

Implementation of the Utilization of West Lampung Traditional Cultural Expression in the Legal System Perspective of Intellectual Property

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Abstract

The embodiment of West Lampung Traditional Cultural Expressions has not been optimal both in terms of intellectual property protection and in terms of its usefulness for the local community of West Lampung. In this article, we will discuss how intellectual property legal protection is implemented if it is implemented in the protection of traditional cultural expressions and how far has the West Lampung Regency Government tried to protect and utilize the potential of traditional cultural expressions. This article aims to identify a model of protection against traditional cultural expressions in West Lampung by using normative and empirical legal research methodologies. The results of the discussion show that the Protection of Traditional Cultural Expressions is carried out based on Law Number 28 of 2014 concerning Copyright, Law Number 5 of 2017 concerning the Advancement of Culture, Law Number 11 of 2010 concerning Cultural Conservation and Government Regulation Number 6 of 2017. 2015 concerning Museums, and Regulation of the Minister of Culture Number 106 concerning Indonesian Intangible Cultural Heritage in addition to the autonomy of the Regional Government of West Lampung Regency has also made efforts to preserve istiadar custom through the Regional Regulation of West Lampung Regency Number 14 of 2000 concerning the Guidance, Preservation, and Development of Indigenous Peoples. and Customary Institutions. The West Lampung Regency Government also seeks to protect and preserve traditional cultural expressions by participating in activities such as traditional festivals organized by the Lampung Provincial Government so that the existence of traditional cultural expressions in West Lampung Regency is known to the public. However, overall the protection of the majority of traditional cultural expressions has not been inventoried and utilized optimally, including the traditional cultural expressions of West Lampung. There should be immediate efforts to regulate the protection of traditional cultural expressions in a sui generis manner apart from the Copyright Law.

Keywords: *Intellectual Property, Traditional Cultural Expressions, West Lampung.*

A. INTRODUCTION

In Indonesia, one of the intangible cultural heritages is in the form of traditional cultural expressions (EBT). This is regulated in Law No. 28 of 2014 concerning Copyright, in particular Article 38, which states that Copyright on EBT is held by the state, with the Ministry in charge of being the Directorate General of Intellectual Property of the Ministry of Law and Human Rights, in addition to the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights. Cultural Conservation and Diplomacy, the Directorate General of Culture under the auspices of the Ministry of Education and Culture, both ministries are responsible for both tangible and intangible cultural heritage (Intangible Cultural Heritage/WBTB) as regulated in Law Number 11 of 2010 concerning Cultural Conservation.

Ethnic communities need national laws to respect their culture, customary law, moral and economic rights, and prevent unlawful use. According to the World Intellectual Property Organization (WIPO) intellectual property strategies meet most expectations. But the debate over whether intellectual property laws are the best to protect Traditional Cultural Expressions or internationally known as Traditional Cultural Expressions (TCEs) is never ending. Copyright law is insufficient because TCEs lack originality and production requirements (fixation requirements) (Bently & Sherman, 2009).

Ethnic communities inherit NRE which is sometimes the result of continuous creative work in ethnic communities. Artists must respect ethnic communities when using NRE to capture their culture, history and religion. It can be concluded that the concept of traditional cultural expression and the concept of innovation are contradictory with regard to the originality side where traditional cultural expressions belong to a group of people and copyright is owned individually. NRE has been passed down for centuries and sometimes its creator is not identified. This is contrary to the moral rights of the author in copyright which requires that the identity of the creator be disclosed.

Law Number 28 of 2014 concerning Copyright in Article 58 and Article 7 of the Berne Convention limits the protection of economic copyright to the life of the creator plus 70 years. Without knowing the creator, it is difficult to determine how long the protection of the work will last. Public domain works (communal societies) in the form of traditional cultural expressions can be used indefinitely and protected indefinitely. Meanwhile, according to the concept of copyright, traditional cultural expressions that have been passed down for thousands of years are in the public domain (Long, 2006). Even if the above concerns are ignored, ethnic communities may also not claim their rights if they are violated. This relates to the customary law of ethnic communities and its relationship to national law.

Henry Merryman says nationalism and internationalism of traditional cultural expressions need no theory. Modern society must incorporate traditional cultural expressions into the legal system. This can influence local, national and international policies on traditional cultural expressions. This is why Traditional Cultural Expressions need protection outside the legal system, which can provide complete

protection but also protect against sociological implementation to speed up the implementation of a policy.

Human intellectual works can produce things that are modern and have a time limit in terms of protection. Community-made creations are often associated with nature and it is difficult to determine in terms of ownership and duration of protection because they are not owned by certain individuals or companies. Indonesia has several cases of violations of traditional cultural expressions. The community together with the government must strive to preserve traditional cultural expressions. The expression of West Lampung Traditional Culture is part of Indonesian culture and a national asset, it needs to be protected, empowered, promoted, preserved, and developed to help build West Lampung people who have identity, noble character, civility, and an understanding of values based on Pancasila and the Law. The 1945 Constitution of the Republic of Indonesia. This paper aims to find out how efforts can be made to maximize the protection of traditional cultural expressions of West Lampung through the intellectual property system to what extent the West Lampung Government has protected their cultural expressions.

B. METHOD

The research method used in this article uses empirical normative legal research methods. Legal normative research methods in this case include examination of primary, secondary, and tertiary legal sources which are collaborated with conditions in the field empirically to then analyze the data qualitatively.

C. RESULT AND DISCUSSION

1. West Lampung Traditional Cultural Expression Protection Policy

Culture is part of the process of human struggle to maintain life, produce offspring, and improve the standard of living despite the limitations of physical perfection and natural resources. Culture is also a form of manifestation of human response to the obstacles faced in the process of adaptation to the environment. While culture is the collective knowledge of humans as social beings, which they use to understand and interpret their environment and experiences, and which also serves as a basis for behaving in a community group.

The protection of traditional cultural expressions is divided into two categories. The first is the safeguarding of traditional cultural expressions whose creator's identity is unknown. The second area is the protection of traditional cultural expressions that can be traced back to their creators. The first domain, protection whose creator is unknown. Traditional Cultural Expressions include verbal, musical, action and intangible cultural manifestations. All previous embodiments have the same formula or pattern. Chinese scholars refer to it as "*Mother-style Folklore*" (Zhang, 2007).

Mother-style Folklore can be compared with all the traditional cultural expressions that have existed before. The term also appears in the WIPO report. The development of NRE is the result of the survival of the group that lasts a long time

and is passed down from generation to generation. It is difficult to determine who created it. Thus, the originator of this inherited EBT is difficult to identify. It can be proven that the community is the source of the overall expression of traditional culture that is passed down from generation to generation (Li, 2014). Traditional Cultural Expressions that are inherited are re-creation or re-performance of the previous one (Zhang, 2007). Traditional Cultural Expressions that are inherited are re-creations or "re-development" or "re-show" types can be elevated to a relatively superior art form from which people can derive beautiful emotions when they appreciate a work of art. u re-performance of the former.

On the basis of the status quo, Indonesia has regulated this Traditional Cultural Expression. Where this is regulated in Copyright Law Number 28 of 2014 concerning Copyright. However, Indonesia has not yet fully regulated the mechanism for regulating Traditional Cultural Expressions which is actually *sui generis* adapted to the needs of the community and the local wisdom of its people. Efforts to change people's behavior is indeed not an easy matter, especially if a regulation is not adapted to the values that live in the community. In its development, regulations that encourage the imposition of severe sanctions for those who violate the rules are considered to be the solution to all problems. The reason is to create a deterrent effect for those who violate these rules. Dölling (2009) in his study questioned the effectiveness of the deterrent effect, and he found the fact that not all law violations can be affected by a deterrent effect.

Bentham (2016) considers that legal compliance depends on how the legislators formulate rules so that they can be obeyed in general. As the originator of utilitarianism, Bentham believes that people's compliance with the law depends on the useful or utilitarian values contained in the law. If the law or regulation has benefits, then people will more easily obey it. Aubert explained that sometimes the law does not work effectively in society because of the weakness of the government administration itself (Aubert, 1967). Weaknesses are found either in compiling or executing these rules. Soekanto (1976) added that the social aspect in the formation of laws and regulations was hardly considered. So that the regulations that have been passed become difficult to change the social conditions of the community. Whereas as stated by Pound that law is a tool of social engineering (Pound, 1910). then the law actually has a social function. Therefore, the thing that must be understood by the government or legislators in drafting laws and regulations is to realize that they act as social engineers (Pound, 1954).

A comprehensive regulation on Cultural Expression is still in draft form. The draft is the Draft Law of the Republic of Indonesia concerning the Protection and Use of Intellectual Property of Traditional Knowledge and Traditional Cultural Expressions. Traditional Cultural Expressions and Copyrights, on the other hand, cannot coexist because Traditional Cultural Expressions which are cultural heritage cannot be registered as copyrights because they do not meet copyright criteria which tend to be individual. In. This Traditional Cultural Expression should only be maintained and preserved. When disputes arise, a number of non-governmental

organizations and artists' organizations try to seek justice for society and the arts through non-judicial institutions and alternative means (Absori et al., 2008).

Unfortunately, the application of registration of traditional cultural expressions as copyright is not copyright itself. However, these rights cannot be transferred because the moral rights and economic rights to traditional cultural expressions belong to the copyright holder, in this case the state, or the custodian community. This protection includes all measures to prevent the unlawful and inappropriate use of traditional cultural manifestations. Protecting the manifestation of traditional culture as part of traditional knowledge is very important to defend the rights of local people (Husamah, 2016).

Traditional cultural expressions have been regulated in Indonesia, but the country's legislation tends to lag far behind. In addition to the Copyright Law, Indonesia has laws that protect the expression of customs in Law Number 5 of 2017 concerning the Advancement of Culture, Law Number 11 of 2010 concerning Cultural Conservation and Government Regulation Number 6 of 2015 concerning Museums, and Regulations Minister of Culture Number 106 concerning Indonesian Intangible Cultural Heritage. But there is no NRE protection in terms of its own intellectual property which is protected by a nationally regulated legal regime. Regarding Traditional Cultural Expressions, Indonesia has also not drafted a Government Regulation that specifically regulates the state as the Copyright Holder for traditional cultural expressions. The legal protection of the Indonesian state for its own traditional cultural expressions is lacking. The lack of a strong and appropriate protection system and the scarcity of data, documentation, and information on Traditional Knowledge and Traditional Cultural Expressions are weaknesses in the protection of traditional cultural expressions in Indonesia (Atsar, 2017).

These things hinder the efforts of the Indonesian people, especially in this paper the people of West Lampung to obtain legal recognition for the work of their ancestors. Evidently, only a few works inherited from the Lampung people's ancestors are recognized as intellectual property. For example, the Lampung Provincial Government (Pemprov) obtained 17 Intangible Cultural Heritage (WBTB) certifications from the Ministry of Education and Culture, including Hadra Ugan and Sekura Cakak Buah, which are ritual communities in West Lampung Regency.

In order for the international community to recognize the works and expressions of traditional Indonesian culture, the Indonesian government has protected these works through claims by international cultural organizations. Despite these efforts by the Indonesian government, intellectual property rights violations against traditional cultural expressions are still common. An interview with R Hari Widiyanto Jayaningrat, Head of the Hari Jayaningrat Arts Section of the Lampung Provincial Education Office revealed the following: Manifestations of traditional West Lampung culture are still used by the indigenous people of West Lampung in various traditional events such as weddings, circumcisions, and even welcoming ceremonies for traditional leaders' meetings. a very small amount because of the cost of

maintenance. Given that empirically traditional cultural forms still exist in West Lampung society, it is necessary to provide legal protection.

The national law that provides a legal framework for the protection of traditional cultural expressions is Law Number 28 of 2014 concerning Copyright, in particular Article 38, which regulates Traditional Cultural Expressions. The expression of West Lampung Traditional Culture is considered to have artistic value, form and also contains symbolism with philosophical implications adopted by the people of West Lampung. This is in line with the definition of Traditional Cultural Expressions, namely "intellectual works in the field of art, including literary expressions, which incorporate components characteristic of traditional heritage and are produced, developed, and preserved by the custodians (Atsar, 2017).

Indonesian handicrafts represent a wealth of art and culture rich in artistic ideas. Indonesia's cultural diversity provides an advantage over other nations. Indonesian culture is diverse. Intellectual Property Rights protect most of the traditional community's efforts to create their regional identity. The legal protection of intellectual property of indigenous peoples or traditional communities is an interesting topic in intellectual property rights research. Indigenous intellectual property includes cultural expressions. The community imaginatively examines how to build something new while at the same time highlighting the nation's cultural history that has been preserved from generation to generation (Rahayu, 2011).

The West Lampung Regency Government recognizes the existence of customs and customary institutions that are used by the wider community and grow and develop in the region, and are seen as values, cultural characteristics, and national personalities that must be empowered. The strategic aspect in an effort to fill and build the soul, wisdom, and spirit of the Indonesian nation as contained in the noble values of Pancasila and the 1945 Constitution is the cultural values and personality of the nation. In line with that, the Regional Government has stipulated the Regional Regulation of West Lampung Regency Number 14 of 2000 concerning Empowerment, Preservation, and Development of Customary and Customary Institutions. However, even the people of West Lampung are not aware of the existence of these local regulations, thus moving them to further preserve and develop their culture.

The government's lack of basic knowledge regarding the technique of disseminating the rule of law or legislation is the reason people do not comply with the existing rules. So that the purpose of the regulation becomes ineffective because the people themselves do not know about the existence of these rules. The application of legal fiction theory or the principle of presumption *iures de iure* which is attached to the closing provisions of laws and regulations does not necessarily change people to obey the law. Soekanto (1976) considered that the effectiveness of law enforcement also depends on facilities and infrastructure to support the community in complying with regulations. For example, when the government prohibits littering, the government is obliged to provide trash cans in various places so that people can immediately dispose of waste in those places.

The view of classical legal theory that explains the existence of non-compliance with laws and regulations, is the existence of injustice in the formulation of these rules. Aquinas said that if a law or rule is unfair, then the rule is not a law that needs to be obeyed. In short, this adage reflects the basic reason that a person may disobey a statutory regulation because the material being regulated is not in accordance with moral values or values of justice (Soekanto, 1976).

Feinberg (1989) claims that from a philosophical point of view, humans are morally justifiable to break the law, as long as there is a justification for it. However, he also mentioned that the limits on justification for violating the law are still debated and it is difficult to define specific parameters. Things that cause citizens to obey the law are at least the result of internalization born of a belief in the intrinsic value or regulated material. The importance of regulated material is considered to have an embedded usefulness value so that compliance is carried out voluntarily without an element of coercion. Kreps (1997) added that compliance provides personal value because it provides certain benefits or rights.

The Ministry of Culture and Tourism and the United Nations Educational, Scientific and Cultural Organization (UNESCO) published a Practical Guidebook entitled "Recording Indonesia's Intangible Cultural Heritage". This shows how important proof of ownership of an intangible cultural heritage belonging to a country is. Scientific proof of an expression of traditional culture is very important as a defensive defense against claims of intangible heritage from foreign parties for traditional cultural expressions belonging to Indonesia. Indonesia should be aware of the urgency to preserve, develop, and promote the intangible cultural heritage that can be expressed in real terms and has artistic value for foreign parties because it is considered unique and artistic as well as having historical value. Indigenous peoples and local governments must provide access to Traditional Cultural Expressions more selectively. Foreign parties who need information on Traditional Cultural Expressions, if possible, are denied access to the broadest possible extent so that they cannot mass-produce the communal intellectual property for economic use. Foreign parties who want to take advantage of traditional cultural expressions should be able to take the initiative to share profits for the local area where a traditional cultural expression originates (Antons, 2013).

2. The Role of the West Lampung Government in Protecting Traditional Cultural Expressions

West Lampung is one of the provinces in Indonesia with a diverse traditional cultural heritage. Weaving tapis cloth, folk songs, musical instruments, and traditional dances are just a few examples. Art in West Lampung is one of the important aspects that contribute to the identity of the people of Lampung. The government, especially the West Lampung Regional Government, plays a role in maintaining the cultural heritage of West Lampung through legal and non-legal policies. The making of Regional Regulation Number 14 of 2000 concerning Empowerment, Preservation, and Guidance of Customs and Customs Institutions is an example of a legal form of policy,

one of the urgencies of which is the awareness that customs must be preserved and used exclusively for the local community.

Preservation of socio-cultural values includes all efforts to preserve and preserve the cultural values of the people affected by trade liberalization which causes one country to become increasingly borderless. Indonesian cultural values have many elements of local wisdom, especially ethical and moral values which are the basis for customs, community habits, and customary institutions, in order to continue to exist. The formation of policies that are adapted to the values of local wisdom will affect the success of their implementation. The behavioral science approach can be used as an option to increase compliance with laws and regulations. This is based on many regulations that are not effective, or are not obeyed by the community. In general, regulatory materials in Indonesia are dominated by traditional approaches that are coercive. The lack of effectiveness of this regulatory model requires the need for a new approach in the formation of laws and regulations. Soekanto (1976) sees that the formation of laws and regulations is basically a mechanism to resolve conflicts or conflicts in society.

The regional head in collaboration with Customary Organizations/Institutions must make maximum efforts to empower, preserve, and develop adat and adat institutions in West Lampung Regency. After deliberation with traditional leaders, the Regional Government can establish various policies or steps that are efficient and effective based on the values of local wisdom of the community so that in the implementation of these policies it will be easier to implement and be accepted as part of the values managed by the community. Customary institutions.

To strengthen the implementation of empowerment, preservation, and development of customs and customary institutions, village heads and regional heads are obliged to encourage and assist the availability of adequate facilities and infrastructure for the implementation of the roles and functions of Traditional Institutions in supporting governance, development and community development activities in the region. the. Empowerment, Preservation, and Development of Customary and Customary Institutions are aimed at human development, enriching the repertoire of national culture, and developing regional culture that supports national culture, which contains noble and civilized values, in order to selectively filter foreign cultural values, accept the positive and reject the negative. This includes, of course, preserving traditional cultural expressions originating from West Lampung.

Empowerment, preservation, and development of customary institutions are prioritized on traditions that are still alive or that already exist, but are in decline, and must encourage the creation of a positive, democratic, fair, and objective attitude among Government Officials, regions, and foreigners. Openness to influence the positive cultural values of other regions and foreign countries, as well as stronger national integrity towards national development. The main objective of empowering, preserving, and developing adat and adat institutions is to increase the role of traditional values and adat institutions in supporting the smooth running of

governance, sustainable development, and increasing national resilience, as well as promoting the welfare of local communities.

Customary institutions are responsible for accommodating public opinion and conveying it to the government, as well as resolving various conflicts related to customary law and inappropriate use of customs. Empowering, preserving, and developing customs in the context of improving regional culture, as well as enabling the community to assist in the administration of government, implementation of development, and community development. Building a democratic, friendly, and objective relationship between the Head of Customs/Customary Stakeholders and the Regional Government Apparatus.

Customary institutions have the right and authority to represent Indigenous Peoples in matters relating to the interests and influences of customs, the commercialization values of communal intellectual property belonging to West Lampung should be prioritized for use for the progress and standard of living of the community in a more appropriate and profitable direction in order to compete in today's digital age and resolve various disputes regarding issues containing traditional values as long as they do not conflict with the laws and regulations. Customary institutions are obligated to: assist the administration of government, implementation of development, and community development, while taking into account the interests of the local customary law community; and maintain a healthy and dynamic national stability.

However, to manage traditional cultural expressions and other cultural potentials is a great authority and responsibility, customary institutions are constrained by the lack of human resources. Therefore, this regulation cannot be implemented properly and does not necessarily play a major role in protecting the traditional cultural expressions of West Lampung.

D. CONCLUSION

Based on the description above, it can be concluded that the protection of traditional cultural expressions in West Lampung by enacting regulations to protect copyrighted works owned by indigenous Indonesians, in particular by implementing Law Number 28 of 2014 concerning Copyright and the establishment of the West Lampung Regency Regional Regulation Number 14 of 2000 concerning Empowerment, Preservation, and Development of Indigenous Customs and Indigenous Lebmaag. In addition, the West Lampung Regency Government, West Lampung Provincial Government, and the Ministry of Law and Human Rights have compiled an inventory of several cultural heritage assets owned and characterized by the West Lampung indigenous people, but the authority given to traditional institutions in maximizing the potential for traditional cultural expressions in West Lampung has not been implemented optimally considering the implementation of the law is still far from being expected. Indigenous people's awareness of intellectual property refers to the extent to which individuals understand intellectual property knowledge and concepts from downstream to commercialization. It also reflects the

extent to which indigenous communities understand the connotation of intellectual property and their understanding of the economic and moral values that constitute the concept of intellectual property law. Public awareness of intellectual property has the potential to affect the effectiveness of the implementation of intellectual property law itself, especially the protection of traditional cultural expressions. In fact, even indigenous peoples do not really understand what intellectual property really is, how their attitudes and opinions about intellectual property are certainly influenced by the level of understanding, and most importantly, what is their interest in the protection of traditional cultural expressions and the development of a western Lampung culture that can be commercialized and developed to be able to improve cultural development based on local regulations concerning the preservation of customs and customary institutions.

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