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INTERNATIONAL CONVENTION VS NATIONAL INTEREST: CONTESTATION AMONG INDONESIAN GOVERNMENT INSTITUTIONS ON UNDERWATER CULTURAL HERITAGE CONSERVATION

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Abstract

Indonesia's underwater cultural heritage has tremendous potential to enhance the understanding of Indonesia's maritime culture history. But, this cultural heritage has a vulnerability due to various factors that can cause cultural heritage to be extinct. Indonesia's vast waters have substantial underwater heritage, but the government has constraints to ensure its protection. In Indonesia, the authority for underwater cultural resources found in the sea involves two government agencies that have different views on the underwater cultural heritage. On one hand, the cultural heritage is treated as "cultural goods" and on the other hand it is treated as "economic goods". The first purpose-protected perspective is supported by the law on cultural preservation and the principles agreed upon in the international convention on the protection of underwater cultural heritage. While the second perspective is supported by the presidential decree that is based on the national interest to improve the welfare of the community. This article explains how the two government institutions are trying to compete and negotiate to win their respective agendas.

Keywords: *underwater cultural heritage, economic goods, conservation, contestation.*

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I. INTRODUCTION

Geographically, the State of Indonesia inherited a vast archipelagic region. It should be understood that the territorial waters of Indonesia only covers 100,000 km² when Indonesia declared independence in 1945 (an area with a width calculated 3 miles from baselines). In 1957 the government of Indonesia developed the concept of the *archipelagic state which calculates the width/length of territorial waters as 12 miles from the baselines. When this idea was then recognized internationally in 1982 (UNCLOS 1982), the territorial waters of Indonesia became greater, increasing to 3 million km². In addition, Indonesia also has sovereign rights over natural resources outside of the territorial waters as far as 200 miles from the baseline, which is in the Exclusive Economic Zone and Continental Shelf. Since then, the area of Indonesia's*

sovereignty over the sea increased again by around 3,000,000 km². If the water areas are added with the land areas, which is an area of more than 2,000,000 km², then the total areas increases again to around 8 million km² (Djalal 2008, Martindas et al. 2007). Indonesia's territory consists of over 17 thousand islands stretching from west to east for 6400 km and from north to south for 2,500 km. If compared with Europe, its length is equal to a length starting from Ireland in the west to Kazakhstan in the East, and from Latvia in the north to Turkey in the south.

From the point of view of culture, the Indonesian archipelago is home to hundreds of ethnic groups that developed their own distinctive traditions, much of which are maritime traditions, there are even old technology that are still used and old methods still practiced today in various parts of the archipelago (Gibson, 1990; Sukendar 1998/1999). Under the vast waters and on the land areas of this archipelagic state, the heterogeneous natural resources and the rich culture has long been an attraction to foreign nations, whether originating from East Asia, South Asia, West Asia, and Europe. Experiences from interacting with foreign nations for a long time, either through peaceful means or violent encounters, have affected the dynamics of society and culture in Indonesia (Groeneveldt, 1960; Meiling-Roelofs, 1962; Manguin, 1985; Lombard 1996).

The maritime traditions of the archipelagic nations was implanted in about 5000 years ago by the ancestors of Indonesia, who are known as the Austronesian speaking people. The cultural heritage of the ancestors, to some extent, still can be traced in the form of archaeological evidence (especially from the megalithic period), and from the tradition of people who still live today (cf. Tanudirdjo 2010, Sopher 1965). The peaks of achievements in the past have been associated with the emergence and growth of the largest maritime kingdoms in the archipelago, namely Sriwijaya and Majapahit. Unfortunately, this great maritime tradition then faded away by the end of the 17th, during the period of western colonization (Tri Sulistiyono 2007), however the tradition is not entirely extinct, it still survives even now in a number of ethnic groups in the archipelago.

Increased understanding of Indonesia's glorious maritime history

and awareness of the great economic potential of Indonesia's waters among the wider community, encourages various community groups, mainly among high-ranking Navy officers, to rebuild the maritime spirit for the future of Indonesia. There even appears to be a strong wish to build a new Indonesia with the "sea paradigm" as its foundation (Soeparno, 2010). In the academic circles, it also appears that there is an increasing awareness of the incompleteness of the reconstruction of the cultural history of Indonesia because it is too dominated by the perspective of land due to data mainly coming from the land. Research on the findings of underwater archeological sites or points of interest in a number of locations within Indonesian waters produces some new knowledge that led the researchers to reassess the image of the cultural history of Indonesia in a more comprehensive manner (Budi Utomo 2008).

Meanwhile, in the tourism industry, a new discourse have emerged which emphasizes the importance of marine tourism for the future of Indonesian tourism, which can be seen through the statement that "The future of Indonesian Tourism is Marine Tourism" (Junaedi 2007). The facts mentioned above confirmed that the maritime heritage of the Indonesian state had an impact on aspects of political, academic and economic affairs.

The question is whether this potential wealth truly have a bright future? The answer will depend very much on government policy in managing its cultural heritage. The problem that is now being faced is that one of the maritime resources that is considered very important to understand the identity of the Indonesian people is under threat to be destroyed and even become extinct. The Indonesian government has provided legal instruments to protect all cultural inheritance on land and in the water. Since 1931 until now, Indonesia has revamped the cultural heritage regulations twice. In 1992 (State Law on Cultural Property) was passed to replace the 1931 colonial legislation product called the *Monumenten Ordonantie*; then in again 2010 (*State Law on Cultural Property*) which was considered as an improvement from the previous Law.

Apart from that, there are other legislative products whose substance is not to protect but to use commercially, especially against the types

of cultural heritage found under water. The legislative product is a Presidential Decree that was first issued in 1989 and then corrected in 2000, 2007 and 2009. In practice, the presidential decree is so effective that it cannot be prevented by other regulations that have a higher hierarchy, namely the State Law on Cultural Property. In an effort to stop the activity, the Ministry of Culture and tourism at that time had tried to evaluate the possibility of the 2001 UNESCO Convention to be ratified. Criticism from the general public continues to flow, but until now exploration activities have not been stopped and the Indonesian government is still not willing to ratify it.

This paper intends to answer three questions, namely (1) why the government chose to implement the Presidential Decree on commercial use rather than carry out the mandate of the Cultural Heritage Law to protect it, (2) why the government is still not willing to ratify the 2001 UNESCO Conventions, and (3) what consequences can occur if a situation like this cannot be stopped.

II. METHOD

The data used to describe the phenomenon of contestation is mainly based on studies of national and international legal products relating to the management of underwater cultural heritage (Kepres 1989; 2000; 2007; 2009; Law RI, 1992, 2010; State Law No. 2007 amended in 2014 concerning Management of Coastal Areas and Small Islands and State Law of Sea; UNESCO Conv 2001). In addition, an intensive study was carried out on reports and news through print and electronic media on exploration activities on underwater cultural heritage (Gatra, Tempo; PANNAS BMKT; Budi Utomo 2010). Throughout the period of 2006 to 2015 the author actively participated in a number of sessions discussing the issue of managing underwater cultural heritage and UNESCO's reactions to commercial exploration and utilization activities by the Indonesian government (2007, 2010, 2011, 2018).

III. RESULT AND DISCUSSION

The history of treasure hunting in the form of underwater cultural heritage found in Indonesian maritime waters may have started since the 1960s. But massive exploration only began to occur in the 1980s.

The exact number of archaeological sites recorded in Indonesia is uncertain. Based on information compiled by BRKP, Ministry of Marine Affairs and Fisheries (2005) showed the following figures (Directorate General of Marine, Coastal and Small Islands 2005:2-3):

Table 1. Recorded Archaeological Sites by MMAF

No.	Area of distribution	Qt of spot
1	Bangka strait	7
2	Belitung	9
3	Gaspar straits, South Sumatera	5
4	Karimata strait	3
5	Riau Waters	17
6	Malaka Strait	37
7	Seribu Islands	18
8	Jawa Tengah Waters	9
9	Karimun Jawa, Jepara	14
10	Madura Strait	5
11	NTB / NTT	8
12	Pelabuhan Ratu	134
13	Makassar Strait	8
14	Cilacap Waters, Central Java	51
15	Arafuru-Maluku Waters	57
16	Ambon-Buru Waters	13
17	Halmahera-Tidore Waters	16
18	Morotai Waters	7
19	Tomini Bay, Sulawesi Utara	3
20	Irian Jaya	31
21	Enggano Islands	11
	Total:	463

Of all the detected locations, there is an estimated treasure trove of economic value which reaches around USD 12.7 billion, equivalent

to IDR 127.6 trillion. For example between 1985-2006 alone, there were at least four prominent cases related to the underwater cultural heritage. The three of them are the Nanking Cargo / De Geldermalsen (1985/1986) worth 15 million US dollars; the Teksing Cargo (1999/2000) with auction results of more than Rp. 117.5 billion; the Tang Cargo (1989/2003) with auction results of more than Rp. 360 billion; and Five Dynasty / Siren Cargo / Cirebon (2004/2006) worth almost one trillion rupiahs (but the auction failed) (Handsas Institute, 2006). It is this attraction of economic value that seems to be a very strong incentive for the government to keep up efforts so that the underwater cultural heritage can be legally traded.

The Directorate General of Marine and Fisheries Resources Supervision of the Ministry of Maritime Affairs and Fisheries (KKP) itself released information that says there are at least 134 locations where ships had sunk in Pelabuhan Ratu and 37 locations in the Malacca Strait. The actual amount is estimated to be far more, because based on the results of UNESCO's research, there are around 20 thousand ships from various countries in the world that have sailed to the Malacca Strait and are known to have never returned to their home countries, these ships allegedly drowned in Indonesian waters (Institute 2006: Kasanah 2016; Kumpran 2017).

Institutionally there are two parties under the Indonesian government that have a large role in the management of underwater cultural heritage. The first party is the Ministry of Education and Culture through the Directorate General of Culture who oversees subordinate directorates, eg. Directorate of the Conservation of Cultural Property and Museum. In some provincial areas that are connected to bodies of water, there are local agencies known as Office for Protection of Archaeological Heritage, which performs tasks such as conducting management (protection, development, and utilization) of archaeological heritage at a local level (on land and underwater). Directorate of Underwater Heritage is actually still very new, established in 2005. Therefore it is still trying to get a feeling of its area and still face many obstacles, especially in terms of equipment, and human resources. This institution works on the basis of The State Law No. 11/2010 Concerning Cultural Property. This law is a new legislative product which replaces the

previous one, State Law No. 5/1992, which was considered no longer suitable for present conditions. Although this new law contains many changes from the previous one, the underlying spirit remains the same, which is conducting the preservation of archaeological heritage.

The other party that have a large role relating to underwater cultural heritage is a committee known as the National Committee for Salvage and Utilization of Valuable Objects from Sunken Ships (VOS), known as PANNAS-BMKT (NCSU-VOS). Initially, this committee was established by Presidential Decree No. 43/1989 then replaced several times by newer presidential decrees, ie. No. 107/2000, then No. 19/2007, and finally no. 12/2009.

The NCSU-VOS is chaired by the Minister of Marine Affairs and Fisheries and designed as a cross-departmental organization involving no fewer than 15 related-government institutions, including the Ministry of Culture and Tourism. It should be kept in mind that the spirit of the government to utilize underwater cultural heritage is inseparable from the bitter experience of exploration as shown by an example in the Riau archipelago in the early 1980s. The exploration results from two shipwreck sites there was successfully auctioned at a price of over U.S. \$ 2 million and U.S. \$ 15 million (Handayani 2010: 60-61). Seeing the huge economic potential, it finally issued the Presidential Decree.

Implementation of the Presidential Decree of NCSU-VOS is often marred by internal conflicts between the representatives from the Ministry of Culture and Tourism (cq. Directorate General of History and Archaeology), and representatives of the Ministry of Marine Affairs and Fisheries (cq. Directorate General of Marine, Coastal and Small Islands). Revisions to the Decree cannot be separated from the internal atmosphere of conflict between the two institutions that dominate the NCSU-VOS. Although this Presidential Decree underwent several revisions, the spirit of the law does not change significantly from the original design, namely as a legal instrument for the commercialization of underwater cultural heritage.

The main task of NCSU-VOS in accordance with the Presidential Decree is to coordinate the management of VOS. The term “management” refers to three main activities, namely surveys, removal, and utilization. The ultimate and main goal of this management is the

sale of VOS to third parties. It is very clear that the committee basically treats underwater cultural heritage as “an economic good” that can be sold as a commodity.

In contrast, the Directorate General of History and Archaeology treats underwater cultural heritage as “cultural objects” that must be protected from possible damage or “removal” from Indonesian territory. The term “utilization” from the standpoint of this institution, in accordance with the mandate of State Law no. 11/2010, is for the interest of religious, social, education, science, technology, culture and tourism (Article 85). In fact, the exploration of underwater cultural heritage is mostly done by NCSU-VOS, especially ones relating to shipwreck sites with high economic potential. It is common sense that most VOS of high economic value is also of significant importance in terms of history, science, and culture. But because it is done by those who sees it for commercial purposes, then the function of preservation gathers less attention. The main drawback of the work of NCSU-VOS is the lack of effort in protecting the wreck which is very important in terms of science, and the lack of efforts aimed at conservation, especially of objects that are considered less valuable economically.

In its function as an institution of underwater cultural heritage conservationists. The Directorate General of History and Archaeology also conducts exploration activities, especially the survey and mapping of archaeological sites under water. Unlike the NCSU-VOS, the directorate general did not conduct an intensive intervention of cultural objects underwater, insteans it puts more effort on mapping the locations and identification of potential findings from the standpoint of history, science, and culture. So far this institution has mapped about 50 sites in various regions in Indonesia. Yet these institutions face obstacles that cannot be overcome by effectively, namely in terms of securing the site of a large area with a limited number of human resources (Ghautama 2011). Several cases can still be found of a number of sites that were damaged or stolen by looters who knew the spot location of these sites. Thus it can be said that this institution faces two problems from different sides, firstly is the problem of thefts or looters at the sites that have been mapped, and secondly is the problem of legal commercial exploration by other government agencies (NCSU-VOS).

Because of the strong funding support from investors, NCSU-VOS can move more rapidly in VOS exploration than the Directorate General of History and Archaeology. Data from the years 2001-2010 mentioned as many as 80 shipwreck sites had obtained a license for commercial utilization, of which, as many as 71 sites have been surveyed and the remaining nine sites have been removed from underwater (PANNAS-BMKT 2010). This data confirms the potential loss of the 80 wreck sites. The question then is “is there any alternative approach that could unite conservation interests with commercial interests?” The answer to that question is “yes”. The eloquent solution is by placing underwater cultural heritage equal to other cultural heritages in the world, namely as an object of tourism attraction. Through this approach, all the parties concerned shall establish standards of ethics and shared responsibility in using and managing this common property resources (cf. Mather, I.R. et.al, 2002: 598-599; cf. Ardiwidjaja 2009). Thus the interests of all parties can be met because cultural heritage is not just limited to academic interest such as being an object for research; but also becomes accessible for tourism and local communities.

As explained earlier, in the contestation between national institutions, it is clear that the victory is with government institutions that use the Presidential Decree instrument where underwater cultural heritage is chosen for commercial use. This victory is not only reflected in the legal products produced to support PANNAS BMKT programs. Since 1989, four presidential decrees have been issued (1989, 2000, 2007, 2009) as a strategy to deal with attacks from conservationists. While the Ministry of Culture and Tourism only relies on State Law which is not supported by regulations

Efforts to prevent commercial utilization of BMKT were also carried out using international instruments in the form of the 2001 UNESCO Convention on Underwater Cultural Heritage Protection. This Convention contains clear provisions that underwater cultural heritage should not be commercialized and in situ protection is the main choice. An evaluation of the possibility of ratifying the UNESCO convention has been carried out since 2006. In one of the meetings with UNESCO and the government agencies that have different interests, the possibility of ratification was offered. The conclusion was left to the Indonesian

government with the choice (1) to ratify by first harmonizing the legislation products which are still contradictory; or (2) ratify directly without prior harmonization, but corrected while running (2008).

The government's decision is not clear because PANNAS BMKT tends to maintain the status quo and the Ministry of Culture and Tourism does not have the power to impose its agenda. A seminar was held in 2010, which included two options to choose from: (1) ratification with a measurable transition period, for example all exploration permits were stopped so that only those who had obtained permits could carry out lifting and utilization activities; or (2) immediately ratified with the consequences of all commercial activities not possible (Rahardjo 2010). But there is no follow-up because each party maintains their respective positions.

What factors actually cause the failure in the effort to prevent the exploitation of underwater cultural heritage? There appears to be two factors, namely economic interests, and government commitment. Since 2015, pressure on the government to stop exploitation was getting stronger. This slightly changes the constellation of the competition. Since President Joko Widodo expressed his ideas about Indonesia as a maritime axis and the Minister of Maritime Affairs and Fisheries putting more emphasis on handling the problem of illegal fishing than BMKT, the licensing for exploitation was suspended (moratorium) through Ministerial Regulation (2015).

Even then the moratorium was further extended (2016) until now. Even so, PANNAS BMKT cannot be completely defeated. The Ministry of Maritime Affairs and Fisheries has included the agenda of utilizing underwater cultural heritage as a maritime service which has been incorporated into the Maritime Law in 2017; the ministry also included the licensing arrangements for utilization in the Law on the Management of Coastal Areas and Small Islands. In the current agenda made by the Ministry of Maritime Affairs and Fisheries, the creation of a National competency standards for the appointment and utilization of BMKT (2018) was also included.

V. CONCLUSION

The wealth of our maritime cultural heritage is currently facing a critical situation, if not addressed properly then things might just be too late later on. The problem we have at hand right now lies in how we (particularly the government) views cultural heritage as; is it a product of commercial value or a part of our history and culture that must be preserved. Regulatory products created to protect them are unable to work effectively, while regulatory products that eliminate cultural heritage are increasingly strengthened. The history of the formation of government policies relating to the utilization of underwater cultural heritage tends to be strongly influenced by various economic interests at play. This domination will be stronger if the political will of the power holders has the same perception.

Right now the power holders finally have a commitment to preserve the underwater cultural heritage. However, regulatory products continue to take sides with attitudes that choose cultural heritage as a mere commercial commodity. The fate of this underwater cultural heritage will be determined by the commitment of the authorities who can make among others, the following three choices, namely (1) continue the exploitation of BMKT on the grounds of not violating national regulations, (2) temporarily stopping exploitation of BMKT through sectoral policies; or (3) stop it altogether by ratifying the 2001 UNESCO Convention. All these choices will have different consequences and will impact our country differently. The preservation and protection of our heritage and culture will depend on which decision will be made.

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