

THE URGENCY OF USING DISTINCTIVE SIGNS AT MUARO JAMBI TEMPLE SITE: A REVIEW FROM THE INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE

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Abstract

This article discusses the role of international law in the protection of the Muaro Jambi Temple site as a cultural place. In specific, the authors highlight the regulations to use distinctive signs for historical and cultural property under the International Humanitarian Law. Even though all Contracting Members should comply with the law, in reality, not all the rules are implemented, such as in Muaro Jambi Temple site. A site is a principal object that passes the historical value of human being as well as scientific information from generation to generation; therefore, is required protection. Using a normative juridical approach, the article analyses the basic problems for not applying distinctive signs at the Muaro Jambi Temple site.

Keywords: *Muaro Jambi Temple Site, Historical Property, International Humanitarian Law*

How to Cite: Akbar Kurnia Putra, Bernard Sipahutar, Budi Ardianto, “THE URGENCY OF USING DISTINCTIVE SIGNS AT MUARO JAMBI TEMPLE SITE: A REVIEW FROM THE INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE”, *Lampung Journal of International Law (LaJIL)* 2, no. 1 (2020): 1-8.

DOI: <https://doi.org/10.25041/lajil.v2i1.1977>

A. Introduction

The cultural object is a world heritage. It resembles the development of human being; therefore, is needed protection from the international world—relics of cultural object pass historical value and scientific information from generation to generation. Obliteration of the object would mean the destruction of civilization and the key source to unravel the chain of human life. There are two types of cultural heritage; they are intangible and tangible cultural heritage. Intangible cultural heritage refers to all kind of practices, representations, expressions, knowledge, skills, tools, objects artefacts, and cultural spaces that are admitted as cultural heritage by a group of people or community. For example are art performance, tradition handcraft, verbal expression and tradition, customs, rites and celebration, and knowledge of the universe. Meanwhile, tangible cultural heritage is cultural objects, property, human-made infrastructures or natural objects that have given cultural value for the user such as temple, castle, natural site, of other cultural landscape.¹

Preservation and protection should be given to tangible cultural objects, which are pre-historical and historical relics such as buildings, sites, statues, temples, and other historical or archaeological objects. This is in line with Article 1 (1) of Law Number 11 of 2011 on Cultural Object, which states that:

¹ <https://kebudayaan.kemdikbud.go.id/ditwdb/menju-warisan-budaya-dunia-proses-penetapan-warisan-budaya-tak-benda-intangible-cultural-heritage-dan-warisan-dunia-world-heritage-indonesia-oleh-unesco/>, accessed on June 1, 2020 at 06.05 WIB

Cagar budaya adalah warisan budaya bersifat kebendaan berupa benda cagar budaya. Bangunan cagar budaya, struktur cagar budaya, situs cagar budaya, dan kawasan cagar budaya di daratdan/atau di air yang perlu dilestarikan keberadaannya karena memiliki nilai penting bagi sejarah, pengetahuan, pendidikan, agama, dan/atau kebudayaan melalui proses penetapan (Cultural objects are tangible cultural heritage such as cultural buildings, cultural structures, cultural sites, and cultural area on land and/or under water whose existence are needed to be preserved because they hold an important historical, scientific, religious, and cultural value throughout their establishment process).

Cultural heritage is important to foster national awareness and dignity, strengthen the sense of unity to realize the national interest in the future; hence, they should be preserved and protected. There are two kinds of protection for cultural heritage. The first is protection against extinction or destruction and the second is legal protection. The first protection is to provide a means for transmitting the culture from generation to generation without having to lose some of the relics. The second protection will accommodate the realization of the first protection. Legal protection is based on legal norms, especially the ones written in the rules and laws. Protection over cultural heritage is not only for economical purpose. Protection, in this case, leads to protection of the national identity kept in the cultural objects.²

Indonesia is a nation with plenty of cultural heritage. Until 2020, Indonesia has enlisted many of its cultural heritage to UNESCO's World Heritage: Cultural and Natural Heritage such as Prambanan Temple site (1991), Borobudur Temple (1991), Singiran Primordial Human site (1996), the Cultural Landscape of Bali: the Subak System as a manifestation of Tri Hita Karana philosophy (2012), Komodo National Park (1991), Ujung Kulon National Park (1991), Lorentz National Park (1991), Sumatera Tropical Forest (2004). For the Memories of the World, Indonesia registered Archives of VOC (2003), La Galigo (2011), BabadDiponegoro (2013), Negarakertagama (2013), and the Asia-Africa Conference (2015). Indonesia also listed Keris (2008), Wayang (2008), Batik (2009), Best Practice Batik (2009), Angklung (2010), Saman dance (2011), Noken Papua (2012), three genres of Balinese dances (2015) for the cultural heritage of Indonesia. For the category of Man and Biosphere, Indonesia sets down Komodo National Park (1977), Tanjung Putting National Park (1977), Cibodas National Park (1977), Mount Leuser National Park (1981), Siberut National Park (1981), Lore Lindu National Park (1993), GiamSiak Kecil National Park (2000), Wakatobi National Park (2012), Taka Bone Rate (2015), Bromo-Tengger-Semeru-Arjuna (2015), Balmbangan (2016). Since 2017, Indonesia nominates the following objects and properties for Intangible Cultural Heritage to UNESCO. The objects are Pinisi the Art of Boatbuilding in South Sulawesi; World Cultural Heritage: the Old Town of Jakarta (formerly Old Batavia); 4 outlying islands of Onrust, Kelor, Cipir and Bidadari; and Ombilin Coal Mining Heritage in Sawahlunto. For UNESCO's global park, Indonesia lists Ciletuh and Rinjanigepark. Meanwhile, Indonesia also registers Panji folk stories, Borobudur archive, Tsunami archive and Non-Bloc Movement archive³ as World Memories. For this reason, protection and organization of cultural heritage in Indonesia are important.

The 1945 Constitution mentions that the government is responsible for enforcing national policy on cultural advancement for the prosperity of the people. In relation to this, all past, present and future creation and national attainments are to be used for development. Cultural heritage is important to be preserved.

In Jambi Province, specifically in Muaro Jambi Regency, there is Muaro Jambi Temple site. The site is the legacy of the Ancient Malay Kingdom and the only remaining largest monument of Hindu-Buddhism (7-13 century BC) in Indonesia with 3.981 hectares of land. The site lies at 01°26'25,0" South Latitude, 01°30'22,4" South Latitude, 103°37'23,7" East Longitude and 103°42'45,4" East Longitude⁴. The Decision of the Minister of Education and Culture of Indonesia Number 259/M/2014 states the site is a cultural heritage.

The Muaro Jambi Temple site is 20 KM away from the city of Jambi and 30 KM away from Sengeti, the capital city of Muaro Jambi Regency. Administratively, the site lies on 8 different villages, i.e. Dusun Baru, DanauLamo, Muara Jambi, KemingkingLuar, KemingkingDalam, TelukJambu, Dusun Mudo, and TebatPatah village. All of these villages are located in MaroSebo and Taman Rajo sub-district of Muaro Jambi Regency.⁵

² Hafidz Putra Arifin, "Politik Hukum Perlindungan Cagar Budaya di Indonesia", *Dialogia Juridica: Jurnal Hukum Bisnis dan Investasi* 10, no. 1 (2018): 470-492, 471, DOI: <https://doi.org/10.25123/vej.3008>.

³ *Ibid.*

⁴ <https://kebudayaan.kemdikbud.go.id/bpcbjambi/kawasan-cagar-budaya-muarajambi/>, accessed on May 26, 2020 at 20. 30 WIB.

⁵ *Ibid.*

The Muaro Jambi Temple site consists of 82 ruins of ancient building which is 8 of them are restored and opened for public. The Government of Indonesia enrolls the site to UNESCO's World Heritage for its outstanding universal value. It meets the requirement written in 77th Paragraph of the Operational Guideline for the Implementation of the World Heritage Convention. The remains of the cultural buildings and environment surrounding the site are well preserved and maintained by the local community. The natural and social environment at which the site is located is good.⁶

In 1989, Indonesia ratified the Convention Concerning the Protection of the World Cultural and Natural Heritage, United Nations Educational, Scientific, and Cultural Organization (UNESCO). The impact of this action is the obligation for Indonesia to take serious efforts to preserve and maintain the cultural object and property by applying the UNESCO's tool for monitoring and reporting. Indonesia shall frequently report the status of the cultural heritage it owns to UNESCO.

The international law also protects the cultural heritage with the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. This Convention 1954 (the Den Hague Convention 1954) is the first international agreement the comprehensively administer legal protection over cultural object and property in the state or armed conflict. The convention also exclusively gives time for participating nations to prepare and take necessary steps to secure their cultural heritage in time of peace.⁷

The convention protects the cultural object and property in four ways. The first is protection over the deliberate attack to cultural object. The second is protection over the accidental attack to cultural object, next is the protection of the looting of the cultural object; the last is the protection of the embezzlement of the cultural object.⁸ Considering the nature of international agreements that only apply to participate nations,⁹ international customs are often used as a reference to fill the regulatory loopholes.

The regulation above does not provide enough information of the way the International Humanitarian Law could protect the Muaro Jambi Temple site, especially about the urgency of using distinctive signs in the protection of the site as a cultural heritage. Whereas, Den Hague Convention 1954 mentions that the Blue Shield Emblem is a distinctive sign to identify cultural objects. The Blue Shield Emblem is used by the international community to identify protected cultural objects. In fact, an International Committee of the Blue Shield (ICBS) is formed to give such protection. At this time, Indonesia has yet to implement the responsibility to use the Blue Shield Emblem on its cultural heritage, even though, Indonesia has domestic legal instruments to protect the cultural objects. For this reason, the article is aimed to highlight the implementation of prevailing regulation should be used in the subject of this research.

This study is normative juridical research that analyses the secondary data. This is descriptive research. Descriptive research shows a comparison or correlation between data to provide an overview, examination, explanation, and analysis. Based on the research design, the main data in this research is secondary data taken from primary legal instruments such as international law and regulation on the subject matter. The secondary legal instruments used in this study are books, journal articles, and scientific paper and articles that will help provide further explanation of the primary legal instruments. The tertiary legal instruments are Indonesia Dictionary (or KBBI) and other literature used to find the definition of terminologies used in this research. Documentation procedure is used to collect data. It includes utilization notes and citations as research guideline; review of legal literature, books, and other

B. Discussion

1. Overview of Cultural Object

Etymology, the word culture in the Indonesian language is *budaya*, originated from Sanskrit *buddhaya*, which is a plural form of *buddhi* (conscious). It is something related to mind (or in the Indonesian language is *budi*) and reasoning. Others argue that the word *budaya* is a combination of the word *budi* and *daya*. *Budi* refers to the spiritual element of a man, and *daya* refers to the physical power of a human. In conclusion, *budaya* means the result of the spiritual and physical power of human.¹⁰ According to John Henry

⁶ *Ibid.*

⁷ Article 3 of the Den Hague Convention 1954

⁸ *Ibid.*

⁹ Mochtar Kusumaatmadja and Etty R. Agoes, *Pengantar Hukum Internasional* (Bandung: Alumni, 2003), 143.

¹⁰ Herimanto, *Ilmu Sosial & Budaya Dasar* (Jakarta: Bumi Aksara, 2011), 24.

Merryman, cultural object or cultural heritage is “*object that has artistic, ethnographic, archeologic, and historical value.*”¹¹ The Hague Convention 1954 defines a cultural object as:¹²

- a. Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- b. Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in subparagraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph(a);
- c. Centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as centres containing monuments.”

Article 1 of the UNESCO World Heritage Convention 1972 on the Protection of the Cultural Heritage and Natural Resources includes cultural objects as part of world heritage. Based on the article, cultural heritage is categorized in three types as follow:

- a. Monuments: architectural works, works of monumental sculpture and painting, elements or structure of archaeological nature, inscriptions, cave dwellings and combination of features, which are of outstanding universal value from the point of view of history, art, or science;
- b. Group of Buildings: a group of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art, or science;
- c. Sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal values from the historical, aesthetic, ethnological or anthropological point of view.

Based on the previous discussion, it can be seen that cultural heritage covers a wide variety of objects with a different definition. Other than that, different terminologies are also applied to refer to cultural objects such as cultural property, cultural heritage, or natural heritage. Representation of culture in cultural object gives a significant impact on the development of a civilization notwithstanding. Therefore, it needed protection.

To be called a cultural heritage, an object needs to be registered, analysed, confirmed, ranked, erased, saved, secured, zoned, preserved, restored, researched, revitalized, adapted and utilized. Humanitarian law is often described as a law of war, notwithstanding, in a time of peace, the law requires the member nations to prepare protection over their cultural heritage. Respect and protection of these objects is the responsibility of a nation and the international community because cultural heritage carries the interest of the international community and international legacy for humanity.¹³

It is written in Article 2 of the Hague Convention 1954 that the general principle of protection of cultural objects lies in the obligation to protect and respect cultural sites. Preservation of cultural sites includes the implementation of necessary preparatory steps in time of peace to create a better condition as postulated in Article 3 of the Hague Convention 1954. Meanwhile, respect for cultural sites means avoiding hostile action against the sites and forbidding, preventing, and ending all kinds of thievery, looting or misuse, and any kind of vandalism against the sites. This includes the prohibition to use cultural sites for military purpose and to support military action, as mentioned in Article 4 of the Hague Convention 1954. Retaliation directed to cultural sites is also forbidden, and there is no justification or exception for any kind of retaliation. This is strongly stated in Article 4 (4) of the Hague Convention 1954 and Article 53 © of the Addition Protocol I of 1977.¹⁴

¹¹ UNESCO, *UNESCO'S RESPONSE TO PROTECT CULTURE IN CRISES, UNIT HERITAGE* (UK: United Nations Economic and Social Council, 2016), 5.

¹² Article 1 of the Hague Convention 1954.

¹³ Mirsa Astuti, “Efektifitas Hukum Humaniter Internasional Dalam Melindungi Cagar Budaya Di Negara Konflik”, *Delegalata: Jurnal Ilmu Hukum* 3, no. 1 (2018): 96-107, 96, <https://doi.org/10.30596/dll.v3i1.3143>.

¹⁴ *Ibid.*

2. Protection of Cultural Object

International Humanitarian Law as a branch of public international law is the first part of the international law that protects cultural objects. The embodiment of the legal protection is in the formation of conventions and international agreements such as the Hague Convention of 1899, the Hague Convention IV of 1907, and the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954. They are the first three international agreements providing binding regulations in the protection of cultural objects. Later in the development, Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War is formed in 1949. Two protocols following the Geneva Convention 1949 are then formulated; they are Protocol Additional to the Geneva Conventions of August 12 1949 (established in 1977) and Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (established in 1999). Both additional protocols contain a legal provision in the protection of cultural object in the event of armed conflict.

Due to the nature of international agreements that only apply to contract parties, international customs that are universally recognized is utilized to fill in the regulation loopholes. These practices hold a significant role in the protection of cultural property in time of armed conflict. Consequently, non-member or non-participating parties should also comply with international practices.

Part II of Article 23 (g) of the Hague Convention IV of 1907 explains about hostilities. The provision states are forbidden to destroy or confiscate the property of the enemy unless the destruction and confiscation of the property are demanded under the propriety in war.¹⁵ In general speaking, the article only describes the prohibition to destroy in terms of military necessity. International laws and practices require a nation to protect its cultural heritage either in time of armed conflict and in peacetime.

Acts of the destruction of cultural objects, according to International Humanitarian Law, is a war crime. This is in line with the provision of the Protocol II 1999 of the Hague Convention 1954, Geneva Convention 1949 and the Additional Protocol I and II of 1977. In the list of customary rules of International Humanitarian Law, there are several rules related to the protection of cultural objects from iconoclast in time of armed conflict. The first rule sets the prohibitions to attack cultural objects unless it is for an imperative purpose. The second rule forbids the use of cultural objects for military purpose, and the last rule contains the provision regarding courteous action towards cultural objects including the prohibition to confiscate, destroy, and damage the cultural objects; thievery, expropriation, vandalism against the objects are also forbidden. The last rule also prohibits the illegal export of cultural objects belonging to occupied territory. Iconoclast is a violation against the human rights law and the International Humanitarian Law. The provisions of these laws strongly mention that, for any reason, this act is not allowed.¹⁶

The procedures to protect and honour cultural heritage involve identification and inventory, application of distinctive emblem, identity card, and registration to the International Register of Property under Special Protection. The first step is the identification and inventory of historic places. When identification is made, the places should be registered. Identification means an action to determine and consider if the places indeed have the cultural and historical value that needed to be protected. The protection is obtained along with the responsibilities of the national government. Inventory is an action to register the historical places and surrender the inventory list to the agencies that regulate the protection of historic property. Next is the application of distinctive emblem at the historic sites (Article 6, Article 10, and Article 16 of the Convention). The rules for the use of distinctive sign are, 1) according to the Hague Convention, the Blue Shield is pointing below with a royal blue square and a royal blue triangle above the square on a white background, 2) one or three emblems should be used in a triangle formation (one shield below), according to the requirements in Article 17. The place to install the emblem is regulated by each nation. In the case of Croatia conflict of 1992, the symbol is painted in a board and placed in two-meter high ground, in hundreds of protected monuments and buildings. According to Article 17, "the distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party".

The third is the identity card for personnel. People responsible for the protection of cultural sites must have a special identity card with the distinctive emblem in it. The card should have a mention the surname, family name, date of birth, designated position of the personnel. It should also have a picture, signature,

¹⁵ In addition to the prohibitions provided by special Conventions, it is especially forbidden to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war."Article 23, Hague Convention IV of 1907.

¹⁶ Wilimantara, Made Panji, I Made PasekDiantha, I Made Budi Arsika, "Penghancuran Benda Budaya (Iconoclast) Sebagai Kejaahatan Terhadap Kemanusiaan", *Kertha Negara: Jurnal Ilmu Hukum* 4, no. 4 (2016): 1-6, 2.

fingerprints of the personnel. Other than that, the card should also have the stamp of the competent authority. The specific information on the card should be informed to other member nations. Lastly, historic and protected cultural heritage shall be registered to the International Register of Property under Special Protection. Shelters and city centres that have historic and protected monuments and immovable objects shall register these objects to International Register of Property under Special Protection that is managed by Director-General of UNESCO. To receive the right for special protection, the national government should send a descriptive file of the location of these objects along with all the required documents.¹⁷

3. Implementation of National Policy on the Protection of Cultural Property

Indonesia is a country with a high level of diversity; thus, it needs to have a national policy to protect its cultural property. The followings are regulations related to the protection of cultural objects:¹⁸

- a. Government Regulation Number 10 of 1993 on the Enforcement of Law Number 5 of 1992 on Cultural Heritage;
- b. Government Regulation Number 19 of 1995 on the Preservation and Utilization of Cultural Property in Museum;
- c. The decision of the Minister of Education Number 087/P1993 on Registration of Cultural Property;
- d. Decision of the Minister of Education Number 062/U/1995 on the Possession, Domination, Diversion, and Termination of Cultural Property and/or Sites;
- e. The decision of the Minister of Education Number 063/U/1995 on the Protection and Preservation of Cultural Property;
- f. The decision of the Minister of Education Number 064/U/1995 on Research and Determination of Cultural Property and/or Sites;
- g. The decision of the Director-General of the Department of Education and Culture Number 0248/F7IV7J.93 on Guidelines of the Registration of Cultural Property;
- h. Regulation of the Minister of Culture and Tourism Number 4 of 2009 on Museum Guidelines;
- i. Law Number 11 of 2010 on Cultural Heritage.

None of the above regulations explicitly regulate the use of distinctive sign on cultural property. Whereas, in reality, the Blue Shield Emblem is an internationally acknowledged identity. As a member nation, Indonesia should install the emblem on its entire cultural heritage for identification purpose. Nevertheless, Law Number 11 of 2010 does not regulate the instalment of the Blue Shield emblem. The authors believe that the government must include the requirement of using the emblem into legislative regulations to ensure international protection for the objects.

Muaro Jambi Temple site is a nationally recognized cultural property in the Province of Jambi, Indonesia. There six main areas of temples in the site. The area I consists of Gumpung Temple, Tinggi Temple, Kembarbatu Temple, Telogorajo Pool, and Menapo-Menapo. Area II is a place for Astano Temple and several Menapo. Area III contains Gedong I Temple, Gedong II Temple, and several Menapo. Area IV consists of Kedaton Temple and several Menapo. Area V is the location for Kotamahligai Temple, Bukit Segalo Temple, and several Menapo. Lastly, area VI contains Teluk I Temple, Chinese Menapo, and several other Menapo.¹⁹ Referring to the prevailing law, these objects should be protected. The question is, has Indonesia used the International Humanitarian Law instrument to protect this site?

Having reviewed the literature and official document concerning the administration of Muaro Jambi Temple site, the authors found that five parties are involved in the observation of the site. The parties are Jambi Cultural Preservation Center (BPCB), Palembang Archaeological Center, Department of Culture and Tourism of Jambi Province, Department of Youth and Sports of Jambi Province, and the Local Community of Muaro Jambi. The authors also found that there is no distinctive sign planted in all archaeological relics located in the site.

The importance of registration and protection of cultural objects is stated in Article 3 of the Hague Convention of 1954. The article assigns participating parties of an international convention to register and protect their cultural heritage in time of peace. Article 7 (1) and (2) of the Hague Convention of 1954

¹⁷ F. D. Sitanggang, "Pengrusakan Tempat Bersejarah Dalam Perang Antar Negara Sebagai Pelanggaran Hukum Humaniter Internasional", *Lex et Societatis: Jurnal Hukum* 1. no. 2 (2013): 5-14, 7.

¹⁸ Jufrian Murzaldan, Sophia Listriani, "Tanggung Jawab Peserta Tempur Dalam Melindungi Benda Cagar Budaya Dalam Suatu Konflik Bersenjata", *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan* 1, no. 2 (2017): 12-21.

¹⁹ Rusmiyati, "Museum Situs di Kawasan Muara Jambi", *Thesis, Universitas Indonesia*, (2014): 72-73, 74.

stipulates that participating nations should insert and introduce the provisions to protect the cultural object into their military regulations. Each nation should adhere to this provision.²⁰

C. Conclusion

Based on the previous discussion, the authors conclude that a natural and human being threatens cultural heritage in Indonesia. Natural threat refers to corrosion of the cultural object, and human threat means deliberate or accidental destruction, looting, and illegal trade. This threat might occur in both peace and armed conflict time.²¹ In a time of peace, Law of the Republic of Indonesia Number 11 of 2010 underlies a criminal penalty for anyone who deliberately destroys, removes, or dispels cultural object. For this reason, Muaro Jambi Temple site should apply a distinctive sign to protect the archaeological relics in the site.

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²⁰ Taufik Rahmat Nugraha, "Urgensi Perlindungan Benda Bersejarah di Indonesia Berdasarkan Hukum Humaniter Internasional", *Mimbar Hukum* 31, no. 3 (2019): 384-401, 385, <https://doi.org/10.22146/jmh.46446>.

²¹ *Ibid.*, 386.

