



## **State Responsibilities on Protecting the Cultural Heritage in Armed Conflict in the Perspective of International Humanitarian Law**

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### **ABSTRACT**

Armed conflict has caused many losses, damages and destroyed the cultural heritage of a country. This article tries to identify the state responsibilities in the perspective of International Humanitarian Law on protecting the cultural heritage. Although the protection of cultural objects has been regulated through various International Conventions, there are behaviors that cause the destruction of these cultural objects in countries that are in conflict. To obtain data, literature research was carried out by studying and analyzing conventions, books, newspapers, scientific writings, and relevant literature both online and offline. Then the analysis is carried out through the content analysis method by focusing on any issues that are effective in protecting International Humanitarian Law in protecting cultural heritage in conflict areas. The results of the study indicate that cultural objects are the identity and cultural heritage of the community, so that attacks on these objects often increase the escalation of conflict. Air bombs, bullets, long-range missiles can damage cultural objects due to armed conflict, these actions have violated international humanitarian law.



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## **Introduction**

In the treasury of human history, war is a form of relationship that is almost as old as human civilization on earth (Murzal & Listriani, 2017). In the history of war, whether war within a country or war between countries always produces an inevitable effect of destruction. On the other hand, some parties take advantage of this to do damage and destruction that occurs and losses that must be obtained in times of war and deliberately damage and destroy various objects or materials belonging to the opponent on the grounds that it is unavoidable (Sitanggang, 2013). This is the background of various regulations that arise regarding the protection of certain places during conflicts or wars, including cultural heritage.

Cultural heritage is a product of the past that is unique and rare. Because of this uniqueness and scarcity, among other things, a cultural heritage needs to be preserved (Keling, 2019). One of the journeys of a nation can be recognized through heritage objects originating from the creative process of local communities, both in the form of material

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and non-material relics called with objects of cultural heritage. Relics can be a picture of the response or actualization of the community towards their environment in a certain space and time (Putra, 2019). For this reason, making cultural heritage an important object to be protected and preserved in any critical condition, even though it is a country. even in conditions of war. Various concerns arise regarding the threat to cultural heritage objects. This is because cultural heritage buildings are objects that are vulnerable to direct destruction and destruction as well as looting during international and non-international conflicts. Protection of cultural heritage buildings during wartime is the focus of the problem discussed in this paper, because based on observations, in state practice many cultural heritage buildings which were cultural sites were in the past destroyed by war (Nurbaiti, 2020). This happened because there was no there is a sense of responsibility from the parties involved in the conflict, as well as the lack of compliance of the disputing parties to the applicable legal rules.

The law of war or often referred to as humanitarian law has a long history as old as human civilization. International humanitarian law is a set of rules that limit the impact of armed conflict on humanitarian grounds. International Humanitarian Law (IHL) protects people who are not participates in conflict and limits the means and means of fighting. Humanitarian Law tries to regulate so that a war can be carried out with more attention to humanitarian principles (Astuti, 2018). In its development, International Humanitarian Law not only provides protection for humans as legal objects, but also against other objects, including protection. to cultural heritage. International Humanitarian Law has tried to suppress everything that causes damage and destruction of objects or buildings of cultural heritage by providing limitations on the parties to the conflict.

Legal protection of cultural objects in times of armed conflict is regulated in a special instrument of international humanitarian law, namely the Convention for the Protection of Cultural Property in the Event of Armed Conflict The Hague in 1954 (Wulansari, 2016). Protection for cultural objects is divided into two main categories in the 1954 Hague Convention, namely general and specific, and one additional category, namely enhanced protection in the second 1999 Protocol of the 1954 Hague Convention. General protection means cultural objects protected by the 1954 Hague Convention which are cultural objects that have noble values. culture for the heritage of mankind, which must not be attacked in times of armed conflict. Special protection is cultural property that is protected in the Hague Convention 1954 the same as general protection, but the practice of relinquishing its protection status must be determined by an officer at the division commander level and has been registered in the International register of cultural property under special protection. Based on the second 1999 Protocol of the Hague Convention 1954, cultural objects that have been registered in the list of cultural property under enhanced protection, are cultural objects that are very important for humanity or in their own terms referred to as "greatest importance for humanity", and have received domestic protection. as high as possible (Nugraha, 2019). Compliance with the rule of law that applies to perpetrators of armed conflict is a measure of the extent to which the responsibilities of

the parties to the dispute are to protect cultural heritage, and measure the effectiveness of International Humanitarian Law in protecting cultural heritage in a state of war.

## **Methodology**

The research method is the most important part of a study, because the research method becomes the direction and guidance for a study (Fajar and Ahmad, 2015). This research uses normative juridical research methods, namely research The law is carried out by researching library materials or secondary data (Seokanto and Sri Muji, 2003). The research specifications in this paper are in the form of analytical descriptive research. Descriptive is showing the comparison or relationship of a set of data with another set of data, and its purpose is to provide an overview, examine, explain and analyze (Soekanto, 1996). According to the type and nature of the research, the data sources used in this paper are secondary data consisting of primary legal materials in the form of; Rules of law related to international law. Secondary legal materials consist of books, scientific journals, scientific papers and articles that can provide an explanation of primary legal materials. Tertiary legal materials; in the form of the Big Indonesian Language Dictionary (KBBI) and so on in finding definitions of terms in discussing the effectiveness of international humanitarian law in protecting cultural heritage in conflict countries. The procedure used to collect data in this research is in the form of documentation, namely the guidelines used in the form of notes or quotes, searching legal literature, books and others related to the identification of problems in this research both offline and online. Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion (Marzuki, 2011). The approach used in this study is a statutory approach. approach) that is by reviewing the laws and regulations related to the research theme. This method is carried out to study the suitability and consistency between laws and regulations (Marzuki, 2014).

## **Results and Discussion**

### **Protection of Cultural Property During War Under International Humanitarian Law**

The cultural heritage has a similar sense like a natural reserve that has often been heard in society, which is important for the understanding and development of the history of science and culture, so it needs to be protected and preserved for the fertilization of national identity awareness and national interests (Sodiq et al., 2014). The nature reserve is a plot of land that is maintained to protect the flora and fauna in it, while the protected cultural heritage is not an area that is natural but the results of human culture in the form of past relics (Romana & Raharja, 2012). Planting awareness about the importance of cultural heritage as one of the identities of the nation to the younger generation is very appropriate because of the successor to this nation that must maintain and maintain the existence of a cultural heritage in order to be enjoyed by future generations (Winarni, 2018).

Cultural Reserve as a cultural resource has a fragile, unique, rare, limited, and not newest nature. In order to maintain a cultural heritage from the threat of physical development, both in urban areas, rural, and those in the water environment, are given settings to ensure their existence. Preservation efforts include the purpose of protecting, developing

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and utilizing it by paying attention to the balance between academic, ideological, and economic interests (Arifin, 2018a). For this reason, there are two kinds of protection needed for the cultural heritage, the first is protection against extinction or damage and the second is legal protection (Arifin, 2018b).

The provisions that regulate the protection of cultural objects are regulated in several conventions, Den Haag Convention 1907 concerning the Procedure of Fingering, the Convention of the Hague 1954 concerning Protection of Culture Objects in Armed Conflict, and Additional Protocol of the Geneva Convention I and II in 1977 concerning the Protection of Conflict Victims Armed international and non-international (Fadil Hidayat\*, Joko Setiyono, 2016).

Among the conventions above, the Den Hague Convention in 1954 provides arrangements in detail and clearly on how to treat and how to secure cultural objects in war and at peace. While two other groups make it part of the provisions of the warning procedures.

The Convention of the Hague 1907 did not regulate the protection of cultural objects, but this Convention was the first point of arranging the protection of cultural objects which was finally perfected with the Convention Den Haag 1954. The Convention of the Hague 1907 regulates the demanding procedure where the purpose of the convention is to reduce The number of victims is not necessary in a war. This convention is imbued by the principles of war habits (Custom of War), including Distinction Principle. This principle is a principle that distinguishes in determining whatever objects that can be involved in wars, including the distinction of civil objects and military objects, where cultural objects include a civil object that should not be attacked. Thus this convention can apply as a law of war habits.

The military object referred to in the 1907 Den Haag Convention is:

- a. The army except the Health and Rohaniawan Service;
- b. Buildings, buildings, or positions occupied by the army;
- c. Other objects, namely: - Which because of its nature, its location, the aim has an effective role in military operation, and if it is crushed in part or overall or controlled will provide military benefits.

The definition of other objects here allows cultural objects to become a military object, which is when military interests want the release of protection rights to it. Because of this, it is necessary to arrange a protection of cultural objects need to be clarified again and re-recently. The arrangement of the protection of cultural objects was found at the Den Haag IV Convention in 1907, precisely in Article 27. The provisions confirmed about the prohibition for the parties to carry out attacks on buildings that were not used for military interests. The owner of the cultural object is required to mark and announce the presence of buildings that are not used for military interests to the opponent before the conflict occurs.

The prohibition of attack on cultural heritage was poured back in the Den Haag IX 1907 convention showing the seriousness of international institutions in an effort to protect cultural objects to unintentional damage due to warfare. The Den Haag IX Convention in 1907 further suppressed the role of commander or leader of another war mission to ban the actions of attacks on cultural objects, as mentioned in Article 5 of the Convention of the Hague IX 1907. Where objects that must be saved according to article 5, some of these

objects meet the criteria as cultural objects, namely religious-related buildings, art objects, scientific objects, and historical monuments.

Seeing the object being raised in this study, the site of the ancient city of Palmyra, has many objects that go into the category of cultural objects, namely breathless monuments and objects of art. In the case of the control of a country over another country due to winning the confiscation (occupation), damage or pollution of cultural objects from the area they occupied and should not be considered as war spoils. This prohibition in Article 56 of the Convention of the Hague IV in 1907. In the article it was stated that all damage to objects aimed at religion, humanitarian goals, education, arts and science both intentionally and not were prohibited and in the event of damage will be legally authorized. With the ban, the authority of the party that occupies a country has been limited, so that all actions in the form of destruction, foreclosure or taking cultural objects are considered a war crime.

However, as an extraordinary event appeared, namely World War II, because of the technological advancements that were very significant, it also affected the progress of weapons. Thus, damage caused by war with the latest weapons that have high damage power has an effect not only on military objects, but also civilians.

World War II has resulted in many cultural objects that are destroyed and damaged or have been transported from their home regions by those who sit in the area of origin of these cultures, this is very detrimental, not only for the country where the cultural object originates, but losses Humans are certain. Likewise for the country that occupies a region and taking cultural objects from the area he occupied, at first glance they may appear to be benefited, but if they are more deeply studied they are also harmed, because by moving cultural objects from their original place will cause changes to the meaning of the culture.

To anticipate this, international institutions publish a regulation specifically in the efforts to protect the cultural object from the destruction of the war, this Convention is produced by UNESCO (United Nations Education Scientific and Cultural Organization) with the Convention for the Protection of Cultural Property in the Event of Armed Conflict. This convention is an improvement of the 1907 Den Haag Convention in particular regarding the arrangement and procedures for protecting cultural objects in international and non-international armed conflicts.

Furthermore, according to the 1954 Den Haag Convention referred to in the efforts of protection against cultural objects are actions that can be in the form of a military location from the object of culture, because the military location is an object of the military target that can be attacked according to the 1907 Den Haag Convention, giving Disturbing signs of immovable cultural objects. This special sign is a shield protection consisting of a rectangle in blue, one end of the shield and a blue triangle on a rectangle and the next room in the form of a white triangle.

Furthermore, cultural protection was also regulated in the I and II Protocol in 1977. The two protocols did not only clarify about the protection of victims of armed disputes, but also there were specific arrangements regarding the protection of cultural objects.

Arrangements regarding the protection of cultural objects mentioned in Chapter III (concerning Civil Objects), Article 53, in the Article explained that there was a prohibition to carry out attacks on historical monuments, artwork or places of worship that have cultural or spiritual values A society, using the object mentioned above to support military

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interests and make the object mentioned above as a target for counter-attack. Meanwhile, if there is a confusion in determining whether a target is a civil object or military object, it must be considered a civil object. This was confirmed in Article 52 paragraph 3. Article 52 was a manifestation of the principle of distinctions that distinguish between civilians here, including cultural objects.

In Article 53 Additional Protocol I Geneva in 1977 is described on the prohibition to attack and use buildings that have historical value or cultural value to support military operations. Also determined in this protocol that violations of the provisions in Article 85 paragraph (4) and (5) are serious violations and also considered a war crime. Points from verse 4 and verse 5 state that the destruction of cultural objects is a serious violation and is said to be a war crime.

In the 1977 II protocol which contained regulations regarding the protection of victims of non-international armed conflicts, also regulated on protection against cultural objects and worship places. The arrangement of protection against cultural objects is contained in Article 16. When noticed the contents of Article 16 of the Protocol II of 1977 above, having similarities with Article 53 of the Protocol II of 1977, but both regulations have different coverage. The 1977 II protocol was devoted to the arrangement of the protection of victims of international armed conflict while the 1977 Protocol in 1977 for the protection of victims of non-international armed conflict.

The above legal instruments have the properties that bind the party to comply with existing war laws which are legal law and legal laws that are legal habits. Therefore, each party that agreed to the above legal instruments has some oars that must be done to protect cultural objects either before the conflict occurs, when the conflict occurs and after the conflict ends.

### **State Accountability for the Destruction of Cultural Conservation During War According to International Humanitarian Law**

The destruction of cultural heritage objects by the state often occurs when the armed conflict takes place, some cases are included in the UNESCO report and ICBS. Like the description of the destruction during the Taliban militia destroyed one of the cultural heritages in Afghanistan named Smaller Bamiyan Buddha which occurred during armed conflict (Kila & Herndon, 2014).

The Den Haag Convention is a convention made by countries in the world in 1954 which aims to protect cultural objects during armed conflict. The symbol of the identification used to protect cultural reserve objects is regulated in the 1954 Den Haag Convention, in the regulations owned by Indonesia, no one has brought up at all about the implementation of the use of the symbol of the blue shield, which in essence the symbol of the blue shield is the identity being admitted by the international world is a recognition of the protection of cultural heritage objects in all parts of the world (Murzal & Listriani, 2017).

The obligation of the country that ratified the 1954 Den Haag Convention was to insert the symbol of the identification, the Blue Shield Emblem in each cultural heritage for identification purposes. Because cultural heritage objects get very serious protection by international law, the violations committed by certain parties can be said to be a war crime

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so that it can be faced with the International Court of Justice. However, even though the Convention relating to Cultural War Crimes does not declare the explicit punishment that should be given to violations. There are several forms of violations of law / disruption in the field of cultural heritage, namely: war; Cultural infiltration; Natural disorders; Trading cultural heritage objects originating from theft, transfer, and smuggling; The wishes of strangers as collectors of cultural reserve objects; Exchange genuine cultural reserve objects with fake ones (Ibrahim & Dirkareshza, 2020).

In Chapter 4 The second additional protocol regulates the criminal and jurisdictional responsibilities, where jurisdictions are regulated in Article 16, prosecution is regulated in Article 17, extradition in Article 18, Legal Assistance in Article 19, the reason for rejection in chapter 20, and action Regarding other violations in Article 21. Combatants must know the things above so that combatants do not commit war crimes that can be held accountable before international law. Including Indonesia which can also be subject to international legal sanctions if they do not participate in maintaining cultural heritage objects. Then it should be included in the regulation of Indonesian laws and regulations regarding sanctions that will be faced if the destruction of cultural heritage objects during armed conflict.

In the Roman Statute in 1998 it was explained that every war crime committed by individuals and a group of individuals must be tried by using national law with international legal considerations. Based on the provisions in the Roman Statute in 1998, there should be no country allowed to intervene in armed conflicts that occur between countries that are in conflict. If there is no international efforts, the possibility of acts of destruction of cultural sites will occur again.

One of the UN DK's obligations is maintaining world peace and security. The article 42 The UN Charter states that the use of the UN Security Council resolution is an extreme action because the action can be considered a violation of a country's sovereignty. The use of the UN Security Council resolution is only used for situations that are considered very necessary international community intervention and requires the approval of the Nine members of the UN Security Council which as a whole consist of 15 countries. Requirements for the enactment of the Geneva Convention on non-international armed conflict, the conflict is within the territory of the country that signed the Geneva Convention.

The Geneva Convention and additional protocols do not contain criminal sanctions in criminals because in these instruments provide obligations that must be fulfilled by national law to establish criminal rules and criminal sanctions that are implemented. It is different from the Geneva Convention, the Roman Statute mentions criminal sanctions that can be imposed on Perpetrators of war crimes. Based on Article 77 of the Rome Statute, sanctions for war crimes can be in prison and fines. Article 77 paragraph (1) only recognizes the maximum prison sentence and does not mention a minimum prison sentence. In the verse it is stated that a maximum prison sentence is 30 years. If based on consideration of the health of the crime and the person's personal circumstances, it can be imposed in imprisonment for life. Apart from Article 77 above, Article 78 also regulates the determination of punishment. In steady punishment, the Court must pay attention to the factors such as the severity of the crime and the person's personal circumstances. Individuals who are responsible for war crimes they do themselves or they order or help others commit war crimes. These individuals are people both citizens themselves and enemy citizens who are bound to the provisions of the convention.

In Article 43 paragraph (1) of the additional protocol in 1977 regulated the provisions of the international law stated that all units, groups and armed units were organized in a command who was responsible for the party (Fadil Hidayat\*, Joko Setiyono, 2016). In the principles of international criminal law, it is known for its universal jurisdiction. In general, national criminal laws only apply to crimes committed in their regions or by their citizens. The International Humanitarian Law gives authority to pass through these limits by providing the rights and obligations of other countries to seek and arrest those responsible for a war crime without being limited by the citizenship of the suspect and the occurrence of crime. The country is then compulsory and has the right to try the perpetrators using its national law and can also be submitted to other state justice and the International Criminal Court. The principle is known as Universal Jurisdiction and is the key to the resolution of war crimes.

From the explanation above, it is sufficient reason that all countries on this earth are obliged to protect all cultural heritages. The obligation is attached to the state in any condition, including in a state of war. The state has the obligation to protect cultural heritage both in its own territory and in the territory of other countries, this is applied when there is a conflict between countries carried out by combatants.

## Conclusion

Protection of cultural heritage according to international humanitarian law has been regulated specifically in the 1954 Den Haag Convention regarding the protection of cultural objects. The cultural heritage also received protection from the convention that regulates the grassment of the war, namely the Convention of the Hague in 1907 concerning the procedures for fighting and the additional protocol of the Geneva Convention I and II in 1977 concerning the protection of victims of international armed conflict and non-international conflict.

In accordance with the arrangement in the Rome Statute and the Additional Protocol I of the Geneva Convention in 1977 concerning the Protection of Victims of International Armed Conflict, the actions of damaging cultural sites and cultural objects is a war crime. The completion of the destruction of the cultural heritage can be handled by the government of the jurisdiction or if the state government is not possible to try it, it can use the universal jurisdiction principle where the case of the case can be tried by other countries and the International Criminal Court.

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