

From the Javanese Cultural Movement
Establishment of a "Monument Decree".

In the name of the Queen!

The Governor-General of the Netherlands-Indies,

To all concerned, Hail!

Let it be known:

That he, thinking it desirable to take measures to protect matters which are of great importance for the prehistory, history, art or palaeontology;

Heard the Council of the Netherlands East Indies and in compliance with the Peoples Council;

Has agreed and understood:

First: Clause 528 of the penal code for the Netherlands-Indies to be abrogated-

Second: To define the following regulations referring to the protection

of matters which must be deemed to have a high value for the prehistory, history, art or palaeontology.

Clause 1.

- (1) In this decree by monuments is meant:
- a. Immovables and movables, brought about by human hand, parts or groups of goods or remnants of those, which mainly are older than 50 years or which belong to a style period at least 50 years old and which are deemed to be of great importance for the prehistory, history or art.
 - b. Goods which, from the palaeontological point of view are deemed to be of great importance.
 - c. Grounds (plots) which show well-founded indications to contain matters as meant under a and b; land acquisition will be saved insofar they are provisionally or definitively inscribed into a register to be designated as public central monument register, initiated and kept up to date by the Head of the Arch. office.

(2) Are considered to be on a par with the items meant under a of the preceding clause and for that reason booked simultaneously, the movables and immovables which belong to it by their original or present destination as well as ^{lands} grounds of which the planning, buildings or general condition is or can be of immediate importance for the items mentioned in the preceding paragraph under a.

Clause 2.

(1) The Director of Education & Worship consults the relevant authorities with reference to contemplated registration of properties belonging to or administered by the State or by autonomous authorities.

(2) Items belonging to private persons can be registered either upon their own request or without request of the owners. In the latter case the Director of Ed. & W. notifies the owners or rightful claimant by registered missive or if necessary by telegram or otherwise through the intermediary of the relevant regent as regard Java and Madura or through the local civil servant, of the intended registration. The relevant party can protest to said Departmental Director within 3 months after date of notification.

If the owner or rightful claimant has no known address in the Netherlands-Indies and he has no proxy or if he is unknown, the notification will be published by convocation in the "Javasche Courant" and in one or more newspapers, if possible in the territory in which the object is situated.

The notification occurs twice with an interval of at least one month. In the latter case a notice of appeal must be given within 3 months after date of insertion of the latest convocation.

(3) If notice of appeal is given within the fixed date, advice from the Chairman of the Archaeological commission will be asked by the Director of Education and Worship, which advice, if the decision in first instance or higher appeal rests with the Government, will be handed over to Her.

(4) Such advice will also be asked and handed over to the Government if the Head of the Arch. Service or the director of Education and Worship can find no real motive in compliance with a request for registration.

(5) If, according to the director of Education and Worship, there is any risk of danger that the situation, concerning an object under consideration, will deteriorate considerably during the period that a proposal or a request for registration is under discussion, he can order a provisional registration in the public central monument register. This is valid for a period of 3 months, which period can be extended twice with the same duration. The provisional registration and the extension of the period are to be reported immediately to the authority administering the object, or to the owner or rightful claimant.

(6) Final registration takes place by order of the Governor General in so far as real estate, with appurtenances, is concerned and in other cases by the Director of Education & Worships's order. The final registration must be published immediately in the "Javasche Courant". At the same time the Authority administering the object or the owner or rightful claimant has to be informed.

(7) A request of annulment of a decision taken by the Director of E & W on the strength of one of the stipulations of this clause can be addressed, during a period of one year, by the owner or rightful claimant to the Governor-General.

(8) Gratis annotation of the final registration will be made by the recorder or other public servants in charge of keeping the said minute if a deed of ownership exists and as far as possible also on the original. The recorder or other functionary concerned will be informed of every registration by the Head of the Arch. Service.

Clause 3.

(1) Cancellation or a provisional or final registration in the public central monument register will be done by order of the

Director of Education and Worship (if he is responsible for the registration) and otherwise by order of the Governor-General.

(2) The directions under (2), (3), (4), (7) and (8) of the preceding clause also apply to this cancellation.

Clause 4.

(1) Damage, sustained directly by the owner or rightful claimant through registration of an object in the public central monument-register, will be compensated by the Government.

(2) Immediately after registration the G.G. tenders a compensation to the party concerned, if the owner or rightful claimant has sustained damage as meant in the preceding paragraph.

If this offer does not take place within 3 months, or if the party concerned is not satisfied with the tender, the compensation will be assessed by three experts, two of which will be nominated by each party and the third will be chosen by these two experts.

Clause 5.

(1) The owner or manager of a monument is obliged to keep this monument in a good condition.

(2) In case of negligence he can be summoned by the Dir. of Education and Worship, to carry out the works necessary for the upkeep within a period defined by this Head of the Department; he is bound to follow thereby the indications given by or on behalf of the Director of the Arch. Service.

(3) If the owner or manager fails to execute the works meant in paragraph (2), these can be carried out on behalf of the Government, whereupon the entire or partial costs will be claimed from the owner or manager.

(4) If the destination of a monument brings damage to or endangers the monument, it can be expropriated in the name of the Government, even without a preceding statement that expropriation for the general good is demanded.

(5) In that case the Head of the Arch. Service can order the immediate occupancy of the monument; thereupon he moves a motion of expropriation to the G.G. as soon as possible.

(6) After consulting the Dir. of Ed. & W. the G. G. orders or refuses the expropriation.

(7) The G.G. offers the owner or rightful claimant a compensation if expropriation is ordered.

If this offer doesn't take place within 3 months or if the party concerned isn't satisfied with the tender, the compensation will be assessed by three experts, two of whom will be nominated by each party and the third will be chosen by those two experts.

(8) If the expropriation is refused the monument will be restored immediately to the owner or rightful claimant, who will receive the direct compensation for the damage suffered, caused by the occupancy. The provision enacted by the preceding paragraph to ascertain the compensation, is applicable accordingly.

Clause 6.

(1) Without the permission of the Head of the Archaeological Service it is prohibited to export from the Netherlands-Indies: articles temporarily or finally registered in the public central monument register, or which are considered to be registered temporarily therein, in compliance with Clause 3, paragraph (2) as well as articles dating from the pre-Mohammed era even if they are not registered into said register.

(2) Without the permission of the Head of the Arch. Service, it is prohibited to repair, to destroy, to make alterations in the appearance or its destination, to withdraw immovables from a monument or to transport movables belonging to or forming a monument to another place.

(3) Said Head of Service can attach conditions to the permission.

(4) The supervision of the operations for which permission is granted rests with the Archaeological Service.

(5) At the written or telegraphic request of the Head of the Arch. Service, the concerning assistant-resident regarding Java and Madura and elsewhere the Head of the local authorities, instruct to remove, to prevent or to perform, if need be, at ex-

... of the contraveners, such matters which are undertaken or omitted without consent of said head of service, or performed, must undertaken or omitted, contrary to the conditions in virtue of paragraph (3).
Urgent cases excepted, this will not occur before the owner, rightful claimant or manager has been warned by or in name of said head of service.

(6) The head of the Arch. Service is qualified to instruct to detain and to return to their place of origin those monuments which, contrary to the provisions enacted by paragraph (1) or (2) of this clause, have been or will be transported to another location.

(7) The owner, manager or the rightful claimant of a monument admits the Head of the Arch. Service, the officials in his service appointed by him and other persons supplied with a written authorization by their department.
If admittance is denied after a written request, the person concerned can force an entrance by assistance of the assistant-resident regarding Java and Nadoere and elsewhere the head of the local authorities; with the exclusion of those parts of which entering is forbidden according to religious regulations or generally recognized religious ideas.

(8) At the request or in name of the head of the Arch. Service, the owner, manager or rightful claimant of a monument co-operates with the survey, designing, description and photographing.
In case of denial, the aid of the police can be enlisted, to enable the desired operation.

(9) The G.G. decides whether or not practice of agriculture or silviculture will be permitted on the sites designated as monuments.

Clause 7.

(1) In the case of conveyance of a monument, the owner or rightful claimant is bound to inform, at least 14 days in advance, the head of the Archeological Service of the intended conveyance.

(2) The person who loses or acquires a monument, is obliged, whether through intermediary of a civil servant or not, to give

notice of that deed within the time limit mentioned in paragraph (1), to the head of the Arch. Service; in the case of loss he must disclose under what circumstances it happened.

(3) All changes of property of a monument as well as its loss will be entered at the public central monument register.

Clause 8.

(1) The finder of a treasure, as to the effect of clause 587 of the civil code, which can be assumed to be a movable as laid down in paragraph (1) sub a or b or par (2) of clause 1 of this decree is obliged to inform immediately the regent, in so far Java and Madocra are concerned and elsewhere the head of the local authority in whose region the finder domiciles, which authority, in case of importance telegraphically, informs the head of the Arch. Service of this notification, stating the details which have come to his knowledge.

(2) Found objects, as meant in the preceding paragraph, as well as the finding-place the borderlines of which are to be indicated by the regent, insofar Java & Madocra are concerned and elsewhere the head of the local authorities, are assumed, solely by their finding, to be registered temporarily in the public central monument register. The directions of clause 2 par (5) are applicable to the above mentioned.

(3) The head of the Arch. Service can order, for account and at the risk of the Government, the forwarding of the found objects to his address in Batavia, in order to have them finally registered.

(4) Those treasures, as meant in the first par. can be expropriated on behalf of the Government, even without preceding explanation that expropriation is claimed for the general good. The provision laid down in clause 5, par (5) up to and incl. (8) applies to this expropriation.

Clause 9.

It is prohibited without written authorisation from the head of the Arch. Service, to execute excavations on matters as described in the first paragraph of clause 1 sub a and b of this decree.

Granting of the authorisation can be subject to conditions. Not fulfilment of these conditions can result in cancellation of the authorisation.

Clause 10.

Against decisions taken by virtue of clause 6, par (1) and (2) and clause 9, by the head of the Arch. Service, against the by virtue of clause 6 par (3) and clause 9 stated conditions and also against his directions by virtue of clause 5 par (2), interested parties can raise objections to the Director of Education and Worship, within 4 months after date of dispatching the letter from said official.

The Dir. of E & W decides after having heard the advise of the Chairman of the the Archeological Commission.

Clause 11.

For execution of this decree, owners, rightful claimants and managers of monuments are given further directions through government regulations, to ensure the preservation of those monuments and also with reference to the public central monument register.

Clause 12.

(1) Breach of the provisions, laid down by clause 6 par (1) or (2) or clause 9, not fulfilment of the obligation enacted by clause 7 par (1) or (2) or clause 8 par (1) and also not fulfilment of the conditions stated by virtue of clause 6 (3) or clause 9, will be punished with detention of, at the most, 3 months or a fine of, at the most, fivehundred guilders.

(2) If a punishable fact, as stated in the preceding paragraph, has been committed by or on behalf of a corporate body, penalty action will be brought and conviction pronounced against the administrators or representatives in the Netherlands-Indies.

(3) The objects, as meant in clause 6 par (1), clause 7 (1) and (2), clause 8 (1) and clause 9, can be confiscated in so far as they belong to the convicted.

Clause 13.

In addition to the persons generally in charge of the tracing of penal offences, the following persons are likewise in charge of tracing breaches of the rules of this decree, each within his jurisdiction:

- a. The head and the officials of the Archeological Service.
- b. The personnel of the Forestry Service, from the rank of superintendent.
- c. The officials of civil public works, in charge of the local supervision of the execution of works.

Clause 14.

This decree can be quoted under the heading of "Decree of Monuments".

Third:

This decree comes into operation as from the thirtieth day after its publication and lest nobody feigns its ignorance, it will be published in the Statute Book of the Netherlands-Indies.

Done at Tjibanas, June 13th 1931.

De Graeff.

P. J. Gorke
Secretary.

Published June 30th 1931

Secretary

P. J. Gorke

(Decree of the Governor-General of
June 13th 1931 no. 19)

(Statute-Book 1931 no. 238).

EXPLANATORY MEMORANDUM

a) General.

Introduction.

To an ever increasing extent the necessity prevails to make provisions for the preservation on behalf of the State of matters, which are considered to be of great importance for the pre-history, the history, the art or the palaeontology of the Netherland-Indies. In other countries too the care of the authorities extends itself over likewise matters, which are generally indicated as monument. One compares the detailed thesis of J. H. Frederiks, entitled "Monumentstatute" printed in 1912.

For that matter, regarding nature reserves, a legal regulation included in Statute Book 1916 no 298, exists. The now proposed arrangement concerns immovable matters and is in the first place of consequence for the highly important, partly even world-famous, antiquities, which are still discovered every year.

As far as the well-known Hindu-Javanese antiquities are concerned, the preservation is ensured to a large extent by the activities of the Arch. Service (see the Instruction in Supplement no 7932) and of the Arch. Commission (Statute Book 1927 no 442), but, as regards these antiquities, a legal regulation can do good service too, while furthermore, among other things, all kinds of buildings from later periods must be taken into account - a kaboeptan, kraton, mosque, Chinese temple or house, church - of which mutilation or loss would bring about great cultural damage. Furthermore antiquities - movables - from different periods can be of great importance for the history or art of these countries, so that their preservation must also be valued. In the past years it finally turned out that the territory of the Netherlands-Indies comprises valuable remains of a pre-historical culture, which probably stretched away to a great part of S.E. Asia. Conservation of these remains is also very desirable because of their value for science. The same holds regarding important palaeontological discoveries, the significance of which is emphasised lately.

Although Government protection of historical, cultural and pala-

ontological monuments may justify the establishment of regulations, it is necessary to restrict to the minimum infringement of the owners rights on matters which are considered for protection. In the draft the indispensable formalities have been reduced to the simplest, while in case of damage of material interests, indemnification will be promised (clause 4). In the nature of the case only direct damage will be compensated and not damage caused by disappointment in expectations.

The definition of a Monument.

As in the legislation of many other countries, the word "Monument" has been chosen for simplicity's sake, for those matters which have to be protected, although etymological grounds can be put forward against it. In clause 1 of the draft ordinance the definition of monument explicitly excludes the nature reserves. In order to avoid confusion over the question whether ruins can be considered to be monuments, the draft ordinance clearly mentions "remnants" of matters which originally were not products of natural processes, although ruins can be considered to be a partial result of natural processes. In order to be declared a monument by regulation in the pertinent register, there are other conditions to fulfil. The monument must be of great importance for history, art or palaeontology and be of a certain age. Every definition concerning this last item is, by the nature of the case, more or less arbitrary. On the one side it is undesirable to submit the work of living or recently deceased contemporaries to the instructions pertaining to monuments, although it is not advisable to exclude it entirely, on the other side the time limit can not be extended too far in connection with the influence of the tropical climate. A limit of 50 years is thought desirable by the experts. With regard to this there is however a period of transition; it may be possible that a building is set up in a traditional style which is older than 50 years, but which building itself has not yet reached that age. It is clear that protection of such a building can be desirable. The employed wording makes provisions for these cases, while further is mentioned "on the whole" older than 50 years, in order to include under the regulations such matters which are partly older, partly younger than

50 years.

But even this does not cover every aspect. In the first place it must be possible to submit to regulations detailed objects, f.i. in the neighbourhood of a temple, as well as the surrounding grounds, which often are an essential part of the building as a whole, as f.i. the ground between the former ring-walls of a Hindu-Javanese temple. It must be possible to issue prohibition on building or planting on such grounds, make arrangements as to drainage or similar provisions as are required for the situation of the proper monument, or their preservation. It will not always be necessary to prevent all building or planting, more than once it will be enough to prohibit building or planting which exceeds a certain height.

The aspects mentioned are foreseen in clause 1 (2) of the ordinance which states that objects and grounds as mentioned, are to be entered in the relative register with the proper monument. Further it must be possible to enter into the register grounds on which are no proper monuments, but which are supposed to contain important objects. (clause 1 (1-c)).

Registration. By inscribing in a special register a matter becomes a monument. Only with regard to discovered treasures this is anticipated by the definition in clause 7, in which these treasures are considered to be provisionally registered immediately.

Furthermore provisional registration can take place by order of the Dir. of Ed. & W., if there is any fear of destruction, abduction etc., during the registration procedure, while the final registration of immovables and all pertaining matters happens by order of the G.C. and for movables of lesser importance by order of the Dir. of Ed. & W.

The ordinance takes into account the interests of owners and managers of matters, which are eligible for monument registration.

Obligation of owners and managers of monuments.

These are embodied in clause 5 & 6 of the draft. They cannot exactly be called burdensome. The normal maintenance of a monument stays with the owner or manager; restoration, destruction and re-

movable are controlled by the Head of the Arch. Service.

The interest of the owners or managers will of course be considered when compounding the necessary conditions. However by requiring special permission one can avoid spoiling (f.i. by painting) the exterior of a monument. For movables this stipulation is of no account, for immovables the application will seldom occur.

The asking of consent for transfer of the as monument declared movables from which only antiquity dealers can be granted a permanent exemption, is somewhat inconvenient. The regulation is inevitable if one wants to keep an eye on the monuments, while furthermore must be considered that the number of objects of this nature to which great importance must be attached, will never be very large.

Clause 528 of the penal code, prohibiting export from the Netherland Indies of antiquities dating from the pre-Islamic or adjacent period cannot entirely prevent the export of historically or artistically important matters, in the first place because, with the increasing tourist traffic, the checking of often rather small objects is insufficient, while other important objects from another period are excluded from the regulation. An enlargement of the prohibition clause is considered; in the meantime the declaration as monument of the most important matters with the adhering regulation, can be of great consequence.

As regards the regulation concerning the maintenance and the resulting financial obligations of the Government on one side and the owners or managers of monuments on the other side it is, in view of the momentary scanty experience not desirable to settle by ordinance this intricate matter, but to have this established in as far as needed by order of the Government, for which clause 10 provides.

Discovered treasures.

On the whole the directions included in clause 7 legally sanction the existing practice as regards discovered treasures of antiquarian value. Its acquisition never gives rise to difficulties. Nevertheless it is suggested to facilitate immediate expropriation, consequently without preceding utility affidavit (see clause 133 (3) I.S.).

Clause 5.

The herein mentioned stipulations all tend to leave the maintenance of a monument to the owner or manager. For all other actions permission from the Arch. Service is needed, which must also control the executed restorations etc. In the nature of the case it will be possible to leave its execution to the owner or manager. Against those who, in bad faith, deny entrance to a monument to the legally appropriate persons, or who are unwilling to permit the necessary documentation (measurement, description, picture etc.), severe measures, necessary for achieving the purpose, are inevitable.

Clause 6.

Regarding movable matters, it will be absolutely necessary for the Arch. Service to stay informed about transfer of property, while there must be the possibility to oppose transfer to unwanted persons or bodies. The third paragraph tends to prevent the sale to tourists, as they in the first place can be expected to try to export the acquired matters.

The criterion lies in the question whether the person lives here during 2 years or not.

Exceptions, e.g. acquisition on behalf of a collection, are tolerated.

Clause 10.

The interest of the owners of monuments demands the possibility of opposition against decrees of the Head of the Arch. Service. The Dir. of Ed. & M. is the proper authority for this, He is considered to ask advice, also in the owners' interest, of the Chairman of the Arch. Commission.

Clauses 11 & 12.

No explanation is necessary. Regarding clause 11 it is stated that, in connection with the subject mentioned in the general explanation, in particular an arrangement has been kept in mind concerning the obligations of owners and managers of monuments for the

daily maintenance.

Clause 13.

Serves to guarantee an as real as possible application of the regulations of the ordinance by qualifying some groups of persons to investigate contraventions.

Not seldom the antiquities can really be found in desolate regions far from the police officer, so that it is advisable to give all the assistance possible to the functionaries who have to stay by virtue of their office in the likewise remote regions.

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