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## UNESCO'S ROLE REGARDING THE PROTECTION OF CULTURAL OBJECTS RECEIVING SPECIAL PROTECTION

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### ABSTRACT

*The purpose of this writing is to determine UNESCO's role in protecting cultural objects that receive special protection by formulating a problem, namely: what is UNESCO's role in protecting cultural objects that receive special protection? The type of research used in this research is normative juridical. The data source used in this research uses secondary data. Qualitative analysis was carried out with an empirical starting point. The results of this research show that there are still limitations in safeguarding and regulating cultural heritage. Cultural heritage preservation is very important. This is intended to protect the historical, cultural and knowledge values contained therein. Illegal acts cannot actually be tolerated, because they can threaten the existence of cultural heritage. Therefore, the author believes that currently the world really needs security assistance and clear regulations to maintain the existence of cultural heritage. Of course, this can be realized if the 2003 UNESCO Convention is ratified.*

Tujuan dari penulisan ini adalah untuk mengetahui peran UNESCO terhadap perlindungan benda budaya yang mendapat perlindungan khusus dengan mengangkat rumusan masalah yaitu: bagaimana peran UNESCO dalam melindungi benda budaya yang mendapat perlindungan khusus? Jenis penelitian yang digunakan dalam penelitian ini adalah yuridis normatif. Sumber data yang digunakan dalam penelitian ini menggunakan data sekunder. Analisis kualitatif dilakukan dengan titik tolak empiris. Hasil penelitian ini menunjukkan bahwa masih terdapat keterbatasan dalam pengamanan dan pengaturan warisan budaya. Pelestarian warisan budaya sangatlah penting. Hal ini dimaksudkan untuk melindungi nilai-nilai sejarah, budaya dan pengetahuan yang terkandung di dalamnya. Perbuatan ilegal sebenarnya tidak bisa ditoleransi, karena dapat mengancam keberadaan warisan budaya. Oleh karena itu, penulis meyakini saat ini dunia sangat membutuhkan bantuan keamanan dan regulasi yang jelas untuk menjaga keberadaan warisan budaya. Tentu saja hal ini bisa terwujud jika meratifikasi Konvensi UNESCO tahun 2003.

**Kata Kunci:** *Role of UNESCO, Protection of Cultural Property.*

### A. PENDAHULUAN

The low level of public interest and awareness of the importance of cultural heritage values is a serious problem. Awareness of the importance of preserving cultural heritage among the community is still low. This is also reinforced by folklore myths which still make people afraid if they find objects from the past. It is known that there

have been cases of residents finding ancient ships during excavations. The resident did not report the discovery to the authorities, and preferred to rebury the items he found.

He buried the findings again because he was afraid of disaster and bad luck from ancestral spirits (Asri, 2016). This shows the need to increase the role of government and archaeologists in making the public aware of the important values contained in cultural heritage. Therefore, many experts in the field of cultural heritage are needed to be able to provide education to the wider community. However, in reality, there are still problems in providing experts.

Low public interest is also the reason why cultural heritage management is still minimal and limited. Currently there are still few people who want to pursue archeology. In fact, the government has formed an agency that focuses on archaeology. Apart from that, the Ministry of Culture and Tourism has also established an institution, namely the Archeology Center, which is responsible for research and protection of ancient remains. However, only a few of these institutions focus on training to increase human resource capacity, especially in carrying out archaeological conservation work in their working areas. In fact, if you look at the working areas of all these institutions, there is actually no serious focus on handling cultural heritage as well as possible (Thontowi, 2016).

Human resources are very important to achieve goals. In this case, studying archaeological remains requires archaeologists to have greater abilities. This is also related to the problem above, due to the low level of archaeological capabilities. Apart from that, the problem with protecting cultural heritage, apart from the field of knowledge, is that the equipment available is still limited. Currently we are still unable to carry out conservation activities optimally, because we still do not have the various equipment needed (Syahfrinaldi, 2022).

Reconsidering the various issues mentioned above, at the time of this research, cooperation between countries was considered the most effective way to protect cultural heritage. For example, there was collaboration between 1992 and 1999 on the Galle Harbor Project, which was conducted between Australia and Sri Lanka and involved researchers from both countries. Furthermore, the Avondster Project involving Sri Lanka, Argentina, Mexico and Uruguay from 2003 to 2006 succeeded in carrying out conservation efforts after sharing technology and knowledge between these countries (Hadikusuma, 2018).

In addition, UNESCO organizes a program to increase human resources for archaeologists through the UNESCO Field School program. This program is organized in collaboration with ICOMOS. The first training course was held in Hong Kong in 2003 and has continued to be held since then in Sri Lanka from 2006 to 2008. Meanwhile for the Asian region there is also the UNESCO Asia – Pacific Regional Field Program which took place from 2009 – 2011 in Thailand (Hadjon Phillipus, 2014).

The international cooperation promoted in the 2003 UNESCO convention does not only involve member countries, but includes a larger framework involving international institutions that are considered professional in dealing with the preservation of Cultural Heritage. These institutions include the International Council on Monuments and Sites (ICOMOS) (Kansil, 2016). This collaboration will be very beneficial, especially in terms of research and knowledge sharing at all levels of international cooperation in accordance with Article 8 of the 2003 UNESCO Convention (Koentjaningrat, 2019).

Besides that, one of the principles of the 2003 UNESCO convention, namely "In-Situ conservation is considered the first choice in carrying out conservation", can be used to overcome all obstacles such as limited equipment and human resources. In-Situ is a conservation concept carried out at its original location on a large scale which aims to avoid damage to cultural heritage due to environmental changes by trying to maintain the stability of the cultural heritage (Riswandi, 2005). In-situ preservation is not something completely new in efforts to preserve cultural heritage.

Furthermore, regarding the In-Situ principle, there is a conceptual distinction between 'In-Situ preservation' and 'abandoned on site'. This lies in monitoring and utilization activities (Marzuki, 2015). In-Situ preservation prioritizes maintaining the condition of cultural heritage and opening access for research and knowledge to the wider community, while abandoning on site is intentionally leaving a cultural heritage site without any further action. The 2003 UNESCO Convention states clearly that apart from ensuring the preservation of Archaeological Heritage, In-Situ preservation is a priority because one of the advantages of this is the minimal costs involved and the public can access Archaeological Heritage according to its original location and has the potential to become a tourist attraction (Sardjono, 2006). This writing discusses issues regarding What is UNESCO's role regarding the protection of cultural objects that receive special protection and How is the Comparative Basic Study of the 2003 UNESCO Legal Convention in Protecting Cultural Heritage?

## **B. METODE**

This research uses a type of legal research with a normative juridical approach (Soekanto, 2015). This approach is a legal research method carried out through examination of library materials or secondary sources. The data collection techniques used in this research mostly use literature/library studies. The data analysis technique uses qualitative juridical methods by analyzing without using statistical formulas and presenting it descriptively, namely describing the problem as a whole. Analyzing data obtained from literature research related to UNESCO'S role regarding the protection of cultural objects that receive special protection.

## C. HASIL DAN PEMBAHASAN

### 1. Special Protection Arrangements for Cultural Objects

According to International Humanitarian Law, Cultural Objects in question are objects, both movable and immovable, which have an important meaning in terms of the cultural heritage of all people (Subur, 2019). It can mean architectural or historical monuments, archaeological sites, art objects or books. In situations of armed conflict, cultural properties receive protection from International Humanitarian Law because destruction of cultural objects is destruction of human heritage (Suryadi, 2015). This protection is contained in international treaties and customary international law. One of them is the 1954 Hague Convention on the Protection of Cultural Property in Times of Armed Conflict and its protocols. These arrangements can also be found in the Additional Protocols of the 1949 Geneva Conventions. The Hague Convention of 1954 can be said to be the first international agreement that focuses on the protection of cultural objects in situations of armed conflict. One of the reasons behind the birth of this convention was the many historical sites and cultural objects that were destroyed after World War II. The symbol of protection agreed upon in international agreements is shaped like a shield, and is known internationally as the 'Blue Shield'. This symbol of protection is stated in Article 17 of the 1954 Hague Convention (Binford, 2020).

Regulations regarding cultural objects that receive special protection are also part of the government's efforts to provide legal protection to parties who have interests/ownership in cultural objects. Cultural heritage is all objects of a material nature (Endang, 2017). Property in the form of buildings, sites and cultural heritage areas located on land and waters that require protection. Objects, buildings or structures can be proposed as cultural heritage objects, cultural heritage buildings or cultural heritage structures if they meet several criteria such as being at least 50 years old and having special significance for history, science, education, religion, culture, and having value. culture to strengthen the nation's personality (Sardjono, 2016). Furthermore, cultural heritage objects can be natural-made objects and/or man-made objects that have been used by humans, as well as biota remains that can be linked to all human activities and the history of human development (Sedyawati, 2014). These objects can be movable or immovable objects and can be a unit or a group.

If we look closely at the 2003 UNESCO Convention, it can be concluded that what is meant by Cultural Heritage is all traces of human heritage which have cultural, historical or archaeological value which are located in whole or in part and have a lifespan of 50 to 100 years. These objects can be sites, structures, buildings, artifacts, or human remains. Some of these objects include ships, airplanes, and other vehicles with their cargo, as well as other objects that have a historical history.

## 2. UNESCO's Role Regarding the Protection of Cultural Objects Receiving Special Protection

In the 1954 Hague Convention, it can be seen that this provision defines more cultural objects comprehensive (complete) when compared with the Roerich Pact. Article 1 of the 1954 Hague Convention includes a definition of what is meant by a cultural object, namely: Every movable or immovable object which is a cultural heritage of very important value to humans, such as architectural, artistic and historical monuments, whether religious or not; archaeological sites; a complex of buildings which, as a whole, is of historical or artistic value; artistic creations; manuscripts, books and other objects of artistic, historical and archaeological value; as well as collections of books of knowledge and other important collections or archives or reproductions of objects mentioned above. Buildings whose main function and purpose is to preserve or exhibit movable cultural objects as stated in the paragraph above, such as museums, libraries (central/national), archive storage buildings, places of protection or storage, which, during armed conflict, are used to store movable cultural objects (movable property);

Cultural objects that receive special protection are cultural objects that have been registered with the "International Register of Cultural Property under Special Protection", in accordance with the Regulations from the 1954 Hague Convention (Soekanto, 2020). If we look at the Regulation, then based on Article 12 paragraph (2) of the Regulation, what is meant by Registration Office is Director General of UNESCO (Director-General of the United Nations Educational, Scientific and Cultural Organization). The shape of the symbol is the same as the previous symbol mandated in the 1954 Hague Convention, but the number of inverted shields is three, as shown in the picture above. This is stated in Article 16 paragraph (2) of the 1954 Hague Convention, which reads: "The emblem shall be used alone, or repeated three times in a triangular formation (one shield below), under the conditions provided for in Article 17".



Source: UNESCO emblems of cultural objects (2024)

Based on Article 16 of the 1954 Hague Convention, it is stated that the distinctive symbol intended by this Convention is in the form of a shield, with the tip at the bottom (inverted shield), where the sides facing each other are blue and white (a shield consisting of a facet four blue, one corner of which is located at the tip of the shield, and one blue equilateral triangle located above the rectangle, and the space on each side is a white equilateral triangle).

In Article 16, based on the provisions of Article 17 paragraph (1), this special protection symbol can only be used as a way to identify (Rafianti, 2021):

- a. Immovable cultural property which is under special protection;
- b. Transportation of cultural objects in accordance with the requirements stated in Articles 12 and 13;
- c. Places for temporary storage of cultural objects, in accordance with the requirements contained in the Regulations of this Convention.

Meanwhile, based on the provisions of Article 17 paragraph (2), the symbol for the protection of cultural objects (with one inverted shield), can only be used as a tool to mark cultural objects that are not under special protection. The officers (personnel) who are tasked with supervising the objects culture, in accordance with the Regulations of this Convention, Personnel involved in the task of protecting cultural property, Identity cards as stated in the Regulations of the Convention.

There are several categories of objects that can be said to be cultural objects, namely (Soeroso, 2017):

- a. Symbolizes masterpieces of human creativity and intelligence as well as values that have a significant influence on culture
- b. Demonstrate the primacy of human values that do not change over a certain period of time in terms of architecture, technology, monumental art, urban planning or landscape design
- c. Contains characteristics or evidence that there were rituals from civilizations in the past that remain or have disappeared
- d. An amazing appearance in a building, architecture or technology that depicts an important stage in the history of human civilization
- e. An amazing appearance in a residence, land or water that can symbolize culture or human interaction with the environment, especially those that are still preserved against significant changes over time
- f. Having a close connection to a particular event or tradition, in terms of thought, belief, artistic and literary

The formation of new symbols on cultural objects basically begins after the Roerich Pact, efforts to produce a more comprehensive plan to protect monuments and artistic and cultural objects during wartime continued (Roger, 2022). Furthermore, in 1939, a more comprehensive draft convention was successfully created with the assistance of the International Museums Office, which was submitted by the Dutch Government. This business was stopped because World War II broke out. After the war was over, in 1948 a new proposal was submitted to UNESCO (United Nations Educational, Scientific and Cultural Organization) by the Dutch Government. In 1951 the UNESCO General Conference finally decided to convene an Inter-Governmental Conference which ultimately resulted in the 1954 Hague Convention, which regulates the protection of cultural objects during armed conflict.

With the development of war techniques and weaponry, it cannot be denied that the impact caused by war has also affected the damage and destruction of cultural objects, even though these objects are priceless historical heritage of mankind. Therefore, cultural objects which are the historical heritage of mankind must receive international protection because these objects are not only valuable for a nation; but for all mankind and is an embodiment of the cultural values that exist within mankind itself.

The 2003 UNESCO Convention also specifically defines: Protection of cultural heritage. Article 11 of this convention states (Sudarsono, 2018):

*"Every country is obliged to take necessary steps to ensure the protection of intangible cultural heritage within its territory. Among the protection measures as intended in article 2, paragraph 3, identify and determine that various elements of intangible cultural heritage within its territory include various communities, related community groups and social institutions."*

Since 1972, UNESCO has begun to aggressively protect world cultural heritage sites with the adoption of The World Heritage Convention. This was followed by the formation of the World Heritage Committee in 1976 which was tasked with registering sites included in the world cultural heritage, and ensuring the protection and preservation of these sites. However, in its implementation, the preservation carried out only covers existing sites. Due to the lack of attention given to cultural objects, their existence is threatened due to commercial exploitation. Even though the law on preserving Cultural Heritage has been written in the convention, in reality the practice of preserving Cultural Heritage is still weak. This is because regulations only provide protection for cultural heritage based on the jurisdiction of a country. The attachment to this convention also explains the guidelines for archaeologists to establish ethics and standards in preserving cultural heritage.

In achieving its objectives, this convention carries out four main principles. The first principle is, "Obligation to Preserve Cultural Heritage". Every country that

is part of this convention is obliged to strive for the preservation of cultural heritage for the benefit of humanity and take appropriate action to protect these cultural heritage objects.

However, in this case it does not mean that the ratifying country must carry out archaeological excavations to carry out preservation, which actually requires a lot of money; they just need to take action that is within their capabilities. However, this convention still encourages scientific research activities on cultural heritage sites and access for the public to get to know these cultural heritage sites (Sudarsono, 2018).

The second principle is, "In-Situ Preservation as first option". Before granting permission for any activity involving this cultural heritage, In-Situ conservation should be considered as the first option. In-Situ conservation is carried out by protecting and maintaining a cultural heritage site so that it remains in its original location without any excavation or removal. This option was chosen as the most important because it is one of the most environmentally friendly methods. In this way, this method can maintain the authenticity and integrity of a cultural heritage site. On the other hand, the conventional method used by most countries to preserve cultural heritage through removal/excavation activities is considered not to be the best choice (Sudarsono, 2018).

The third principle is, "No Commercial Exploitation". The 2003 Convention stipulates that cultural heritage must not be exploited commercially, namely for trade. Implementation of this principle is also in line with the principle of protecting cultural heritage on land. This is done because commercial companies that search for and sell cultural heritage objects rarely document these sites and tend to focus only on "gold dredging". In fact, in some cases, parts of cultural heritage objects that are considered to have no economic value are discarded and left to decay.

Then the last principle is "Training and Information Sharing". Currently, one of the main obstacles to heritage protection is the fact that archeology is still a very new science. So there are not many guidelines that can be used to preserve cultural heritage. Therefore, this convention seeks to encourage archaeological training, technology transfer and share information regarding the best ways to preserve cultural heritage.

It was concluded that the 2003 UNESCO Convention sought to establish a general standard regarding the protection of cultural heritage. The standards contained in this convention are equivalent to the standards provided by international conventions that regulate protectionncultural heritage. This convention is an "autonomous agreement" which aims to protect cultural heritage for the common good, and without any intention of changing the status of state sovereign rights or ownership of cultural property (UNESCO, 2017).

To realize this goal, this convention will promote cooperation between its member countries. Cooperation is chosen because if a country does not have jurisdiction over an area. The 2003 Convention also seeks to become a facilitator for countries to collaborate with each other in safeguarding cultural heritage and jointly find solutions to every problem, because in overcoming this, adopting an extension of each country's jurisdiction is not the best choice.

The joining of state parties to this convention means that these countries have agreed to prohibit citizens and their flag vessels from looting cultural heritage regardless of location, then ordering them to immediately report and notify other countries if they find cultural heritage. Apart from that, additional cooperation can also be carried out to prevent trade in cultural heritage that is exported illegally (UNESCO, 2017).

To become a state party to this convention, a country first needs to ratify it. The ratification process usually involves political considerations and national authorization. Then, the statement to be bound by the 2003 convention must be stated in writing and firmly based on legal law. Every country that has joined UNESCO can ratify, accept or approve the 2003 convention, while non-member countries can access it (UNESCO, 2017). In essence, every country that has joined is obliged to cooperate with each other and implement the principles put forward in this convention.

This is stated in the 2003 UNESCO Convention which says:

*"Acknowledging the importance of underwater cultural heritage as an integral part of the cultural heritage of humanity and a particularly important element in the history of peoples, nations, and their relations with each other concerning their common heritage."* (UNESCO, 2017).

The second background indicator, from these two laws, also agrees that in recent times there has been a rise in illegal activities that threaten the original historical value of the cultural heritage. So in this case, firm action is needed to secure the existence of cultural heritage for the benefit of humanity. Then the aim of the 2003 UNESCO Convention is that the preservation of cultural heritage is aimed at historical and scientific interests. The Convention technically emphasizes strengthening the protection of cultural heritage in terms of regulations and norms.

Therefore, the convention offers international cooperation, especially for countries that are considered less capable of carrying out their obligations to protect cultural heritage optimally. This is in line with the national goal to improve community welfare by promoting the nation's cultural heritage to the international community. In terms of the role of the state, the convention considers the role of the state to be vital in efforts to protect cultural heritage. It is proven that the 2003 UNESCO Convention always prioritizes international cooperation in the preservation

of cultural heritage which can be carried out by member countries. The Convention creates space and bridges to allow for intervention in the protection of cultural heritage, but the intervention in question must not conflict with the national regulations of member countries.

Furthermore, in terms of granting authority, the convention allows each member country to work together to supervise and determine all forms of activities deemed most appropriate in the jurisdiction of the country concerned. This was done to avoid losing sovereignty over the region even though it had ratified the 2003 UNESCO Convention. The final indicator of cooperation is an important factor in ensuring the security of cultural heritage. The 2003 UNESCO Convention has offered an international standard that requires each member country to cooperate with each other in sharing information, technology and human resources. In relation to several of the indicators above, if we look again at each article and provision that has been regulated in the 2003 UNESCO convention, it will not have a negative effect. On the contrary, all the arrangements in the convention tend to have a positive effect. Below the author will try to elaborate on the articles in the 2003 UNESCO convention, which are considered beneficial and in line with what has been desired. For example, Article 2 paragraph 4 of the UNESCO convention states:

“States Parties shall, individually or jointly as appropriate, take all appropriate measures in conformity with this Convention and with international law that are necessary to protect underwater cultural heritage, using for this purpose the best practical means at their disposal and in accordance with their capabilities .” (UNESCO, 2017).

This article indicates that each member country is obliged to take all measures to safeguard cultural heritage, but by taking into account the limitations of that country's capabilities. In this regard, it was also discussed in the previous sub-chapter that currently we are experiencing limited capabilities both in terms of human resources and equipment for preserving cultural heritage. Therefore, with the existence of this article, there is no need to be afraid of standardizing the security of cultural heritage which makes the government unable to do so. The Convention only provides recommendations that primary conservation should be carried out in-situ.

Even though it is true that in in-situ conservation, we still cannot do it optimally (Weerawit, 2013), this will not cause problems because what is required by the convention is only within its limits. In fact, the ratification of this convention will bring benefits, because it will result in the transfer of knowledge and technology in the preservation of cultural heritage. This is guaranteed in Article 6 Paragraph 1 of the Convention which states:

*“States Parties are encouraged to enter into bilateral, regional or other multilateral agreements or develop existing agreements, for the preservation of underwater cultural heritage. All such agreements shall be in full conformity*

*with the provisions of this Convention and shall not dilute its universal character. States may, in such agreements, adopt rules and regulations which would ensure better protection of underwater cultural heritage than those adopted in this Convention.*" (UNESCO, 2017).

This collaborative project is regulated in Article 19 of the 2003 UNESCO Convention which states: The above collaboration will certainly be very profitable considering various problems regarding the limited human resources who have competence in archaeology. Because if this problem is not handled immediately it will result in minimal and failed efforts to preserve cultural heritage. Apart from that, with all possible cooperation schemes in place, there is no need to worry about trespassing and violations that threaten the sovereignty of the country's territory. Because in Article 7 Paragraph 1 of the Convention states:

*"States Parties, in the exercise of their sovereignty, have the exclusive right to regulate and authorize activities directed at underwater cultural heritage in their internal waters, archipelagic waters and territorial sea."* (UNESCO, 2017).

This article will provide special rights to regulate all types of cooperative activities in the preservation of cultural heritage. Apart from that, we can also choose and determine the most appropriate action and feel that it does not disturb the sovereignty of the country.

#### **D. SIMPULAN**

Cultural heritage protection is one of the most relevant forms of protection for cultural objects that receive special protection. From the previous explanation, it can be seen that our country still experiences limitations in safeguarding and regulating cultural heritage. Conservation of cultural heritage is very important. This is intended to protect the historical, cultural and knowledge values contained therein. Illegal acts cannot actually be tolerated, because they can threaten the existence of cultural heritage. For this reason, the author believes that security assistance and clear regulations are needed to maintain the existence of cultural heritage. This can of course be realized if we ratify the 2003 UNESCO Convention.

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