

# The Legal Status of Shipwreck Cargoes as Underwater Cultural Heritage from National and International Standpoints

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## Abstract

Shipwreck cargo or *Benda Muatan Kapal Tenggelam* (BMKT) in Indonesia, often referred to as underwater cultural heritage (UCH), holds significant economic potential for Indonesia, a nation prosperous in UCH sites. However, the preservation and management of these assets frequently encounter legal challenges at both national and international levels. This study examined the complex legal landscape surrounding shipwreck cargo in Indonesia, highlighting the divergent perspectives of national legislation and international norms. Indonesia's domestic laws allow for the auctioning of shipwreck cargo, which presents an opportunity for economic advancement. However, this approach clashes with the principles outlined in the Convention on Protection of the Underwater Cultural Heritage 2001, which underscore the collective heritage value of UCH objects and discourages their commercialization. This legal divergence underscores the need for Indonesia to balance its national interests with its international commitments in managing shipwreck cargo. By examining these legal intricacies, this study reveals the challenges of the coexistence of conflicting legal frameworks. It provides insights into potential strategies for harmonizing preservation efforts with commercial interests, thereby facilitating a balanced approach to the management of shipwreck cargo. By navigating these complexities, Indonesia can effectively leverage its underwater cultural heritage while fulfilling its obligations as a member of the international community.

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**Keywords:** BMKT, shipwreck cargo, underwater cultural heritage.

## A. Introduction

Indonesia's strategic location between two vast continents, Asia and Australia, and its borders with the Pacific and Indian Oceans have long established it as a crucial crossroads for international maritime trade. Indonesia's waters have been integral to global shipping routes for centuries, facilitating connections between Europe, Africa, the Middle East, South Asia, and East Asia. Beyond its reputation as a vital shipping lane, Indonesia stands out as a historical leader in spice production. Evidence of Indonesia's maritime prowess and significance as a global trade hub abounds throughout its history.

In Eastern Indonesia, maritime trade routes profoundly shaped local identities, as illustrated by the prominence of key port cities like Makassar in the 19th century. This historical narrative highlights Indonesia's expansive territorial reach, facilitating the arrival and departure of countless vessels worldwide. This rich legacy significantly contributes to Indonesia's enduring maritime heritage.<sup>1</sup>

Furthermore, it is unsurprising that Indonesian territorial waters, renowned for their strategic positioning along major sea lanes of trade, harbour hundreds, if not thousands, of shipwrecks. These maritime graveyards predominantly cluster around crucial traffic routes and pivotal hubs of commerce. In the 10<sup>th</sup> century, these waters witnessed the demise of numerous vessels belonging to Chinese fleets, the Dutch East India Company (VOC–Verenigde Oostindische Compagnie), the United Kingdom, Portugal, and Spain, and domestic merchant ships. The ships carried much spice and various merchandise, such as gold, to Indonesia. Even the Director of Preservation of Cultural Heritage and Museum at the Ministry of Education and Culture roughly estimated 500,000 shipwrecks in the waters of Indonesia. UNESCO also noted that there are 5 million shipwrecks worldwide, and about 500,000, or 10 percent, were in the sea of Indonesia. At the same time, 50,000 of them contain thousand-year-old valuable treasures, and a few even contain precious treasures with high value.<sup>2</sup>

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<sup>1</sup> Edward L. Poelinggomang, *Makassar Abad XIX: Studi Tentang Kebijakan Perdagangan Maritim* (Jakarta: Kepustakaan Populer Gramedia, 2002), 171-172; Nanto Sriyanto, "Global Maritime Fulcrum, Indonesia-China Growing Relations, and Indonesia's Middlepowermanship in The East Asia Region," *Jurnal Kajian Wilayah* 9, no. 1 (2018): 11, <https://doi.org/10.14203/jkw.v9i1.784>; Yety Rochwulaningsih, et al., "Marine Policy Basis of Indonesia as A Maritime State: The Importance of Integrated Economy," *Marine Policy* 108 (2019): 7, <https://doi.org/10.1016/j.marpol.2019.103602>.

<sup>2</sup> Around 500,000 shipwrecks exist in Indonesia, according to UNESCO data, there are at least five million shipwrecks worldwide and 10 percent of them are in Indonesia. On the contrary, based on Law Number 11 of 2010 on Cultural Heritage, the government will impose heavy sanctions on anyone who commits a criminal act of removing or destroying Indonesian Cultural Heritage. See Mahmudah, "Sekitar 500.000 Kapal Karam di Indonesia", *ANTARA News*, accessed February 20, 2024, <https://jateng.antaranews.com/berita/69688/sekitar-500000-kapal-karam-di-indonesia>. Various legal aspects regarding shipwrecks in Indonesia are also of public

Research and development data from Indonesia's Ministry of Marine Affairs and Fisheries has identified 463 shipwreck sites within Indonesian waters, each containing valuable cargo. According to Chinese historians, around 30,000 ships never returned to their ports of origin, with some presumed to have travelled to Indonesia. These vessels sailed to areas including East and West Sumatra, the Sunda Strait, the northern coast of Java, the Karimata Strait, and the Makassar Strait.<sup>3</sup> National Geographic reported in 2011 on seven notable ancient shipwrecks in Indonesian waters: the British ship *Diana*; Chinese ships *Tek Sing* and *Turiang*; Dutch ships *Nasau* and *Geldernmalsen*; the Portuguese ship *Don Duarte de Guerrera*; and the Japanese ship *Ashigara*. These vessels were located off the coast of western Indonesia, particularly around the Malacca Strait.

Despite these discoveries, the number of identified sunken ships is likely underestimated. Wells (1995) recorded approximately 186 VOC shipwrecks in Indonesian waters, while the Netherlands Archaeological Organization archives documented 245 VOC shipwrecks. Additionally, the Marine and Fisheries Research Board of LIPI, the Hydro-Oceanographic Service of the Indonesian Navy, and the Research and Development Board on Oceanology collectively estimate that 463 shipwrecks are situated in Indonesian waters.<sup>4</sup>

The underwater treasure is the world's cultural heritage that must be preserved and protected from illegal exploitation. Therefore, the United Nations, through UNESCO, held the Convention on the Protection of the Underwater Heritage on November 2, 2001. The Convention was internationally rejected, including by Indonesia, which legalized and justified the auction of treasure. The government of Indonesia successfully identified 2506 sunken ship sites with precious value. For the government, it will become an obstacle if they preserve many heritage objects, considering the high maintenance cost and inadequate storage.<sup>5</sup>

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concern, especially regarding how to protect and aspects of cultural heritage. See also Roby Ardiwidjaja, "Pelestarian Tinggalan Budaya Bawah Air: Pemanfaatan Kapal Karam sebagai Daya Tarik Wisata Selam," *Amerta* 35, no. 2 (2017): 138, <https://ejournal.brin.go.id/amerta/article/view/3430/2397>; Sakina Fakhriah and Arie Afriansyah, "Yurisdiksi Indonesia Sebagai Negara Pantai dalam Proteksi Kapal Karam Sebagai Warisan Budaya Bawah Laut," *Refleksi Hukum: Jurnal Ilmu Hukum* 7, no. 1 (2022): 131-132, <https://doi.org/10.24246/jrh.2022.v7.i1.p123-142>; Zhen Lin, "The Protection Of Sunken WWII Warships Located In Indonesian or Malaysian Territorial Waters," *Marine Policy* 113 (2020): 2, <https://doi.org/10.1016/j.marpol.2019.103804>; Jun Kimura, "Shipwrecked? New Developments in Southeast Asian Maritime Archaeology and The Safeguard of Shipwrecks in The Region," *International Journal of Nautical Archaeology* 44, no. 1 (2015): 2, [[https://doi.org/10.1111/1095-9270.12104\\_1](https://doi.org/10.1111/1095-9270.12104_1)].

<sup>3</sup> Ira Dillenia and Rainer Arief Troa, "Identifikasi Situs Kapal Karam Bersejarah "Karang Panjang" Di Perairan Pulau Laut Natuna," *Jurnal Kelautan Nasional* 11, no. 1 (2016): 15, <http://dx.doi.org/10.15578/jkn.v11i1.6063>.

<sup>4</sup> Widiati, *Katalog Peninggalan Bawah Air di Indonesia* (Jakarta: Direktorat Peninggalan Bawah Air Dikjen Sejarah dan Purbakala Departemen Kebudayaan dan Pariwisata, 2007), 5-6.

<sup>5</sup> Jhohannes Marbun, "An Advocacy Approach on Underwater Heritage in Indonesia, Case Study: An Auction on Underwater Heritage from Cirebon Waters In 2010," in *Proceedings of the Asia-Pacific Regional Conference on Underwater Cultural Heritage*, 2011; Supratikno Rahardjo, "International Convention Vs National Interest:

Shipwreck cargo, or *Benda Muatan Kapal Tenggelam* or BMKT in Indonesian, holds immense value<sup>6</sup> economically and in terms of historical and cultural values. Shipwreck cargo is considered the state's most critical asset. However, the high value of these underwater artifacts has led to frequent incidents of theft, illegal excavation, and unauthorized surveys.<sup>7</sup> On the other hand, the protection efforts clashed with the government, which legalized and justified the auction of shipwreck cargo.<sup>8</sup> In the same context, some scholars highlighted that Indonesia's legal framework permits the commercial removal and salvage of underwater cultural heritage, particularly by enacting the Job Creation Law 2021, which applies open-investment principles. Despite lacking specific provisions for underwater cultural heritage, Indonesia is urged to adopt a model for its protection and preservation, drawing on its obligations under the United Nations Convention on the Law of the Sea (UNCLOS).<sup>9</sup>

In the broader context, shipwrecks, lying silent beneath the ocean's depths, often hold more than mere historical artifacts; they embody the cultural heritage of civilizations long past. The legal status of shipwreck cargoes as underwater cultural heritage represents a complex intersection of national sovereignty and international law. At the heart of this debate is the need to recognize shipwreck cargo not merely

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Contestation Among Indonesian Government Institutions on Underwater Cultural Heritage Conservation," *Indonesian Journal of International Law* 16, no. 3 (2019): 351, <https://doi.org/10.17304/ijil.vol16.3.763>.

<sup>6</sup> But the important thing is the controversy lies in whether a sunken ship should be the object of salvage. In contemporary salvage, a ship in distress is usually considered to be one that is not yet lost. There is a wide variety of items that qualify a salvable property. The 1989 Salvage Convention does not define the relationship between salvage law and protection of underwater cultural heritage and the 1989 Salvage Convention also does not mention wreck. However, it is assumed that the convention includes wrecks due to its generally inclusive nature. See Liza J. Bowman, "Oceans Apart over Sunken Ships: Is the Underwater Cultural Heritage Convention Really Wrecking Admiralty Law?" *Osgoode Hall Law Journal* 42, no. 1 (2004): 25-26, <https://doi.org/10.60082/2817-5069.1388>; Rika Kurniaty, "The Implementation of Vessel-Sinking Policy as An Effort to Protect Indonesian Fishery Resources and Territorial Waters," *IOP Conference Series: Earth and Environmental Science* 137, no. 1 (2018): 2-3, <https://doi.org/10.1088/1755-1315/137/1/012038>; Dhiana Puspitawati, "The Protection of Underwater Cultural Heritage in Indonesian Law: Do Sunken Warships Count?" in *Culture and International Law* (Florida: CRC Press, 2019), 91-92.

<sup>7</sup> W. Indrawan, "KKP Perketat Pengawasan BMKT", *ANTARA News Lampung*, accessed February 25, 2024, <https://lampung.antaranews.com/berita/273483/kkp-perketat-pengawasan-bmkt>. See also Natali Pearson, "Protecting and Preserving Underwater Cultural Heritage in Southeast Asia," in *The Palgrave Handbook on Art Crime* (London: Palgrave Macmillan, 2019), 691-692, <https://doi.org/10.1057/978-1-137-54405-6>.

<sup>8</sup> Riama Luciana Sihotang, "Problematika Kegagalan Lelang Benda Berharga Asal Muatan Kapal yang Tenggelam (BMKT): Suatu Analisis Penerapan Asas-Asas Lelang pada Pelaksanaan Lelang BMKT" (Thesis, Universitas Indonesia 2013), 3-4.

<sup>9</sup> Dhiana Puspitawati and Rangga Vandy Wardana, "The Protection and Preservation of Underwater Cultural Heritage: The Practice of Indonesia," *Indonesian Journal of International Law* 20, no. 3 (2023): 421-422, <https://scholarhub.ui.ac.id/ijil/vol20/iss3/1>; Dhiana Puspitawati, et al., "Conceptualizing Policy on Underwater Cultural Heritage: Towards Legal Protection and Ecotourism Promotion in Karimun Jawa, Indonesia," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 648-649, <https://doi.org/10.15294/jils.v8i2.68464>.

as objects of historical interest but as essential elements of cultural identity that merit protection. Several pertinent theoretical perspectives enrich the discourse.<sup>10</sup>

Internationally, frameworks such as the UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001) establish principles for preserving, excavating, and repatriating submerged cultural artifacts. This convention underscores the global consensus on the importance of underwater cultural heritage and outlines mechanisms for cooperation among nations. However, legal frameworks differ significantly, reflecting diverse approaches to ownership, salvage rights, and the balance between archaeological stewardship and economic interests. Theories such as cultural property theory and legal pluralism offer insights into these varying national perspectives, highlighting the tensions between heritage preservation and commercial exploitation.

In addition, current international law lacks adequate provisions for marine archaeology. Specifically, international law does not ensure the preservation of historically significant shipwrecks, a major component of marine archaeological finds, for the public benefit. Because historic shipwrecks have educational, recreational, and cultural value and contribute to our understanding of history, it is in the public's interest to ensure these resources are not jeopardized.<sup>11</sup> According to the conditions described before, this paper aims to examine the legal status of shipwreck cargoes within the National and International Law Regime as the Common Heritage. This paper also aims to look at how the government's efforts to protect underwater cultural heritage include sunken ships and shipwrecks in the waters of Indonesia.

## B. The Legal Status of Underwater Cultural Heritage

Cultural heritage encompasses shared, studied, symbolic, and inherited objects that can adapt and integrate over time. Broadly defined, cultural heritage includes artistic, literary, historical, architectural, archaeological, ethnological, intellectual, or

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<sup>10</sup> Sean A. Kingsley, *Shipwrecked in Situ: Saving the Sunken Past or Scapegoat Archaeology*, (Maritime Heritage Foundation: London, 2019), 15-17.

<sup>11</sup> Anne M. Cottrell, "The Law of the Sea and International Marine Archaeology: Abandoning Admiralty Law to Protect Historic Shipwrecks," *Fordham International Law Journal* 17, no. 3 (1993): 684, <https://ir.lawnet.fordham.edu/ilj/vol17/iss3/7>; See also Meike Rachmana, "The Conception of Historic Shipwrecks Ownership in Accordance with International Law," *Indonesian Journal of International Law* 12, no. 3 (2015): 368-369, <https://doi.org/10.17304/ijil.vol12.3.610>; Natali Pearson, "Resisting Internationalism? The Evolution of Indonesia's Shipwreck Legislation," *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 178, no. 4 (2022): 391, <https://doi.org/10.1163/22134379-bja10044>. Other circumstances highlighted the complex interplay between copyright law and cultural preservation efforts in Indonesia, emphasizing the need for effective legal instruments to uphold creators' rights and preserve cultural heritage. See Lyndel V. Pratt, and Patrick J. O'Keefe, "'Cultural Heritage' or 'Cultural Property'?" *International Journal of Cultural Property* 1, no.2 (1992): 312, <https://doi.org/10.1017/S094073919200033X>.

technological artifacts—movable or immovable—embodying a nation's values. Cultural heritage is in the form of objects, and the heritage area of land and/or water that needs to be preserved has value because it is important for history, science, education, religion, and/or culture through the setting.<sup>12</sup>

### 1. Legal Status of UCH Based on International Law

The legal landscape surrounding Underwater Cultural Heritage (UCH) within international law is a dynamic and intricate area of exploration. As countries confront the challenges of safeguarding submerged cultural riches, fundamental questions emerge concerning ownership, jurisdictional boundaries, and the application of legal frameworks. The Convention on the Protection of Underwater Cultural Heritage (2021) provides a structured framework for addressing these issues.

Article 1 of the Convention defines several categories delineating what constitutes underwater cultural heritage. These encompass a broad spectrum of artifacts and sites. Underwater cultural heritage includes sites, structures, buildings, artifacts, and human remains, each within their archaeological and natural context. These elements represent tangible remnants of human history submerged beneath the earth's waters, often bearing significant cultural, historical, or scientific value.

Additionally, the Convention recognizes vessels, aircraft, and other vehicles submerged underwater, along with any components thereof and their cargo or contents. These items are considered part of underwater cultural heritage when they are found within their archaeological and natural surroundings. Such artifacts provide insights into past maritime activities, technological advancements, and trade networks, offering invaluable historical perspectives. Objects of prehistoric character also fall under the purview of underwater cultural heritage as defined by the Convention. These artifacts, often dating back millennia, contribute crucially to our understanding of early human civilizations, lifestyles, and cultural practices. This Convention stated that the underwater cultural heritage is an integral part of the cultural heritage of humanity and the critical element of the history, nation, and human relationship. According to Indonesian legislation, the world's cultural heritage or objects of cultural heritage (*benda cagar budaya*) are divided into tangible and intangible. Intangible cultural heritages are the untouchable cultures. In comparison, tangible cultural heritages are touchable because they are concrete objects. UNESCO emphasized those cultures as the world's cultural heritage.

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<sup>12</sup> See Consideration of Law Number 11 of 2010 on Cultural Heritage.

Convention on the Protection of the Underwater Cultural Heritage 2001 had complete instruments. The 2001 Convention<sup>13</sup> sets high standards for protecting the underwater cultural heritage that will be common to all nations. As for the national rules, Indonesia has Law Number 11 of 2010, which is the change to Law Number 5 of 1992 on Cultural Heritage. The national and international laws concerning underwater cultural heritage are closely related. National law should already take notice of international law. Table 1 compares the Conventions on the Protection of Underwater Cultural Heritage and Law Number 11 2010.

**Table 1.** Comparison of Conventions on the Protection of Underwater Cultural Heritage and Law Number 11 of 2010 on Cultural Heritage

About	UNESCO Convention	Law Number 11 of 2010
Philosophical	It acknowledges that underwater cultural heritage is part of humanity's cultural heritage and an essential element in the history of the people and the nation.	Cultural Heritage ( <i>Cagar Budaya</i> ) is the cultural heritage of nations, a critical thought and attitude expression of humanity.
Backgrounds	<ul style="list-style-type: none"> <li>a. It recognizes the importance of protecting and preserving underwater cultural heritage.</li> <li>b. It notes the public interest.</li> <li>c. There is a need to develop international regulations relating to underwater cultural heritage.</li> <li>d. The fact that illegal actions are threatening underwater cultural heritage.</li> </ul>	<ul style="list-style-type: none"> <li>a. The central and local governments must manage cultural heritage objects for the welfare and prosperity of the people.</li> <li>b. There is a need to balance the ideological, academic, ecological, and economic aspects.</li> <li>c. Law Number 5 of 1992 on cultural heritage objects does not follow the development. The demands and needs of law</li> </ul>

<sup>13</sup> The aims of the UCH Convention are concise and clear: "to ensure and strengthen the protection of underwater cultural heritage" for the benefit of humanity. See Lowell Bautista, "Ensuring the Preservation of Submerged Treasures for the Next Generation: The Protection of Underwater Cultural Heritage in International Law," in *Proceedings The 2012 LOSI-KIOST Conference: Securing the Ocean for the Next Generation*, May, 2012, Seoul, Korea: The Law of the Sea Institute–Korea Institute of Ocean Science and Technology Conference.

About	UNESCO Convention	Law Number 11 of 2010
	e. Technological development does not match a good conscience.	in society need to be replaced.
Purposes	<div>a. It organizes and develops rules relating to underwater cultural heritage.</div> <div>b. It secures and strengthens the protection of underwater cultural heritage.</div> <div>c. It prohibits commercial exploitations.</div>	<div>a. It preserves the nation's cultural heritage and the heritage of humanity.</div> <div>b. It raises the dignity of the nation through the cultural heritage.</div> <div>c. It preserves underwater cultural heritage for the benefit of humanity.</div> <div>d. It increases the welfare of people</div> <div>e. It promotes cultural heritage to the international community.</div>
Role of State	<div>a. State Parties shall preserve underwater cultural heritage for the benefit of humanity under the provisions of this Convention.</div> <div>b. State Parties shall cooperate in the protection of underwater cultural heritage.</div> <div>c. It secures access to documents about observing underwater heritage, except when not under the convention's provisions.</div>	<div>a. Central and local governments facilitate the promotion of heritage committed by any person.</div> <div>b. The government's role is to be responsible for any activities related to cultural heritage objects.</div>



About	UNESCO Convention	Law Number 11 of 2010
Authority	<ul style="list-style-type: none"> <li>a. State Parties have the exclusive right to regulate and perform the activities related to underwater heritage in their jurisdiction.</li> <li>b. The nation reserves the right to prohibit and prevent any interference activities related to underwater cultural heritage with sovereign rights.</li> </ul>	<ul style="list-style-type: none"> <li>a. It establishes norms, standards, procedures, and criteria for preserving cultural heritage.</li> <li>b. Central and local governments can terminate and cancel permits to preserve culture.</li> <li>c. It preserves cultural heritage in the border area or outside the country.</li> <li>d. It prepares and establishes a master plan for heritage preservation culture.</li> </ul>
Cooperation	<ul style="list-style-type: none"> <li>a. State Parties shall cooperate and assist each other in protecting and managing underwater cultural heritage under conventions, including, in practical terms, excavation investigation documentation, conservation, research, and presentation of the heritage.</li> </ul>	<ul style="list-style-type: none"> <li>a. People are forbidden to conduct a cultural heritage without the government's permission.</li> <li>b. Everyone can participate in the register of cultural heritage or suspected cultural heritage.</li> <li>c. Every person is entitled to technical support from central and local governments to preserve cultural heritage.</li> </ul>

Table 1 shows that some crucial aspects are compared between the Conventions on the Protection of Underwater Cultural Heritage by Law Number 11 of 2010. The conventions and the laws have a common philosophy, background, purpose, role of the state, authority, and cooperation. Following is the analysis of each point:

Philosophically, the Convention and the Act recognize that underwater cultural heritage is part of the world's cultural heritage. Article 1 of Law Number 11 of 2010 defines cultural heritage as the form of objects, and the heritage area of land and/or water that needs to be preserved has value because it is important for history, science, education, religion, and/or culture through the setting. From these

explanations, the authors argue that cultural heritage is defined in the Convention. So philosophically, the object is the same in both rules as the object of cultural heritage.

The Convention primarily addresses the various illegal activities that threaten underwater cultural heritage. Illegal activities and violations of state jurisdiction would also eliminate the value of cultural objects. Regulations concerning existing cultural property cannot accommodate the underwater cultural heritage and tend not to correspond with the development of technology and the human mind. Recognizing the need for legislative updates, Indonesia's legal framework aims to enhance the prosperity of its people in accordance with Article 33, paragraph 1 of the Constitution. This new legislation also amended Law Number 5 of 1992, which has become outdated in contemporary challenges and legal disputes. Consequently, these two regulations can be harmonized to address better the complexities surrounding underwater cultural heritage.

Both the convention and the law aim to raise the value of cultural heritage objects. However, the convention strongly emphasizes reinforcing the protection of underwater cultural heritage, both technically and through regulatory norms. The convention offers international cooperation in underwater cultural heritage preservation, especially for countries that are less able to fulfil their obligations to preserve their cultural heritage to the fullest. This purpose aligns with the Indonesian objective of promoting public welfare and cultural heritage internationally.

The state has a role in preserving cultural heritage objects in its territory. The convention places the state parties as a bridge to provide space and opportunity to foreigners, in this case, the state parties, to intervene in all matters relating to underwater cultural heritage. However, the means of intervention are in the Convention and do not conflict with the state parties' regulations. Therefore, the state parties also act as watchdogs against such interventions. Nevertheless, the law, in this case, gives authority to local governments to participate in the conservation of cultural heritage objects.

The Convention still provides authority to the state parties to monitor and determine all activities within its jurisdiction. The authority is given so that the state does not lose sovereignty over its territory, although it has ratified this convention. This is consistent with the authority mandated in the legislation, which establishes norms, standards, procedures, and criteria for preserving cultural heritage. The law adds authority related to the division of authority with local governments. Law Number 32 of 2004 on Local Government gave the right, authority, and duty to regulate autonomous regions and manage the affairs and interests of local communities under the legislation. Government area referred to Law Number 32 of 2004, respectively, and provincial and district/city, in article 2, paragraph 1.

Regarding areas with a particular area of marine waters, it is also set in several articles in Law Number 32 of 2004 on Regional Autonomy Law.

The Convention of 2001 essentially offered a high international cooperation standard for protecting underwater cultural heritage. Each state that becomes a party to the present Convention must work together regarding information, technology, and human resource development. In line with the convention, the law also works with "everyone" in activities related to cultural heritage objects. The 1st section of the Act means that each person is an individual, group of people, community, and/or legal and incorporated business entity. From these explanations, the government does not rule out the possibility of cooperating with all parties. Even according to the author, the words "*any person*" can be interpreted by Indonesian citizens and foreigners.

## 2. Legal Status of UCH on National Law

According to Indonesian Law, underwater cultural heritage has many problematic issues. National Committee of Shipwrecks Cargo Salvage and Utilization or *Panitia Nasional Pengangkatan dan Pemanfaatan BMKT* becomes the one who has authority concerning that. The cargo of sunken ships is essential for disclosing the archipelago's history. Most provide an overview of the various social, political, economic, or cultural contiguities in the past and should be preserved for the sake of using them to benefit humankind. On the other hand, the underwater heritage also has a very high economic value. Some recent events prove that underwater treasures are famous and sold in international auctions. Their values can be hundreds of billions of rupiahs or even trillions.

The Indonesian government also regards underwater cultural heritage as the country's economic asset and immediately formed National Committee of Shipwrecks Cargo Salvage and Utilization (PANNAS BMKT --*Panitia Nasional Pengangkatan dan Pemanfaatan BMKT*) to regulate the activities of exploration and is expected to be a bridge between government with the national or foreign private investors, who are interested do shipwreck cargo salvage.

Some scholars argue that the formation of PANNAS BMKT has commercial and economic value based only on shipwreck cargoes. PANNAS BMKT was born in response to the looting and theft of shipwreck cargo in the past, such as theft by Michael Hatcher for the shipwreck cargo of the *De Geldermasen* VOC merchant ship that drowned in the southeast of Tanjung Pinang. The cargo he stole was then auctioned at the Christie's auction house, Amsterdam, for USD 15,000,000.00, and Indonesia did not get the slightest part of it.<sup>14</sup>

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<sup>14</sup> See Fanny Priscyllia, "Pengaturan Benda Muatan Kapal Tenggelam dalam Rangka Perlindungan dan Pelestarian Warisan Budaya di Indonesia," *Lex Administratum* 10, no. 3 (2022): 3-4,

PANNAS BMKT's formation began in the era of President Suharto through Presidential Decree Number 43 in 1989. The Chairperson of PANNAS BMKT was the Coordinating Minister for Politics and Security Affairs. The decision was lifted by the next president, Abdurrahman Wahid, and amended by Decree of the President of the Republic of Indonesia Number 107 of 2000. The Chairperson was the Sea and Fisheries Minister and was assisted by the Minister of Educational National (Vice Chairperson I) and the Chief of Staff of the Indonesian Army-Navy Sea (Vice Chairperson II). Furthermore, the decision was changed again by the Decree of the President of the Republic of Indonesia Number 19 of 2007 and then refined by Presidential Decree the Republic of Indonesia Number 12 of 2009 on Amendment Decisions Presidential Decree Number 19 of 2007. The Chairperson of PANNAS BMKT was the Minister of Marine and Fisheries, assisted by the Minister of Culture and Tourism and the Vice Chairperson of the parties comprising several ministries and related agencies.<sup>15</sup> Generally, the legal basis of the shipwreck cargo utilization refers to the following special regulations:

- 1) Decree of the President of the Republic of Indonesia Number 43 of 1989 about National Committee of Shipwrecks Cargo Salvage and Utilization, which has been amended by Decree of the President of the Republic of Indonesia Number 12 of 2009 on Amendment of Presidential Decree Number 19 of 2007 on National Committee of Shipwrecks Cargo Salvage and Utilization.
- 2) Decree of the President of the Republic of Indonesia Number 25 of 1992 on The Sharing of Valuable Artifacts from Shipwreck Cargo Salvage Between Government and Company (after this referred to as Decree Number 25 of 1992).
- 3) Decree of the Minister of Marine and Fisheries as the Chairperson of National Committee of Shipwrecks Cargo Salvage and Utilization Number 39 of 2000 on the Licensing of Technical Provisions and Licensing Salvage Survey and Shipwreck Cargo (after this referred to as Decree of Marine as PANNAS BMKT Chairperson Number 39 of 2000).
- 4) Decree of the Minister of Marine and Fisheries as the Chairperson of National Committee of Shipwrecks Cargo Salvage and Utilization Number KEP.03/PN/BMKT/III/2010 on Determination of Origin status Valuable Artifacts Determination of Origin Cargo Ship Sink in Water Buaya Lingga Island Riau Island,

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<https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/41815>; Bintang Parashteo and Akhmad Budi Cahyono, "Shipwrecks of Feasibility in the Field of Investment Business," *LEGAL BRIEF* 11, no. 6 (2023): 3611, <https://doi.org/10.35335/legal.v11i6.727>; Maulana Satria Wibowo and Andi Akhmad Basith Dir, "Analisis Kebijakan Indonesia Terhadap Regulasi UNESCO Convention 2001," *Journal of International Relations* 6, no. 4 (2020): 571, <https://doi.org/10.14710/jirud.v6i4.28682>.

<sup>15</sup> Dwi Kurnia Sandy, et al., "Permasalahan Shipwreck Sisa Perang Dunia II di Perairan Indonesia," *WALENNAE: Jurnal Arkeologi Sulawesi Selatan dan Tenggara* 20, no. 1 (2022):48-49, <https://doi.org/10.24832/wln.v20i1.495>.

Heluputan coral Riau Islands, North Java Sea and the Gulf of Sumpat Riau Islands as a State-owned.

Furthermore, several articles within Law Number 11 of 2010 on Cultural Heritage regulate the protection and management of UCH, including Shipwreck Cargoes. However, these regulations still present several issues and challenges. For instance, Article 5 prohibits any person from damaging, destroying, seizing, taking, transporting, moving, altering, or engaging in actions that could harm or remove cultural heritage. Despite this explicit prohibition, enforcement against illegal excavation or looting often proves difficult in expansive or remote areas.

Another example is in Article 25, Paragraph (1), which stipulates that implementing cultural heritage restoration activities as defined in Article 19, Section C, requires government permission. However, the licensing process for underwater archaeological excavation and research can be exceedingly complex and time-consuming, hindering activities that have the potential to uncover new insights into history and culture.

On the other hand, Article 37, Paragraph (1) asserts firmly that any excavation activities for research or historical preservation purposes must adhere to principles of caution, minimal intervention, and environmental impact assessment. However, despite these principles being established, oversight and thorough environmental impact assessments are sometimes lacking, leading to potential environmental damage and loss of historical information.

In the context of Shipwreck Cargoes, uncertainties surrounding ownership, recovery, and utilization of artifacts recovered from sunken vessels can be intricate. Adequate protection of UCH, including careful handling of excavated artifacts, also poses a significant challenge within the current legal framework. Therefore, improvements in oversight, inter-agency coordination, and law enforcement are necessary to ensure that Indonesia's underwater cultural heritage is effectively safeguarded and can be enjoyed by future generations.

### **C. Further Implication of Ratifying Convention on the Protection of Underwater Cultural Heritage: A National Interest Perspective**

In Indonesia, there are many points of sunken ships with an estimated load of valuables. These ships are from China, Portugal, and the Netherlands, and they have cargoes of gold, silver, diamonds, emeralds, precious stones, porcelain, and ceramics.<sup>16</sup> As a sovereign state, the Indonesian government has established a set of

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<sup>16</sup> Achmad Sahri, et al., "A Treasure from The Past: Former Sperm Whale Distribution in Indonesian Waters Unveiled Using Distribution Models and Historical Whaling Data," *Journal of Biogeography* 47, no. 10 (2020): 2112, <http://dx.doi.org/10.1111/jbi.13931>; Zhen Lin, "Jurisdiction Over Underwater Cultural Heritage in The EEZ and on The Continental Shelf: A Perspective from The Practice of States Bordering the diked Sea," *Ocean*

rules to control, regulate, and enforce the law in waters under the jurisdiction of Indonesia. Regulations relating to cultural heritage objects are Law Number 11 of 2010 on Heritage, which repealed Law Number 5 of 1992, Presidential Decree Number 43 (Decree 43) of the National Committee of Shipwrecks Cargo Salvage and Utilization and Government Regulation Number 10 of 1993 on the regulations implementing the Act 11 of 2010.

Before Law Number 11 of 2010 was issued, the subject of cultural heritage objects referred to Law Number 5 of 1992. Law Number 11 of 2010 explicitly includes cultural remains underwater, which is not found in the legislation of the previous culture. Article 26 of the Act states that:

- 1) The government is obliged to search for objects, buildings, structures, and/or locations of the alleged heritage;
- 2) Searches suspected any person can do cultural heritage of cultural heritage with the excavation, diving, and/or removal of the land and/or water;
- 3) Searches referred to in paragraphs (1) and (2) can only be done through research about ownership and/or control of the location;
- 4) Every person is prohibited from conducting alleged cultural heritage with the excavation, diving, and/or removal of the land and/or water as referred to in paragraph (2), except with permission from the state or local government under its authority.

However, Article 27 states that "government regulations govern further provisions regarding the search heritages or suspected heritages." Nevertheless, there are no government regulations relating to the Act. In collaboration with a private company, foreign investors have searched and removed or excavated underwater cultural remains as mandated by the previous law. National Committee of Shipwrecks Cargo Salvage and Utilization coordinated investor involvement in these activities through Presidential Decree Number 19 of 2007. Nevertheless, solely for commercial interests, the attempted to lift objects' findings are as many as possible and in good condition.

Underwater cultural objects hold significant economic value, which has attracted considerable legal and illegal interest. Since establishing the Directorate of Underwater Heritage in 2005, Indonesia has witnessed at least 11 incidents involving

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*Development & International Law* 50, no. 2-3 (2019): 183, <https://doi.org/10.1080/00908320.2019.1582601>. See also Elena Perez-Alvaro, *Underwater Cultural Heritage: Ethical Concepts and Practical Challenges* (London, UK: Routledge, 2019), 235-236; Kim Browne and Murray Raff, *International Law of Underwater Cultural Heritage: Understanding the Challenges* (Switzerland: Springer Cham, 2022), 126-127; Robert Parthesius and Jonathan Sharfman (eds), *Maritime and Underwater Cultural Heritage Management on the Historic and Arabian Trade Routes* (Switzerland: Springer Cham, 2020), 87; Craig Forest, *International Law and the Protection of Cultural Heritage* (London, UK: Routledge, 2010), 55-58.

the unlawful salvage or theft of cultural artifacts from various waters. Beyond their economic worth, these artifacts embody profound historical, scientific, and cultural significance. However, it is lamentable that awareness and understanding of this value among Indonesians remain limited. Indonesia faces several legislative shortcomings concerning the governance of underwater cultural heritage. The preamble of Law Number 11 of 2010 on Heritage underscores the state's responsibility to preserve cultural heritage, highlighting the need for robust legislation and effective enforcement to protect these invaluable resources.<sup>17</sup>

Therefore, the state must preserve the cultural heritage as one way to protect it. Protection is an effort to prevent and tackle damage, destruction, or obliteration through rescue, security, zoning, maintenance, and restoration of cultural property.<sup>18</sup> That Law is also further supported by the implementing regulations contained in Article 2 paragraph (1) of Regulation Government Regulation Implementing Law Number 5 of 1992, which is *for the protection and/or preservation of cultural heritage objects, objects of cultural heritage objects suspected, precious objects of unknown owners either movable or immovable, and the site is located in the territory of the Republic of Indonesia is dominated by State*.<sup>19</sup>

From the articles mentioned, Indonesia has the right and complete power over all sorts of cultural heritage objects in the territory of the Republic of Indonesia. However, the existing law cannot seem to minimize the occurrence of vandalism, looting, and theft of the underwater cultural heritages. The existence of overlapping rules makes open-slit crime. It involves foreign and private parties in any activity relating to underwater cultural heritage. That means Indonesia does not have legal certainty in terms of the protection of underwater cultural heritage.

In general, Indonesia requires a legal order that can assist in addressing issues relating to underwater cultural heritage. These problems include:

- 1) Limited capacity in monitoring and controlling shipwreck cargoes and the limited quality and quantity of human resources compared to the vast Indonesian waters;

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<sup>17</sup> See Consideration considering letter (b) of Law Number 11 of 2010.

<sup>18</sup> Article 1 Number 23 Law Number 11 of 2010. Furthermore, it is emphasized that Law Number 11 of 2010 in its articles clearly mentions underwater cultural heritage. This can be seen in the explanation regarding cultural heritage sites and objects in article 1. On the other hand, Law Number 5 of 1992 in its explanation of the site does not really emphasize its attention to underwater cultural heritage. Article 12 paragraph (1) Law Number 5 of 1992 regarding searches states, *"everyone is prohibited from searching for cultural heritage objects or valuable objects whose owners are unknown by diverting, diving, lifting, or by other means, without permission from the government."* See also Dhiana Puspitawati, *Hukum Laut Internasional* (Depok: Kencana, 2017), 84-85; Dikdik Mohammad Sodik, *Hukum Laut Internasional dan Pengaturannya di Indonesia* (Jakarta: Refika Aditama, 2014), 73-74; Hikmahanto Juwana, Jeffrey Thomas, Mohd Hazmi Mohd Rusli, Dhiana Puspitawati (eds), *Culture and International Law* (London: CRC Press, 2019), 213-214.

<sup>19</sup> Article 2 (1) Government Regulation on the Implementation Regulations of Law Number 11 of 2010.

- 2) Inadequate facilities and supporting infrastructure surveys, removal, and post-removal;
- 3) Unavailability of the maritime museum to accommodate various maritime heritage, including shipwreck cargoes;
- 4) Lack of public knowledge about the importance of underwater cultural heritage; and
- 5) No international cooperation to fight treasure hunting and looting

A comparative analysis was conducted in a previous discussion between the Indonesian Law on Cultural Heritage and the UNESCO Convention on Underwater Cultural Heritage. This study illuminated certain facets, revealing the degree of harmonization between the two frameworks. These aspects, such as the imperative to preserve underwater cultural heritage and the prohibition of commercial exploitation, are central to the Indonesian legal framework and the UNESCO Convention of 2001. The Convention emphasizes in-situ preservation and collaboration among nations to combat the illegal trafficking of underwater cultural objects, aligning closely with Indonesia's efforts to safeguard its submerged cultural heritage.

Underwater cultural heritage in Indonesia faces challenges due to limited technological resources and expertise, necessitating cooperation with international entities for effective management and preservation. This collaboration is crucial as commercial ventures often prioritize profit over scholarly research and conservation efforts, potentially leading to the loss or destruction of valuable archaeological and historical artifacts. By adhering to the principles outlined in the UNESCO Convention, Indonesia seeks to mitigate these risks and ensure that its underwater cultural heritage remains protected and accessible for future generations.

However, implementing international principles and conventions into the national legal system has faced many challenges. The relationship between international and national law concerning the protection and management of UCH, such as Shipwreck Cargoes, is a dynamic interplay influenced by legal theories and principles. International law, embodied in treaties and conventions, often shapes and interacts with national legal frameworks, influencing how states like Indonesia approach the preservation and regulation of UCH.

In Indonesia, incorporating international law into national legal systems can be understood through theoretical perspectives on monism and dualism. Monism posits that international and national laws are inherently connected, with international norms automatically becoming part of domestic law upon ratification. As affirmed by legal scholars such as Malcolm N. Shaw, monist states integrate



international law directly into their legal order without the need for transformation or incorporation into national legislation.<sup>20</sup>

Conversely, dualism maintains that international and national law are distinct legal systems, requiring domestic legislative action to transform international obligations into enforceable national laws. According to dualist theory, legislative processes must explicitly incorporate treaties into national law. This approach ensures clarity and specificity in legal implementation.<sup>21</sup>

Indonesia often incorporates international treaties into its legal system through specific legislation or regulations. For instance, the Cultural Heritage Law (Law Number 11 of 2010) provides the overarching framework for protecting and managing cultural heritage, including underwater sites. This legislative framework reflects Indonesia's commitment to upholding international standards for preserving cultural heritage. The implementation of international treaties, such as the UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001), involves a hierarchical relationship of norms within Indonesia's legal order. Treaties ratified by Indonesia hold significant legal weight and are superior to conflicting domestic laws under Article 7 of Law Number 24 of 2000 on International Treaties. This legal principle ensures that Indonesia's commitments under international agreements, including the protection of UCH and Shipwreck Cargoes, are upheld and enforced domestically.

#### **D. Government Initiatives in Preserving Indonesia's Underwater Cultural Heritage: Focus on Sunken Ships and Shipwrecks**

With its vast maritime territory, Indonesia is home to a wealth of underwater cultural heritage, including sunken ships and shipwrecks that bear witness to centuries of maritime history. Recognizing the importance of safeguarding these invaluable relics, the Indonesian government has implemented various initiatives aimed at preservation and management. These efforts seek to protect the economic and historical value of sunken ships and shipwrecks and underline Indonesia's commitment to upholding international standards for cultural heritage conservation. This introduction sets the stage for exploring the comprehensive strategies and challenges faced by Indonesia in its endeavour to preserve and manage its underwater cultural heritage effectively. Within cultural heritage laws and regulations, shipwreck cargo is categorized as non-living marine resources, yet it receives legal protection under various statutes.

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<sup>20</sup> Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2017), 336-339.

<sup>21</sup> Alan E. Boyle, "Some Reflections on The Relationship of Treaties and Soft Law," *International & Comparative Law Quarterly* 48, no. 4 (1999): 908, <https://doi.org/10.1017/S0020589300063739>.

One crucial legislative document, Law Number 11 of 2010 on Cultural Heritage, underscores protecting underwater cultural heritage, including shipwreck cargo. The law broadly defines cultural heritage, encompassing sites on land and underwater that contain artifacts, heritage buildings, or structures of historical significance due to human activity or evidence. In addition, Chapter II of the law outlines core principles, objectives, and environmental considerations, emphasizing the preservation, protection, development, and sustainable utilization of cultural heritage across terrestrial and aquatic domains.

Furthermore, Chapter IV of Law Number 11 details ownership and control regulations, stipulating that foreign individuals or entities not permanently residing in Indonesia are prohibited from owning or controlling heritage. They are also restricted from removing heritage from Indonesia unless authorized for research, cultural promotion, or exhibitions with ministerial approval. These provisions expressly prohibit foreign ownership of underwater cultural heritage, including shipwreck cargo and its extraction from Indonesian waters.

This legislative framework highlights Indonesia's commitment to safeguarding its rich cultural heritage, including underwater artifacts and historical sites submerged within its maritime jurisdiction. By establishing clear definitions, regulations, and prohibitions, the law aims to ensure responsible management and preservation practices that uphold Indonesia's maritime heritage's cultural and archaeological significance. Before Heritage Law Number 11 of 2010 was issued, prevailing arranged objects of cultural heritage referred to Law Number 5 of 1992. The difference between the two is that this legislation is significant enough. There are new things discussed in the articles of Law Number 11 of 2010 that previous legislation did not touch at all, such as protecting the underwater cultural heritage. Chapter 1 of Law Number 11 mentioned the notion of objects of cultural heritage as "*who are on the ground and in the air*," while Law Number 5 of 1992 was not made clear and emphasized that a broad meaning, whereas the legal language is raw and firm.

Part three, article 12 mentions "*any person prohibited from searching for heritage objects or valuables that are unknown to its owner by diversion, the dives, the rapture, or otherwise, without seizing of government*." This article is offensive about underwater cultural heritage between shipwreck cargo. However, it looks weird in previous articles concerning UCH objects that are not at all mentioned. So, it is not very relevant to protecting underwater cultural heritage.

Chapter VIII of the provisions of the Penal Code, specifically Chapter 27, Article 12, Paragraph (1), stipulates that anyone who searches for cultural heritage objects or valuables belonging to others using excavation, diving, or other methods without explicit government permission faces penalties of up to five years imprisonment and/or a fine of up to IDR 50,000,000 (fifty million rupiah). This penalty remains

consistent when compared with Law Number 11 of 2010, particularly when adjusted for inflation, resulting in equivalent financial repercussions. One notable absence in the provisions pertains to underwater cultural heritage, reflecting a historical unawareness of Indonesian archaeology's submerged treasures despite numerous instances of theft involving salvaged shipwreck cargo. A significant event occurred in 1986 when the world was astonished by the retrieval of 100 gold bars and 20,000 ceramics from the Ming and Qing dynasties found aboard the Geldernalsen VOC ship, which sank off the Riau Islands in January 1751. Michael Hatcher, an Australian self-described maritime archaeologist and entrepreneur, played a central role in this discovery. His exploits were chronicled in a book published by Hamish Hamilton Ltd. in 1987, detailing the saga of the Nanking Cargo, a vessel laden with valuable commodities from VOC trade operations in Nanking, China.<sup>22</sup>

Additionally, another regulation, Presidential Decree Number 25 of 1992, established regulations governing the distribution of shipwreck cargo between the government and private entities. According to Article 1, shipwreck cargo is classified as cultural heritage objects, prohibiting their trade and mandating submission to the State. Section 2 outlines procedures for public auctioning recovered items by the State or international auction houses, subject to approval by PANNAS BMKT as per Presidential Decree Number 43 of 1983. This decree signifies the initiation of shipwreck cargo auctions dating back to Presidential Decree Number 43 of 1983. However, Law Number 5 of 1992 did not prioritize essential legal protections for underwater cultural heritage, representing a notable oversight. Consequently, underwater cultural heritage continued to be exploited for economic gain rather than recognized for its intrinsic cultural and scientific value, undermining its significance to the nation's heritage and scholarly pursuits.

## E. Conclusion

This study examined the legal status of shipwreck cargo as UCH in Indonesia, highlighting significant disparities between national and international legal frameworks. Indonesia's non-ratification of the Convention on the Protection of Underwater Cultural Heritage marks a departure from global standards, leading to practices such as shipwreck cargo auctions within the country. Additionally, the fragmented legal framework governing shipwreck cargo and UCH—spread across various laws—complicates effective preservation efforts.

To address these challenges and enhance the protection of UCH, Indonesia should prioritize ratifying international conventions such as the Convention on the Protection of Underwater Cultural Heritage. This step would signal Indonesia's

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<sup>22</sup> Hendriyo Widi, "Sepenggal Pesan Harta Karun Perairan Indonesia", *KOMPAS*, accessed February 25, 2024, <https://nasional.kompas.com/read/2009/09/04/09593168/nan?page=all#page2>.

commitment to upholding global standards and provide a framework for more coherent legal measures at the national level. Indonesia should invest in supporting infrastructure and capacity-building initiatives to strengthen its institutional and technical capabilities for UCH preservation.

By ratifying international conventions and consolidating legal provisions, Indonesia can better protect its rich underwater cultural heritage and fulfil its obligations to future generations. Preserving shipwreck cargo and UCH safeguards Indonesia's cultural legacy and contributes to the broader global heritage landscape. Therefore, concerted efforts to harmonize national and international legal frameworks and enhance preservation initiatives are crucial for safeguarding Indonesia's invaluable underwater cultural heritage in the long term.

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