sup>8</sup> It proves the attention

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<sup>4</sup> Conference on Jewish Material Claims Against Germany dan United States Holocaust Memorial Museum, "Cultural Plunder by Einsatzstab Reichsleiter Rosenberg: Database of the Art Objects at the Jeu de Paume," <http://www.errproject.org/jeude-paume/>, accessed on 18 April 2015.

<sup>5</sup> Mechanism set includes alternative forms of dispute resolution outside of filing a case to court. Lihat: Jos Van Beurden, *The Return of Cultural and Historical Treasure: The Case of Netherland*, (s.l.: KIT Publisher, 2001), p. 23.

<sup>6</sup> *Ibid.*

<sup>7</sup> At first the regime of protection of heritage objects made by Iraq is one of the most effective and stringent in the world, so little is transferred either legally or illegally from Iraq. However, by doing the occupation by Iraq against Kuwait, the Coalition had moved a lot of cultural heritage from Kuwait to museums or similar institutions in Iraq. With the start of the Coalition which seeks to liberate Kuwait from occupation of Iraq, the more cultural heritage of Iraq and Kuwait are in danger. Craig Forrest, *Op.Cit.*, p. 219. Cf. Irak, *Antiquities Law No. 59 1936 amandment No. 120 1974 and No. 164 1975*, Article.3.

<sup>8</sup> The resolution invites member states of the United Nations to "take appropriate steps to facilitate the safe return to Iraki institutions of Iraki cultural property... including by establishing a prohibition on trade in or transfer of such items and items in respect

of international society to the restoration cultural heritage case.

Indonesia has a very strong interest to protect its cultural heritage inside its territory as well as ask for restoration of cultural heritage which have been exported illicitly. This interest is reasonable, considering that Indonesia has abundant natural resources, human resources, cultures, and sustained and deep human-natur interaction which result to beautiful nature and complex cultures.<sup>9</sup>Indonesia's rich cultures have amazed other countries in the world. Consequently, there are foreign entities which intent to own Indonesia's cultural heritage and bring it to their origin states. In addition, high demand from certain states leads to high stealing and smuggling of Indonesia's cultural heritage.

There is an unfortunate fact for Indonesian people; in 2013, four 1,000 years old gold artifacts that are collection of Museum National were lost. Those four collections are crescent plaque with script on it, Naga Mendekam plaque, Harihara plaque, and closed container made of gold.<sup>10</sup> It is suspected that those artifacts were moved abroad to be aucted.<sup>11</sup> That case is only one of many cases of smuggling. On the other hand, many Indonesia's cultural heritages have been taken away by Dutch colonizer in colonial era.<sup>12</sup> This writing will explain about Indonesia's effort based on international law to restore its cultural heritage abroad; Indonesia has not utilized its right of restoration to the maximum level.

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*to which a reasonable suspicion exists that they have been illegally removed...*" United Nations Security Council, Resolution 1483, S/Res/143 (2003), 22 May 2003. Cf. Barbara T. Hoffman, *Op.Cit.*, p. 58.

<sup>9</sup> UNESCO (a), *Indonesia: State Programming Document 2014-2017*, (Jakarta: s.n., 2014), p. 14.

<sup>10</sup> Ana Shofiana Syafitri, "Diduga Artefak Emas Sudah di Tangan Penadah di Luar Negeri," [http://megapolitan.kompas.com/read/2013/09/17/0913554/Diduga.Artefak.Emas.Sudah.di.Tangan.Penadah.di.Luar.Negeri?utm\\_source=news&utm\\_medium=bp-kompas&utm\\_campaign=related&](http://megapolitan.kompas.com/read/2013/09/17/0913554/Diduga.Artefak.Emas.Sudah.di.Tangan.Penadah.di.Luar.Negeri?utm_source=news&utm_medium=bp-kompas&utm_campaign=related&), accessed on 31 January 2015.

<sup>11</sup> *Ibid.*

<sup>12</sup> Jos Van Beurden, *Op.Cit*, p. 31

## II. INDONESIA IS NOT A STATE PARTY OF 1970 UNESCO CONVENTION

The first reason why Indonesia has not fully utilized its right of cultural heritage restoration is because Indonesia is not the state party of 1970 UNESCO Convention on the Illicit Import, Export, and Transfer of Ownership of Cultural Property (it will be called UNESCO Convention 1970 later on) whereas UNESCO Convention 1970 has important value to restoration and preservation of cultural heritage. UNESCO Convention 1970 is not the first document which discusses about protection of cultural heritage but it establishes important basic provisions about minimal protection of cultural objects and comprehensive provisions about restoration of cultural heritage.<sup>13</sup> UNESCO Convention 1970 also has important value to promote and encourage cooperation among states with same objective and understanding, formation of ethics code, formation of agreed customs and ethics, softened behavior, abolishment of immoral acquisition certificate by museum and collectors, meeting of archeological principles, history, and art and collection trade.<sup>14</sup>

Another principle in UNESCO Convention 1970 is cultural heritage exchange between State parties because that way can support intercultural understanding, cultural tolerance, and peace from each State party to all nations in the world.<sup>15</sup> That exchange is only justified as long as its objective is for the sake of science, culture, and education in order to level up human's civilization knowledge, enrich cultural life of all people, and inspire respect from each other and nations' appreciation.<sup>16</sup> Another provision upon cultural heritage exchange is attachment of all possible information related to origins, history

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<sup>13</sup> The first convention in discussing the protection of objects of cultural heritage is 1954 *Den Haag Convention on the Protection of Cultural Property during Armed Conflict*. Irini A. Stamatoudi, *Cultural Property Law and Restitution: A Commentary to International Conventions and European Union Law*, (Northampton: Edward Elgar Publishing Limited, 2011), p. 63.

<sup>14</sup> *Ibid.*, p. 64.

<sup>15</sup> Craig Forrest, *Op.Cit.*, p. 167.

<sup>16</sup> "...for scientific, cultural, and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual-respect and appreciation among nations." UNESCO (b), *Convention on the Means of Prohibiting and Preventing Illicit Import, Export, and Transfer of Ownership of Cultural Property 1970*. 4 November 1970, second preamble.

and tradition, because only these can generate full appreciation to the cultural heritage.<sup>17</sup>

The appreciation and recognition upon cultural heritage obliges State parties to go against all forms of cultural heritage illicit import and export and to appreciate each other's cultural heritage. The protection in UNESCO Convention 1970 is explained in Article 1. The Convention also provided definition's limitation that protected cultural heritage has essential characteristics based on religion or secularism, archeology, pre-history, history, literature, art, or science.<sup>18</sup> Every state has the right to determine by itself in its jurisdiction about what cultural heritage is.

State's right to set status of cultural heritage is regulated in Article 4. Article 4 explains the state's exclusive right to determine what cultural heritage is for it.<sup>19</sup>The fundamental meaning of Article 4 is to set what objects controlled by states, national cultural heritage status, export limitation, and restoration claim. A state can limit cultural heritage export; even the cultural heritage from other states as long as their existence in its territory is legitimate.<sup>20</sup>This regulation can be seen from character c, d, and e of Article 14: through mission which receives origin state's consent, free exchange agreement, act as grant or through legitimate purchase.

According to UNESCO Convention 1970, purchase can be raised by a State if cultural heritage status, export prohibition, obligation to attach export certificate, proof of cultural heritage provenance, compensation, and restoration costs have been implemented. Furthermore, only cultural heritage whose export and import go against the provisions in UNESCO Convention 1970 can be subject for restoration. This can be provisions in Article 3, 6, and 7 in UNESCO Convention 1970.

The primary provision from UNESCO Convention 1970 lies at

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<sup>17</sup> "...its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting". *Ibid.*, third preamble.

<sup>18</sup> *Ibid.* art. 1.

<sup>19</sup> Michael L. Dutra, "Sir, How Much Is That Ming Vase in the Window? Protecting Cultural Relics in the Peoples' Republic of China", *Asian-Pacific Law and Policy Journal* Vol.5 (2004), p. 65.

<sup>20</sup> Craig Forrest, *Op.Cit.*, p. 171.

Article 4. It states that import, export, or ownership shift of cultural heritage which go against the provisions in UNESCO Convention 1970 shall be counted as illicit by State parties.<sup>21</sup> Indicator of illicit export/import in UNESCO Convention 1970 is vulnerable to multi-interpretations; one of them is the provision that stipulates illicit actions are determined by each State.<sup>22</sup> However, there is a common perspective that Article 3 solely refers to Article 6 about the nature of illicit export and Article 7 about the nature of illicit import.<sup>23</sup>

Import and export regime regulated in the Convention has several weaknesses as follow: import of illicit cultural heritage export is not always considered as illicit; prevention of cultural heritage acquisition is limited to several institutions and cannot be implemented to individual acquisition and the prevention is only valid as long as the State's national law regulates it and as long as the importer State regulates it; importer State can sell illicit imported cultural heritage to origin State where the cultural heritage comes from.<sup>24</sup>

Import and export provisions UNESCO Convention 1970 do not prevail retroactively so that all cultural heritage imported from other States before UNESCO Convention 1970 for both States cannot be limited or claim of restoration cannot be conducted according to the Convention.<sup>25</sup> However every State can give looser provisions. For instance, it can limit cultural heritage import and enable restoration from State that has not been the party UNESCO Convention 1970.<sup>26</sup>

In spite of its weaknesses, UNESCO Convention 1970 still provides advantages for its State parties. On this matter, there are several advantages for Indonesia if it will become the State party of UNESCO Convention 1970. First, mechanism to submit claim of

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<sup>21</sup> "...the import, export and transfer of ownership of cultural property effected contrary to the provision adopted under this Convention by the States Parties thereto, shall be illicit." UNESCO (b), *Op.Cit.*, art. 3. cf. Craig Foreest, *loc. cit.*

<sup>22</sup> Craig Foreest, *Op.Cit.*, p. 176.

<sup>23</sup> *Ibid.*, p. 177.

<sup>24</sup> Cultural heritage of the Summer Palace were purchased at high prices by some citizens of the People's Republic of China after the offering from France. *Ibid.*, p.162.

<sup>25</sup> Pasal 7 b (ii) stipulates that the restoration can be conducted "after the entry into force of of this Convention in both States concerned."

<sup>26</sup> Craig Foreest, *Op.Cit.*, p.183.

restoration will be clear, namely through diplomacy as stipulated in Article 7 UNESCO Convention 1970. This clarity can be used as basis of diplomacy for Indonesia. UNESCO Convention 1970 is a strong foundation for States to restore their cultural heritage that have been stolen or exported abroad.

Second, there will be legal certainty for process of cultural heritage restoration that was exported illicitly after UNESCO Convention 1970 prevails in Indonesia. It means that all cultural heritage that are exported with certificate from Ministry of Education, Culture, and Tourism since UNESCO Convention 1970 prevails in Indonesia will be considered as illicit or illegal.

Third, export certificate upon cultural heritage as regulated in Article 68 paragraph (2) and export prohibition upon cultural heritage as regulated in Article 109 of Law No.11 of 2010 on Cultural Heritage will be recognized by other States which are the State parties of UNESCO Convention 1970. With this recognition, the absence of certificate when cultural heritage imported from other States will also be considered as illicit import. Moreover, government from other States can cooperate to initiate restoration.

Fourth, Indonesia can cooperate with other State parties to trace stolen and illicitly exported cultural heritage after Indonesia becomes State party of UNESCO Convention 1970. This is in accordance with Article 10 paragraph (a) in UNESCO Convention 1970. Article 10 demands States parties to oblige their museums to or similar institutions to register all cultural heritage. Such provision is related to Article 13 paragraph (a) and (b) UNESCO Convention 1970 where State parties have obligation to prevent ownership shift that can cause cultural heritage illicit imports.

Therefore, Indonesia's participation in UNESCO Convention 1970 will be beneficial for documentation of Indonesia's cultural heritage abroad. Besides, Indonesia can also establish bilateral and regional cooperation with other State parties.<sup>27</sup>All of these effort aim to

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<sup>27</sup> Options for cooperation in bilateral and regional database included in the recommendations for the implementation of the UNESCO Convention. This is to achieve transparency in the trade of cultural heritage. Lihat: UNESCO (c), Resolution Meeting of State Parties to UNESCO Convention on the Means of Prohibiting and

transparent cultural heritage trading among State parties.

Fifth, Indonesia can cooperate with other State parties to conduct training, raise awareness, build capacity in order to face threats of illicit cultural heritage import and export which will be assisted by UNESCO. In this case, State has to provide fund but the activities will be carried out by UNESCO Secretariat. It is adjusted in accordance to Article 5 paragraph (f) and Article 10 that explains education becomes important part to raise awareness about the danger of illicit cultural heritage import and export.

Unfortunately, UNESCO Convention 1970 is not retroactive so that all cultural heritage moved abroad before the Convention cannot be restored according to the framework in the Convention. It should be emphasized that Article 7 paragraph (b) (ii) sets out that States need to submit restoration of cultural heritage request through diplomatic path.

### **III. THE RELEVANCE TO SEEK FOR RESTORATION THROUGH INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE RETURN OF CULTURAL PROPERTY TO ITS STATES OF ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION**

The second reason why Indonesia has not fully utilized the right of cultural heritage restoration is based on the fact that Indonesia has never submitted brief of cultural heritage restoration to Intergovernmental Committee for Promoting the Return of Cultural Property to its States of Origin or its Restitution in case of Illicit Appropriation (ICPRCP). ICPRCP's duty is to assist member States of UNESCO to deal with cultural heritage which are not covered in any International Agreements related to Restoration.

Initially, the objectives of ICPRCP establishment is to address cultural heritage problem that were moved based on colonialization history, foreign occupation, or illicit appropriation before UNESCO Convention 1970; assist the decolonization process by restoration of cultural heritage for reconstruction of cultural heritage in origin

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Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, C70/15/3.MSP/RESOLUTIONS, Mei 2015, p. 5.



States.<sup>28</sup>In its development, ICPRCP's mandate also encompasses cultural heritage trading.<sup>29</sup>

Eligible restoration request is request upon cultural heritage whose characteristics are mentioned in Article 3 paragraph (2) of ICPRCP Statute, namely important cultural heritage for a State that were moved because of colonialism, foreign occupation, and illicit appropriation.<sup>30</sup>

Another requirement upon submission to ICPRCP by a State is the brief is submitted after unsuccessful bilateral international agreement by two States; related to Article 7 of UNESCO Convention that requires claim of Restoration through diplomatic path.<sup>31</sup> On this matter, ICPRCP can only facilitate, give recommendations, and frame cooperation to formation of bilateral international agreement. There is no legal force which obliges case submission to ICPRCP<sup>32</sup> or upon ICPRCP's recommendations.<sup>33</sup>Tendency to do bilateral negotiation comes from the perspective that every claim of restoration is unique and can only be addressed on the case per case basis.<sup>34</sup> Document by ICPRCP is legal instrument that gives no normative obligation.<sup>35</sup>

Furthermore, Indonesia can submit case to ICPRCP (an institution

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<sup>28</sup> Alessandro Chechi, Alessandro Chechi, *The Settlement of International Cultural Heritage Disputes*, (Oxford: Oxford University Press, 2014), p. 103.

<sup>29</sup> *Ibid.*

<sup>30</sup> "any cultural property which has a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO and which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation." UNESCO (d), Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its States of Origin or its Restitution in case of Illicit Appropriation, 20 C/Resolution 4/7.6/5, 28 November 1978, art. 3 section (2).

<sup>31</sup> Intergovernmental Committee for Promoting the Return of Cultural Property to its States of Origin or its Restitution in case of Illicit Appropriation (a), Standard Form Concerning Request for Return or Restitution, CC-86/WS/3, 30 April 1986.

<sup>32</sup> State has to first communicate the application towards *Director-General UNESCO* attached with relevant documents. Director-General would forward the application to ICPRCP afterwards. UNESCO(d), *Op.Cit.*, art. 9 section (1).

<sup>33</sup> Alessandro Chechi, *Op.Cit.*, p.103.

<sup>34</sup> *Ibid.*,

<sup>35</sup> UNESCO (e), "Mediation and Conciliation," <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/mediation-and-conciliation>, accessed on 10 April 2015.

formed on the basis of UNESCO Convention 1970) as long as Indonesia is not the State party of UNESCO Convention 1970 and as long as Indonesia’s law does not accommodate restoration of cultural heritage.

Case submission to this institution is also relevant because there has not been any clear provision about restoration of cultural heritage which were taken in colonial era according to International Agreements, including in UNESCO Convention 1970 or Den Haag Convention 1954, as well as bilateral regulations between Indonesia and the Netherlands. Therefore, one of the ways that can be done by government is through ICPRCP. The following table shows many problems of cultural heritage restoration between Indonesia and the Netherlands. Moreover, it also shows the lack of initiative from Indonesian government:

Table 1. List of Cultural heritage Successfully Restored from the Netherlands<sup>36</sup>

Year	Institution of Involved Party in the Netherlands	Cultural heritage	Restoration Explanation
1977	<i>National Museum of Ethnology</i> , Leiden. Some restorations come from <i>Rijksmuseum</i> , Amsterdam	243 Lombok treasures to Museum Nasional, Jakarta. Including Negarakertagama Book.	It is not solely caused by cultural reason by it is gift for Indonesia. <sup>1</sup> The result of diplomacy with Dutch government. It was restored on 200 <sup>th</sup> Museum Nasional’s anniversary. The result of diplomacy with Dutch government. <sup>2</sup>
1978	<i>National Museum of Ethnology</i> , Leiden.	Prajnaparamita Statue to Museum Nasional, Jakarta.	It was restored when Queen Juliana visited Jakarta in 1978. The result of diplomacy with Dutch government. Dikembalikan pada saat kunjungan. <sup>3</sup>
1977	Museum Bronbeek, Arnhem	Horse saddle, spear (Kyai Rondhan), and Prince Diponegoro’s robe to Museum Nasional, Jakarta.	The result of diplomacy with Dutch government. <sup>4</sup>

<sup>36</sup> The restoration from 1977 until 2009 referred from: Jos Van Beurden, *op.cit*, p. 53. The 2015 restoration based on an interview with Peter B.R. Carey on 7 March 2015. cf. Werner Kraus and Peter B.R. Carey, “A Lost Pusaka Returned: Kanjeng Kyai Cakra,” (publication booklet from Aku Diponegoro: Sang Pangeran dalam Ingatan Bangsa, dari Raden Saleh Hingga Kini Exhibition, Jakarta, 6 February-8 March 2015).

1977	Dutch Royal Family	Painting “The Arrest of Prince Diponegoro” by Raden Saleh to Museum Nasional, Jakarta.	Present from Dutch Royal Family to Indonesia. <sup>5</sup>
2003	Dutch Government Institution	Two Hindu Statues to Indonesia.	Restoration from Dutch government, based on illicit import. <sup>6</sup>
2005	<i>Wereldmuseum</i> , Rotterdam	150 puppets to Indonesia.	Initiative from <i>Wereldmuseum</i> and Rotterdam government as present for Indonesia. The political reason is to strengthen sister city relations with Jakarta. <sup>7</sup>
2008	<i>Order of Friar Minor Capuchin</i>	Eighteen ethnographic objects to Museum in Sintang.	<i>Order of Friar Minor Capuchin</i> cooperate with Tropenmuseum to restore them to Kalimantan Barat because of practical reason; difficulty to keep them. <sup>8</sup>
2009	<i>Order of Friar Minor Capuchin</i>	Thirty three ethnographic objects to Museum Pusaka, Nias.	Voluntary restoration from <i>Order of Friar Minor Capuchin</i> . <sup>9</sup>
2015	Baud Family	Odyssey cane of Prince Diponegoro (Kanjeng Kyai Cakra), to Museum Nasional, Jakarta.	Voluntary restoration from Baud Family. The reason was because it is irrelevant for Baud Family to keep it and it coincided with Prince Diponegoro’s award exhibition.

The Netherlands is a State with the most frequent contact with Indonesia since colonial era so that there are many transfers or export on historical objects and cultural objects from Indonesia. As the result, restoration of cultural heritage from the Netherlands is one of the most prominent problems.

Case submission to ICPRCP does not require Indonesia to be State party of UNESCO Convention 1970 so long as Indonesia is Member State of UNESCO. The settlement also aims to restore cultural heritage which was taken in colonial era; where UNESCO Convention 1970 does not have any provision about it. Submission through ICPRCP can only be done by State according to Article 3 Rules of Procedure ICPRCP. It fits with situation and provisions in Indonesia; there is need to restore cultural heritage which was taken in colonial era as well as

Law No. 11 of on Cultural Heritage which regulates that only State can submit restoration. Therefore, Indonesia is supposed to utilize ICPRCP to restore its cultural heritage.

Nevertheless, restoration of cultural heritage between Indonesia and the Netherlands has never been settled through ICPRCP whereas the most prominent problem between Indonesia and the Netherlands lies upon historical and cultural objects taken in colonial era; it is proven by seeing successful restoration including Prajnaparamita Statue, horse saddle, cane, and odyssey cane of Prince Diponegoro taken in colonial era.

Therefore, Indonesia is still able to restore its cultural heritage although Indonesia is not State party of UNESCO Convention 1970 and although there is a vacuum of legal regulation upon restoration of cultural heritage in Law No. 11 of 2010 on Cultural Heritage. The settlement through ICPRCP should be considered by Indonesia. However, Indonesia should also prioritize its membership in UNESCO Convention 1970 in order to achieve more comprehensive legal protection to address illicit import and export of cultural heritage.

One of restorations that have been successfully facilitated by ICPRCP is restoration of Boğazköy Sphinx from Germany to Turkey. Initially, Turkey submit assistance application to ICPRCP in 1987<sup>37</sup> and it was included in Recommendation No. 2 in result of 25<sup>th</sup> Session General Conference which invite Germany and Turkey to do mutually beneficial bilateral negotiation in order to settle the case.<sup>38</sup>

A moment after the recommendation, in May 2011 Germany and Turkey reached an agreement by concluding memorandum of understanding to do restoration. This case highlights the important role of ICPRCP and shows that origin State has right to bring restoration claim to international forum to get support and public attention where ICPRCP bridges that objective.

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<sup>37</sup> UNESCO (f), General Conference Twenty Fifth Session, 25 c/91, 16 June 1989, p. 3.

<sup>38</sup> “Expresses its sincere hope that the pending Turkish request with regard to the sphinx will be solved amicably and notes with satisfaction the willingness of both parties to find a mutually acceptable solution.” *Ibid.*, p.1.

#### **IV. LAW NO. 11 OF 2010 ON CULTURAL HERITAGE**

The third reason is Law No. 11 of 2010 on Cultural Heritage has not clearly regulated about restoration of cultural heritage. Law No. 11 of 2010 on Cultural Heritage only has one article related to restoration, namely Article 20:<sup>39</sup>

Restoration of Indonesian cultural heritage that is outside territory of Unitary State of the Republic of Indonesia conducted by overnment according to ratified international agreement, bilateral agreement, or transferred directly by the owner, except otherwise contracted consistent with applicable law.

Based on that regulation, it can be understood that government has right to submit restoration claim. Nonetheless, this provision lacks of clarity about the mechanism and to whom the restoration shall be submitted by Origin State. UNESCO Convention 1970 Article 7 paragraph (b) stipulates that the possible measure for Origin State to submit restoration request is through diplomatic path. The same article also mentions that Origin State has to prepare strong evidence for restoration claim, incidental payment, and compensation fee upon restoration. Clear provisions about restoration included in UNESCO Convention 1970 have not existed in Law No. 11 of 2010 on Cultural Heritage.

Furthermore, Law No. 11 of 2010 on Cultural Heritage is not very clear in phrase “according to ratified international agreement”. It is related to the fact that Indonesia has not participated in UNESCO Convention 1970 which is the primary International Agreement regulating restoration of cultural heritage. Thus, that particular provision can be seen as futile.

Article 20 Law No. 11 of 2010 on Cultural Heritage mentions that restoration can be done through direct transfer from the owner abroad. This article acts as Indonesian government’s basis to rely on voluntary restoration from the owner abroad rather than do active effort to submit restoration claim. This condition is shown by restoration of Prince Diponegoro’s cane. In that case, government did have the initiative

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<sup>39</sup> Indonesia, *Cultural Heritage Law*, Law No. 11 of 2010, Lembar Negara No. 130, Tambahan Lembar Negara No. 5168., art. 20.

to encourage restoration but rather government relies on sympathy from foreign entity that wanted to restore Prince Diponegoro's cane to Indonesia.

The consequence of unclear Article 20 Law No. 11 of 2010 on Cultural Heritage is Ministry of Education, Culture, and Tourism, Ministry of Foreign Affairs, and Ministry of Finance flings responsibility of restoration to each other.<sup>40</sup> This also proves that restoration of cultural heritage has not been the priority of Indonesian government.<sup>41</sup>

Moreover, Law No. 11 of 2010 on Cultural Heritage regulates that stipulation is done through registration one by one. Stipulation according to Article 1 number 17 is status granting cultural heritage on objects, building, structure, location, or geographical space by regency/city government based on Cultural Heritage Expert Team.<sup>42</sup> There are four steps within the stipulation process. The system that is used is by registering historical and cultural objects one by one to get status of cultural heritage.

The first step is by means of application. It is applied to: (1) discoveries, (2) search results, and (3) items which has been owned or controlled by an individual or government. According to Law No.11 of 2010 on Cultural Heritage Cultural Heritage regulates that every individual who discover an item that is presumed to be a cultural heritage must report it to the authority or police department within the period of 30 days upon the discovery.<sup>43</sup> The second step is registration. According to Article 28 and Article 29, registration is an obligation of the owner.<sup>44</sup> Registration can be done by: (1) every individual over the item in their possession to the district/city government, (2) district/city government over item that is controlled by the State, and (3) representative(s) of the Republic of Indonesia that is situated abroad over item that is located outside of Indonesian territory.

The third step is assessment conducted by Cultural Heritage Expert Team to verify the properness of an item to be labelled as cultural

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<sup>40</sup> Based on an interview with Junus Satrio Atmodjo on 6 June 2015.

<sup>41</sup> *Ibid.*

<sup>42</sup> Indonesia. *Op.Cit.*, art. 1 section 17.

<sup>43</sup> *Ibid.*, art. 23 section (1).

<sup>44</sup> *Ibid.*, art.28-29.

heritage according to Article 31.<sup>45</sup> The fourth step is according to the recommendation from the Cultural Heritage Expert Team, within the period of 30 days the district/city government will issue the status of cultural heritage according to Article 33 paragraph (1).<sup>46</sup> Afterwards, the prohibition to move or export out of Indonesian territory will only be applied to items which have been issued a status of cultural heritage. This prohibition is regulated with the minimum criminal sanction of 6 months of imprisonment and the maximum of 10 years of imprisonment, and/or the maximum fine of Rp 1.500.000.000 according to Article 109.<sup>47</sup>

This strict regulation on the issuance of cultural heritage status is not followed by an equally strict means of enforcement. It is evident from the high number of potential items of cultural heritage which are left abandoned after their discovery. For instance, in the District of Magelang and Temanggung in Central Java, where there are dozens of cultural heritage which are left unattended and stranded by the street.<sup>48</sup> The discoveries are made unintentionally when locals are excavating land; discoveries such as ancient golden statues, bronze statues and the likes which are found in Dusun Gandulan.

On the other hand, the cultural heritage Preservation Office<sup>49</sup> argues that saving those items are not always a part of their responsibility, yet there needs to be a sense of awareness from the local citizens and the district/city government.<sup>50</sup> Meanwhile, the local government and local people are not aware of how to maintain and report those items.<sup>51</sup> Therefore, the locals who made a discovery sold it to a third party for their personal gains. Considering that, it is not surprising to find that the movement and export of historical and cultural items or cultural heritage of Indonesia often takes place in this state.

The first advantage is that this system allows the means of preservation that is referred in Law no. 11 of 2010 regulates that to be more focused on items that are worthy to be preserved; which is already lawfully

<sup>45</sup> *Ibid.*, art.31.

<sup>46</sup> *Ibid.*, art.33 section (1).

<sup>47</sup> *Ibid.*, art 109.

<sup>48</sup> "Benda Bersejarah Dibiarkan Tak Terurus," *Kompas* (15 March 2015), p. 9.

<sup>49</sup> Balai Pelestarian benda cagar budaya

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

acknowledged to be cultural heritage. The second advantage is that the target of preservation becomes more specific hence the allocated fund for preservation can be used in a more correct manner. Considering the limited fund that the government has in terms of cultural heritage preservation, this mechanism is suitable with the current circumstance.<sup>52</sup>

The frailty of the system lies within its single file registration system which renders legal protection unavailable for some items with historical or cultural value. This condition leaves makes preservation or legal protection uncertain for the following items: (1) findings which are yet to be registered, (2) items which are in the registration process but is yet to be issued a status of cultural heritage, and the most vulnerable (3) historical or cultural items which are yet to be found or excavated.

The previous elaboration indicates that the single-file registration system results into an absence of restoration practices in Indonesia that is conducted according to the mechanism that is regulated in 1970 UNESCO Convention; it states the prohibition of items which are already issued a status as cultural heritage to be exported from Indonesia. This indicates the frailty of the single-file registration system; if the government leaves their guards down and the relevant item remains left without a status of cultural heritage and is moved out of Indonesia, then the government will not be able to be protected by the law if they are putting forth restoration claims.

Cultural heritage in Indonesia adopts the deposit system over the the cultural heritage retention.<sup>53</sup>This refers to every item, be it those originating from Indonesia and other states, if it already gains the status of cultural heritage, then it is basically banned from being exported to states outside of Indonesian territory.<sup>54</sup> Therefore, even for every cultural heritage originated from outside of the State, they will be detained and banned from being moved outside of Indonesian territory once it is already inside.

This deposit system is applied as means to prevent any movement or export of cultural heritage outside of Indonesian territory. Although it is

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<sup>52</sup> Based on an interview with M. Mitu Prie and Junus Satrio Atmodjo on 6 May 2015, that the conservation budget is limited.

<sup>53</sup> Based on an interview with Junus Satrio Atmodjo on 6 June 2015.

<sup>54</sup> *Ibid.*



implied that Indonesia adopts cultural internationalism by attempting to detain as much cultural heritage within its borders, it is not necessarily true. This system is put in place as preventive means to protect cultural heritage which originates from Indonesia.

Article 68 paragraph (2) regulates that cultural heritage, be it partially or wholly, is prohibited from being moved outside of Indonesian territory, except with authorization of the Minister of Education, Culture, and Tourism.<sup>55</sup> In terms of authorization, the purpose of export can only be conducted with the underlying purpose of research, cultural promotion, and/or exhibition.<sup>56</sup> This regulation is also followed by a strict criminal sanction according to Article 109; minimum sanction of 6 months of imprisonment and the maximum of 10 years of imprisonment, and/or the maximum fine of Rp 1.500.000.000 according to Article 109.<sup>57</sup>

The duty of providing the authorization is in line with the regulation written in Article 6 of the 1970 UNESCO Convention. Although Indonesia is yet to be a participatory State. The Article in specific dictates that exporting States must introduce a certificate which contains the claim that the exporting of a certain cultural heritage has been authorized, and only such export is deemed legitimate.<sup>58</sup> Furthermore, State must forbid any means of export of cultural heritage which is not accompanied by such certificate.

As a consequence, such certification is granted with the authorization from the Minister of Education, Culture, and Tourism. But in reality, such means has not yet been executed.<sup>59</sup> Not to mention that the regulation regarding authorization or certification is still obscure because the mandate from Article 68 of Law No 11 of 2010 on Cultural Heritage to establish a Government Regulation in regards to such authorization is yet to be manifested.

The existence of export certificate or such authorization is important, especially when it is breached it can become the basis for the State to justify the Cultural Heritage Restoration; that the relevant item has been

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<sup>55</sup> Indonesia, *Op.Cit.*, art. 68 section (2).

<sup>56</sup> *Ibid.*, art.68 section (1).

<sup>57</sup> *Ibid.*, art.109.

<sup>58</sup> *Ibid.*, art.6 (a).

<sup>59</sup> Based on an interview with Junus Satrio Atmodjo on 6 June 2015.

taken outside of Indonesian territory and is against the existing law. It is also unfortunate that Indonesia is yet to become a participatory State of the 1970 UNESCO Convention. Hence, the export authorization of cultural heritage in any means will not be acknowledged by other States as what is accommodated in the 1970 UNESCO Convention.

In Law No 11 of 2010, Indonesia adopts the deposit system over the the cultural heritage retention.<sup>60</sup>This refers to every item, be it those originating from Indonesia and other states, if it already gains the status of cultural heritage, then it is basically banned from being exported to countries outside of Indonesian territory.<sup>61</sup>Therefore, even for every cultural heritage originated from outside of the State, they will be detained and banned from being moved outside of Indonesian territory once it is already inside.

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<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> Cultural internationalism means that everyone has a vested interest in the preservation and enjoyment of heritage objects, wherever located, of any geographic or cultural source. Based on this view, cultural heritage does not have a special link with a particular country or region, These type of objects form the world heritage and belong to mankind. John Henry Merryman, "Two Ways of Thinking about Cultural Property" *American Journal of International Law* 80 (1986). p. 831. cf. Craig Forrest, *Op.Cit.*,p. 408. Cf. Irini A. Stamatoudi,*Op.Cit.*,p. 20.

<sup>63</sup> Indonesia, *Op.Cit.*,art. 68 section (2).

<sup>64</sup> *Ibid.*,art.68 section (1).

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The existence of export certificate or such authorization is important, especially when it is breached it can become the basis for the State to justify the Cultural Heritage Restoration; that the relevant item has been taken outside of Indonesian territory and is against the existing law. It is also unfortunate that Indonesia is yet to become a participatory State of the 1970 UNESCO Convention. Hence, the export authorization of cultural heritage in any means will not be acknowledged by other States as what is accommodated in the 1970 UNESCO Convention.

According to the 1970 UNESCO Convention in regards to request of Restoration, there is a State Obligation to prove the provenance of the cultural heritage, as well as the Obligation to provide payment of compensation to the owner of cultural heritage. In the 1970 UNESCO Convention, the State Obligation to provide payment of compensation over the Restoration done by buyers of good faith or entities who have a legal basis over the the relevant item. In the same Article there is also a regulation concerning State Obligation to prepare documentation or

<sup>65</sup> *Ibid.*, art.109.

<sup>66</sup> *Ibid.*, art.6 huruf (a).

<sup>67</sup> Based on an interview with Junus Satrio Atmodjo on 6 June 2015.

verification for the sake of the Restoration.

In Law No. 11 of 2010 on Cultural Heritage, there has not been any regulation concerning the funding that needs to be prepared to fulfill the demands of compensation over Restoration. Meanwhile in reality, even if Restoration is conducted under the initiative of foreign citizens, sometimes they imply a demand for compensation. The Minto Stone could serve as an appropriate study case for this. The Minto Stone originated from Indonesia, yet it has been stored by the descendants of Lord Minto in Scotland. In that particular case, the family implies the need for payment of compensation for the Restoration to take place.

In regards to compensation, it is important to highlight the importance of the fund for Restoration, and which entity needs to prepare the fund. Mainly, government must focus on cultural heritage which belongs to the State because it is a part of State property hence its Restoration also needs to involve the Minister of Finance. Up until this point, the Minister of Finance still consider the Restoration as a financial issue. Oftentimes, Restoration is not conducted due to the limited funding which is needed in the process.<sup>68</sup>

In regards to the obligation to prove the provenance and documentation by the State, Law No. 11 of 2010 on Cultural Heritage is also yet to regulate that. Ideally, government must always be ready with any forms of data regarding cultural heritage or at least items with historical and cultural value which is located outside of Indonesia. This practice was once carried out in the 1970s as previously elaborated. During that time, Indonesia possesses a list of items which are included in the Restoration efforts; resulting into the Restoration of Prajnaparamita Statue, horse saddle and spear which belonged to Prince Diponegoro from Netherlands.

As of today, Indonesia has yet to conduct any study with the purpose of collecting data regarding historical or cultural items and/or any cultural heritage which is located outside of Indonesia and is worth an effort of Restoration. Such study is absent from the Ministry of Education, Culture, and Tourism, and even the Ministry of Foreign Affairs. It

<sup>68</sup> *Ibid.* This was also confirmed through interviews with M. Mitu Prie who mentions that the Indonesian government as not having "ammunition" to ask restoration of cultural heritage.

will be better if the government prepares to study and collect data regarding items located outside of the state, which as a consequence will proactively strive for their Restoration.

Another thing that needs to be criticized and regulated better in Law No. 11 of 2010 on Cultural Heritage is related to the deposit system. Ideally, the export prohibition of cultural heritage also regards its provenance. The requirement for export written in Article 68 paragraph (1) only covers the purpose of research, cultural promotion, and/or exhibition. It is yet to regulate export under the basis of Restoration to other States. Supposedly, if the relevant item is originated from another State, an exemption of export needs to be authorized due to the bilateral agreement with that State.

Therefore, it will not close the opportunity for Indonesia to conduct Restoration of cultural heritage to its origin State. It is true that Indonesia aims to adopt this system to ensure the security of its cultural heritage, but if it is implemented in too extreme a manner, it will not distinguish Indonesia from what is referred to as developed importing State which adopts cultural internationalism.

Based on the elaboration, it is suggested that Law No. 11 of 2010 on Cultural Heritage provides detail regarding the Restoration of Cultural Heritage with the basis of Article 20. Especially regulations regarding (1) distribution of responsibility between the Ministry of Education, Culture, and Tourism, Ministry of Foreign Affairs, and/or Ministry of Financial Affairs, (2) funding, (3) studies and documentation of Cultural Heritage located outside of Indonesian borders, and (4) export exemption with the purpose of Restoration to Other states. These issues can be regulated in a separate Article within the Undang-Undang or to be put into detail in a Government Regulation which is yet to be established.

## **V. INDONESIAN GOVERNMENT LACKS INITIATIVES IN REGARDS TO CULTURAL HERITAGE**

The fourth reason is the lack of initiatives from the government to conduct Restoration of cultural heritage from territories outside of Indonesia. There are several examples of Cultural Heritage<sup>69</sup> which is yet

<sup>69</sup> The term cultural heritage in the sub-chapter is consistent with the terminology used from the beginning of the writing, not the cultural heritage as specifically stipulated by

to be returned by Netherlands to Indonesia; despite several existing discourse of Restoration. The following is a list of the relevant items which were taken during the era of colonialization and is still in the possession of the Netherlands. There has not been any claims of Restoration over these items which is initiated by the government of Indonesia.<sup>70</sup>

Table 2: Cultural Heritage Which Is Yet To Be Returned By Netherlands<sup>71</sup>

<b>Related institutions in Netherlands</b>	<b>Cultural Heritage</b>
Rijksmuseum, Amsterdam	The painting of Mohammad Toha.
Tropenmuseum, Amsterdam	Eight statues of Borobudur Temple's Buddha heads.
Rijksmuseum, Amsterdam	One statue of Borobudur Temple's Buddha head.
National Museum of Ethnology, Leiden	Two statues of Borobudur Temple's Buddha head.
Location unknown	Three ceremonial knife owned by Prince Diponegoro

Firstly, there has been discourse revolving around the Restoration of the painting of Mohammad Toha in 2009.<sup>72</sup> Yet, the Rijksmuseum has not found the painting's original location in Indonesia that is authentic and can be deemed as its provenance. As a consequence, the Restoration process is yet to take place.

Secondly, in regards to the eight statues of Borobudur Temple's Buddha heads which is located in Tropenmuseum. These statues hold an important meaning for Indonesia because, originating in the 9th century, they are a part of the Borobudur Temple which is the largest Buddhist temple in Indonesia.<sup>73</sup> In 2003, the Director of Tropenmuseum claimed that the acquisition of those statues is not to be equated with illicit trading as what is rumored. Hence, he deems that there is no room to discuss the Restoration of those statues. In 2011, the stance of Trop-

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the Cultural Heritage law of 2010.

<sup>70</sup> Jos Van Beurden, *Op, Cit*, p. 55.

<sup>71</sup> *Ibid.*, p. 66.

<sup>72</sup> *Ibid.*, p. 57.

<sup>73</sup> *Ibid.*, p. 57.

penmuseum remains the same.<sup>74</sup>

Thirdly, in regards to the two statues of Borobudur Temple's Buddha heads which is located in the National Museum of Ethnology. The problem lies on the fact that there has not been any claims by Indonesia for their restoration. If such claim is put forth, according to Engelsman as the Director of the National Museum of Ethnology, it will be dealt with in a serious manner.<sup>75</sup>

Fourthly, regarding one statue of Borobudur Temple's Buddha head which is located in Rijksmuseum. Taco Dibbets, its Director, creates a statement in 2011 saying that if Indonesia wishes for Restoration, a precise location of origin in Indonesia needs to be identified.<sup>76</sup>In his perspective, issue of Restoration must not be dealt with by generalization, but with case per case investigation. In addition, the Rijksmuseum implies that Indonesia must provide a reason for each cultural heritage as to why their Restoration is needed.

Fifth is concerning Prince Diponegoro's ceremonial knives. These knives hold an important meaning because they are the heritage of an influential person in the Java War. In the culture of Java, ceremonial knife is an object with magical power to protect, heal, and vengeance.<sup>77</sup>The main reason which becomes a hindrance for the Restoration is the undetermined location of those knives in Netherlands. Nevertheless, there are presumptions that they are located at Bronbeek in Arnhem; yet it is not confirmed because they are suspected to be moved for a number of times.<sup>78</sup>

Hence, according to the facts, the need for Indonesia to conduct studies regarding the cultural heritage for the purpose of Restoration and identification of its location in Netherlands becomes more urgent. Furthermore, Indonesian government also needs to have initiatives to file claims for Restoration.

As a comparison, one of the study case of Cultural Heritage which

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<sup>74</sup> *Ibid.*, p. 58.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*, p. 59.

<sup>78</sup> *bid.*, p. 61 .

is yet to be restored is the Minto Stone which is located in England.<sup>79</sup> The aforementioned cultural heritage holds an important meaning because they are an inscription originating from the Majapahit Kingdom, yet was taken away by Stamford Raffles to serve as a gift to Lord Minto which at that time, was in Java. After being taken to Scotland, that inscription was believed to continuously bring peril and resulted into the death of Lord Minto. Afterwards, it remain stored on the grounds of the Minto family's house and is passed on for generations.

In the control and possession of the Minto family, the inscription is believed to continuously bring disasters to them; there has been discourse of Restoration to the government of Indonesia. Therefore, it is evident that it was the Minto family who initiated the Restoration. The party which was involved in the attempts of Restoration in 2006 was the General Director of History and Ancient Times and the negotiation was held with the family through the Cultural Attache in England. The requirements of Restoration at that time was payment of compensation<sup>80</sup> for the Minto family and the requirement for Indonesian government is to keep the Restoration process a secret to ensure its success. The main reason is to minimize the number of parties involved and the interest of other parties.

Unfortunately, the information was leaked in Indonesia along with publication in mass media that reached the Minto family and British government. Eventually, the Minto family lost trust to the Indonesian government and Indonesia lost its chance at the Restoration of the Minto Stone. On the other hand, the British government has established the stone as a part of their national cultural heritage; its Restoration to Indonesia becomes less guaranteed. Indonesian Government, through its embassy in London, eventually refuses to provide payment of compensation and the Restoration effort was discontinued.<sup>81</sup>

Oftentimes, the settlement of cases concerning Cultural Heritage is conducted by selling them to gain financial benefits.<sup>82</sup> The Ministry of

<sup>79</sup> Based on an interview with Junus Satrio Atmodjo on 6 June 2015.

<sup>80</sup> Based on electronic mail from Peter Carey with the author dated 5 June 2015.

<sup>81</sup> The Ambassador of Indonesia for United Kingdom was then Marty Natalegawa. *Ibid.*

<sup>82</sup> This case related to heritage objects coming from the bottom of the sea from Bangka, which does not fall within the scope of this writing. However, it is important to



Financial Affairs claim that they do not possess sufficient fund to send Cultural Heritage back to Indonesia; there are no interest to manage and facilitate the Restoration. Therefore, those items are auctioned so that the sales result can be added to State fund.

According to the elaboration, it can be seen that Indonesian government does not put the issue of Restoration on its top priority. Non-jurisdictional factors which has been becoming a reoccurring hindrances are (1) diffusion of responsibility between related ministries; (2) considering Restoration as a financial burden which is not profitable for the State because it is not viewed from the cultural perspectives.<sup>83</sup> Legal concerns revolving around the preservation of Cultural Heritage according to Junos Satrio Atmodjo is mainly about the obscure heritage policy which can not be used by the Ministry of Foreign Affairs to conduct a good diplomacy, or for the Ministry of Financial Affairs to provide funding to facilitate Restoration.<sup>84</sup>

The stances of institutions in Netherlands is also worthy of notice; most are still reluctant to open up the opportunity of Restoration in regards to this problem. For instance, a requirement which overburdens Indonesia that is demanded by Netherland is for Indonesia to build a qualified museum; which, according to Junus Satrio Atmodjo, is often politicized to prevent any initiatives of Restoration; not only focusing on the cultural value.<sup>85</sup>

Meanwhile, a supporting factor of the previous Restoration is that they are done during a certain momentum of event or other occurrences. For example, the Restoration of Prajnaparamita Statue in 1978 was a part of Queen Juliana's visit to Indonesia. Another example is the Restoration of Prince Diponegoro's spear was conducted on the same time of Aku Diponegoro Exhibition which was held on February-March 2015. This proves that the practice of Restoration is incidental, sometimes it is not due to cultural reasons, yet as a demand for a certain

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underlined the attitude of the Indonesian government in matters concerning restoration of cultural heritage. This case occurred in 2009, where restoration of Indonesian cultural heritage was intended. Information based on an interview with Junus Satrio Atmodjo on May 6, 2015.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

event of occurrences; there has not been any clear mechanism according to the pattern which is evident in Indonesia's practices.

It is evident that the government needs to be more proactive in requesting for Cultural Heritage Restoration, not just those which are located in Netherlands but also those in other States. It is better to treat all of them as isolated cases, when there is still no legal framework to regulate the Restoration nationally nor internationally. Furthermore, based on the opinion of Junus Satrio Atmodjo, there needs to be studies to document and gather data regarding the Cultural Heritage which needs to be claimed by the government, yet priorities also need to be set in regards to the meaning that those items hold to Indonesia's history and culture.

On the other hand, the market demand for antiquities and items with artistic values is increasing in developed States which becomes a fuel for illicit exports.<sup>86</sup> it is not sufficient to only strive for the Restoration of Cultural Heritage, the initial effort to prevent illicit export from the States of origin and to drive down the demand for those items must be undertaken. As an exporter developing State, Indonesia must adopt a more aggressive stance in dealing with the problem in this sector considering its importance in developing, reconstructing, personality, and the pride of the nations's culture. Indonesia must not succumb and let Craig Forrest's statement in the International Law and the Protection of Cultural Heritage continues to become a bitter reality: "try as they may, source States, as suppliers of cultural heritage, cannot control the demand side of the market. It is demand that controls the market..."<sup>87</sup>

## **VI. CONCLUSION**

Up until now, there are nine cases of Restoration between Indonesia and Netherland involving items which were taken during the era of colonialization. In practice, none of them has followed the mechanism that is set in the 1970 UNESCO Convention which are namely through (1) diplomatic filing for Restoration, (2) prove of provenance and (3) claiming any violation of exports based on Indonesian legal framework.

<sup>86</sup> Craig Forrest, *op.cit.*, p. 156.

<sup>87</sup> *Ibid.*

This condition derives from the fact that Indonesia is yet to become a participatory State of the convention and it involves Cultural Heritage which was taken during the era of colonialization, something which is yet to be regulated within the convention. The Restoration which have happened between Indonesia and Netherlands take place based on a framework of cooperation which is general in nature, without any clear lines of Rights and Obligations of each States according to the Cultural Cooperation Agreement in 1968. Meanwhile Law No.11 of 2010 on Cultural Heritage has yet to provide clear regulation concerning Restoration and is limited in range due to the limited legal protection that is given to the procedure of the issuance of status of Cultural Heritage. The obscurity within the regulation concerning Restoration and the absence of Government Regulation results into confusion and diffusion of responsibility between the ministries. The period of time between 1977 and 1978 was the apex of Restoration by Netherlands because of the initiatives from the government to be engaged in diplomatic talks with the government of Netherlands. Unfortunately, the government in the current context lacks initiatives and does not consider Restoration as a priority.

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