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**RESEARCH ARTICLE**

## Legal Protection Prospects Traditional Cultural Expression of Lampung

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**ABSTRACT**

The protection of intangible cultural goods, such as oral traditions, is a source of tension between industrialized and developing nations. Many advanced nations argue that culture emerges in the absence of restrictions on normative forms of expression. Using normative approaches, this study examines the current state of traditional cultural expressions in Indonesia and their potential for legal protection in Lampung. The Heritage Law and the Copyright Law both place the onus on regional and municipal governments to conduct cultural inventory, recordings, and documentation to preserve Indonesia's rich cultural heritage. Traditional cultural manifestations in Indonesia are not now protected by a government-enacted statute. Lampung Province is home to a wealth of intangible and tangible cultural expressions that deserve legal protection. Such expressions could be safeguarded by provincial, regional, and municipal regulations that establish a hierarchical framework for protecting Lampung's traditional cultural expressions following the Copyright Law. To prevent other countries from readily claiming their intellectual assets, the Provincial Government of Lampung must work with the community, local government, and the central government to establish regional legislation to protect traditional cultural manifestations.

**KEYWORDS**

Legal Protection, Traditional Cultural Expression, Lampung

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### 1. Introduction

Indonesia is a big country with extraordinary riches covering riches. Natural resources, both from the fisheries sector and agriculture and culture, are assets very valuable in supporting the economy of its people. Not infrequently, the results of wealth in the above have unique or distinctive characteristics that differentiate one region from another or differentiate the results of resource wealth owned by other countries so that with there is a huge comparative advantage has the potential to be given legal protection so that not taken over or claimed by other parties responsible who are not the owners of the wealth of these resources.<sup>1</sup>

Traditional cultural expression is a value that is the basis of traditional indigenous peoples in Indonesia. The Values contained in it are spiritual and communal values and can also be of economic value, representing the identity of certain regions in Indonesia.<sup>2</sup> Traditional cultural expression comes from expression, culture, and tradition. Expression is an expression, idea, and feeling.<sup>3</sup> The

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<sup>1</sup> Purnama Hadi Kusuma and Kholis Roisah, "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 107–120.

<sup>2</sup> Hilman Hadikusuma, "Pengantar Ilmu Hukum Adat Indonesia Edisi Revisi," *Mandar Maju, Cet. III: Bandung*, 2014.

<sup>3</sup> Rotua Magdalena, "Hidup, Seni Dan Teks," *Jurnal Desain-Kajian Bidang Penelitian Desain* 1, no. 1 (2021): 45–57.

culture comes from the Sanskrit language, that is, "budhayah", which means mind or intellectual.<sup>4</sup> While in English, the culture comes from the word culture, with the same understanding as the culture in Indonesia.<sup>5</sup>

Traditional cultural expression is a traditional knowledge that refers to knowledge accompanied by innovations from indigenous peoples in practice, developed according to hereditary experience. Traditional cultural expressions include folklore, folk songs, customary languages, proverbs, customary rituals, and customary laws to the typical animals of the region.<sup>6</sup>

A basic expression of traditional culture is divided into 3 words, namely expression, culture, and Tradition. It is an integral part of cultural life in society as its owner contains economic, spiritual, and spiritual values communality that is respected by society traditionally, so it is an expression of traditional culture that can represent the identity of indigenous peoples in a country area.<sup>7</sup>

The Convention for the Protection of Cultural Heritage is managed by UNESCO (the United Nations Educational, Scientific, and Cultural Organization). The goal of this gathering is to ensure that cultural norms are preserved and passed down from generation to generation. In the main case, this convention discusses the expressions, knowledge, and skills that the community has and some cases that claim the cultural heritage of a region, both tangible and intangible. The reason for this convention is that UNESCO argues that cultural heritage is a science that is traditional but closely related to the life of local people, such as fisheries, agriculture, horticultural crops, health, and so on.

Discussions at this convention also do not give explicit meaning. This is because the knowledge and practice in question is a science that has a close relationship with the universe.<sup>8</sup> Thus, it can be known that the knowledge here is different from the knowledge gained from science; the difference is made clear that the knowledge included in traditional cultural expression is first tradition, customs, and language; second, art; third, ritual ceremonies, and social habits; fourth, knowledge and skills; fifth, traditional crafts.<sup>9</sup>

Folklore, music, art, design, name, sign, symbol, look, architecture, and craft are all recognized by the World Intellectual Property Organization as expressions of traditional culture.<sup>10</sup> Traditional knowledge is defined as the expression of a culture through art forms such as music, dance, craft, song, narration, and other forms of artistic expression.<sup>11</sup>

When drawn in conclusion, WIPO and UNESCO define a traditional cultural expression as a cultural characteristic in an area that enthralled sacred objects that can be embedded and preserved for generations, develop dynamically, and is the identity of a nation.<sup>12</sup> The existence of action as a guarantee of the survival of traditional culture, both tangible and intangible, and communal creativity is thus one of the activities made in the effort to conserve traditional cultural expression.<sup>13</sup>

Intellectual property rights, which govern the protection of traditional cultural expression, are a source of contention between industrialized and developing countries. Countries of all economic levels continue to combat cultural appropriation and work to preserve their unique folk traditions. Indonesia is a country affected by the war. Quite several developed countries claim the expression of traditional Indonesian culture due to the absence of the rule of law on traditional cultural expressions, such as batik claimed by the Chinese, rending claimed by the Dutch, Jepara carvings claimed by the French, tempe claimed by Thailand, Bali silver fleur claimed by the Americans and typical Jepara ornament figure claimed by the British.

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<sup>4</sup> Abdul Atsar, "Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta," *Law Reform* 13, no. 2 (2017): 284–299.

<sup>5</sup> Laode Monto Bauto, "Perspektif Agama Dan Kebudayaan Dalam Kehidupan Masyarakat Indonesia (Suatu Tinjauan Sosiologi Agama)," *Jurnal Pendidikan Ilmu Sosial* 23, no. 2 (2014): 11–25.

<sup>6</sup> Gari Ichsan Putro, "Perlindungan Hukum Ekspresi Budaya Tradisional Untuk Kepentingan Komersial Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," n.d.

<sup>7</sup> Atsar, "Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta."

<sup>8</sup> Z A Tabrani, "Relasi Agama Sebagai Sistem Kepercayaan Dalam Dimensi Filsafat Dan Ilmu Pengetahuan," *Ar-Raniry, International Journal of Islamic Studies* 5, no. 1 (2018): 161–176.

<sup>9</sup> Yenny Eta Widyanti, "Perlindungan Ekspresi Budaya Tradisional Indonesia Dalam Sistem Yang Sui Generis," *Arena Hukum* 13, no. 3 (2020): 388–415.

<sup>10</sup> Berthon Jonathan, "Perlindungan Hukum Terhadap Lagu Daerah Yang Tidak Diketahui Penciptanya," *University Of Bengkulu Law Journal* 4, no. 2 (2019): 171–182.

<sup>11</sup> O K Saidin, "Aspek Hukum Hak Kekayaan Intelektual:(Intellectual Property Rights)," 2010.

<sup>12</sup> Saparudin Brutu et al., "Pelindungan Hukum Mejan Sebagai Ekspresi Budaya Tradisional Dalam Pengembangan Peraturan Daerah Di Kabupaten Pakpak Bharat," *Media Informasi Penelitian Kabupaten Semarang* 5, no. 2 (2023): 144–155.

<sup>13</sup> Saidin, "Aspek Hukum Hak Kekayaan Intelektual:(Intellectual Property Rights)."

Efforts need to be made in every region of Indonesia to regulate and protect traditional cultural expression regulations so that incidents like those described above can be avoided. Similar to how there is a wide range of traditional cultural expressions in Lampung Province. Clothing, rituals, songs, dances, and languages are all examples of cultural expressions.<sup>14</sup> Currently, what has entered the international scene is the traditional clothing of the Lampung people, especially in the art of Tapis and Siger, the crown of Lampung women who have their meaning for the indigenous people of Lampung.

Previous research related to this research is research conducted by Bayangsari Wedhitami; her research concluded that cultural expression research needs to get intellectual property rights protection.<sup>15</sup> Rahman Hasima's investigation led him to the conclusion that Law No.28 of 2014 concerning Copyright is used to adequately safeguard Tolaki traditional cultural manifestations in the court system. While the Copyright Law does a good job of protecting and ensuring the appropriate use of traditional cultural expressions, it is not foolproof.<sup>16</sup> I Made A.D. Mustika and Ni Ketut Supasti Dharmawan, in their research, concluded that the right legal protection system is not too possessive but also still protects strictly so that abuse of rights can be avoided.<sup>17</sup>

This research aims to find about the legal protection of traditional cultural expression in Indonesia dan to find about the prospect of legal protection of traditional cultural expression Lampung.

## 2. Research Method

In this study, we employ both normative and empirical approaches to the law, specifically Methods of Normative Law; normative law is an approach to the law that is grounded in the study of precedent, the development of legal theories and principles, and the enactment of rules governing these activities. In an empirical study, researchers go out to the field and look at the things themselves, gathering primary data through in-person interviews and observations.

Both primary and secondary sources of information were tapped for this study. Primary sources include information gathered by in-person interviews, direct observation, or written reports; secondary sources include secondary sources analyzed in light of primary sources; and third-party sources analyzed in light of primary sources. In contrast, secondary data is information that has already been collected but is used to supplement primary data.

A literature study was employed to compile the legal resources for this investigation. Specifically, information was gathered by reading relevant statutes, government papers, and scholarly works. This information was examined and compiled for use as a foundation for this study. Deductive reasoning is used to process legal documents, which involves making inferences about particular issues based on known facts about the underlying general problem.

- a. Observation. Action is directed at a process or object to sense and, using prior knowledge and ideas, interpret the phenomenon to get the data necessary to proceed with the action study. Methods like surveys, questionnaires, and even video and audio recordings can be used in observational studies.
- b. Interview. In this context, "direct question and answer" refers to a specific method of data collection in which information is gleaned from respondents through verbal exchanges.
- c. Literature study is by studying and collecting opinions of legal experts, which can be read from literature, legislation, official documents, publications, and research results.

Data analysis is a post-data gathering process in research where data is examined, processed, organized, and compiled, and conclusions are drawn from the overall research findings. The collected data comprises information gathered through theoretical analysis, examination of doctrines, regulations, and literature studies about the problem. This data is then combined with existing literature to seek a solution by analyzing sentence structures for enhanced comprehension. Finally, conclusions are drawn to derive results in the form of answers to the problem based on the research findings.

<sup>14</sup> Andhika Putra Herzani, "Peran Pemerintah Dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia," *Jurnal Hukum & Pembangunan* 50, no. 4 (2021): 956–978.

<sup>15</sup> Bayangsari Wedhitami, "Upaya Perlindungan Ekspresi Budaya Tradisional Dengan Pembentukan Peraturan Daerah," *Law Reform* 9, no. 2 (n.d.): 32–48, <https://ejournal.undip.ac.id/index.php/lawreform/article/view/12444>.

<sup>16</sup> Rahman Hasima, "Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional Masyarakat Adat Tolaki," *Literasi Hukum* 2, no. 1 (2018): 15–27, <https://jurnal.untidar.ac.id/index.php/literasihukum/article/view/753>.

<sup>17</sup> I Made A.D Mustika and Ni Ketut Supasti Dharmawan, "Prospek Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Perspektif Hak Cipta," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 3 (2019): 1–15, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/52750>.

### **3. Result and Discussion**

#### **3.1 Protections of Traditional Cultural Expression Law in Indonesia**

Indonesia, as an archipelagic country in the equatorial region, has been blessed by God with abundant natural resources and cultural diversity from various tribes that inhabit the homeland. The large number of tribes is in line with the birth of various expressions of traditional culture, which contributes highly valuable intellectual property to Indonesia.<sup>18</sup>

Indonesia is a developing country known as a country that has a very diverse work of art and traditional culture. This is because Indonesia is a country with a lot of ethnicities, so the creativity of traditional art and culture is very diverse with their uniqueness. This makes the number of developed countries claiming the traditional cultural expression of Indonesia illegal.<sup>19</sup>

When other industrialized countries claim traditional cultural manifestations as their own, it makes Indonesia feel disrespected and unappreciated as the rightful owner of those traditions among regional populations. As a result of these kinds of crimes, there is a pressing need for coordinated worldwide action to safeguard authentic forms of artistic expression.

In full, settings related to indications geographically internationally regulated in the Treaty of Lisbon. Regarding geographical indications, in terms of definition, there are 3 elements included: geographical factors that provide markings on products that indicate origin from the country, the reputation of the product among the public broad, there is continuity between geographical conditions with products determined by natural causes and the human.<sup>20</sup>

In line with this, Prof. Coombe stated that the survival of most indigenous peoples from various regions of the world is very dependent on traditional knowledge, including agriculture, plantations, forestry, traditional cultural expression, biodiversity, and traditional cultural heritage.<sup>21</sup> So, it can be said that traditional knowledge is the intellectual property of a nation. For example, folklore is the work of the creation of the thought of a person who should give birth to a right. The right is called copyright, although it is very difficult to know who is the creator of the folklore.<sup>22</sup>

Individuals and communities rely on the fruits of individual and collective intellectual labor in the form of intellectual property rights to make a living and maintain their standard of living. As such, it is clear that traditional cultural expression and other forms of cultural scholarship are protected by the copyright law instrument codified in Law No.28 of 2014. For the simple reason that it is common knowledge that traditional forms of cultural expression span the fields of art, literature, and science.

According to the Copyright Act, once an original work has been manifested in real terms without any reduction in restriction, the author is entitled to copyright as his or her exclusive property based on declaratory principles. Traditional cultural expression is governed by Article 38 of the Copyright Act. Copyright-protected cultural expressions include both singular and multiple expressions, such as:

- a. Verbal textual, the scope of which is oral and written in the form of prose and poetry with a variety of themes containing messages, as well as in the form of literature and narrative;
- b. Music whose coverage is like vocals, instrumentals, and/or combinations;
- c. Motion, whose coverage is dance;
- d. Fine art, whose scope is two or three dimensions made of leather, wood, bamboo, metal, paper, ceramics, textiles and so on;
- e. Theater, with a variety of performances of folk plays and puppets;
- f. Traditional ceremony.

The existence of the Copyright Law passed by the state as an institution with authority makes one of the efforts to protect and prevent the commercialization of foreigners in traditional cultural expression. In carrying out its objectives, the central government must also assist local governments as copyright holders. This is done so that intellectual works expressed through traditional

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<sup>18</sup> Dwiati Lindati, Kasmawati Kasmawati, and Rahmatullah Danu, "Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional Menurut Undang-Undang Nomor 28 Tahun 2014," *Pactum Law Journal* 1, no. 04 (2018): 348–361.

<sup>19</sup> Cheryl Yuswar, Runtung Sitepu, and Dedi Harianto, "Kajian Filosofis Terkait Perlindungan Ekspresi Budaya Tradisional Oleh Rezim Hak Cipta," *University of Bengkulu Law Journal* 7, no. 2 (2022): 98–107.

<sup>20</sup> Indra Rahmatullah, "Perlindungan Indikasi Geografis Dalam Hak Kekayaan Intelektual (HKI) Melalui Ratifikasi Perjanjian Lisabon," *Jurnal Cita Hukum* 2, no. 2 (2014): 95161.

<sup>21</sup> Rosemary J Coombe, "Protecting Traditional Environmental Knowledge and New Social Movements in the Americas: Intellectual Property, Human Right, or Claims to an Alternative Form of Sustainable Development," *Fla. J. Int'l L.* 17 (2005): 115.

<sup>22</sup> Dina Andiza, "Perlindungan Hukum Atas Ekspresi Budaya Tradisional Upacara Adat Dan Tata Rias Pengantin Tapanuli Selatan/Sibolga Ditinjau Dari Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Jurnal Hukum Responsif* 7, no. 2 (2020): 171–180.

cultural expressions can be safeguarded by the state. Intellectual works such as traditional and original cultural customs derived from these cultures are examples of traditional cultural expressions.

The protection of the law is regulated in such a way that it makes it difficult for traditional people to protect the work. This is because the nature of traditionally protected cultural manifestations varies. Intellectual property law is sometimes criticized for failing to adequately safeguard more conventional forms of cultural expression, but a closer look reveals why this is the case.

The Copyright Act regulated the protection of traditional cultural expressions that are quite different from other types of copyright protection, such as songs, books, or paintings. This difference is due to the copyright of other types of individuals who have economic motives, while in traditional cultural expressions, copyright is not individual but belongs to a group of regions. It is known that traditional cultural expression is the ownership of indigenous peoples of the region and/or belonging to a particular area without knowing the identity of the creator and movie. Because traditional cultural expressions arise from heritage through generations, not only from documentation but also by oral means.<sup>23</sup> From the explanation above, it can be known that the component in protecting traditional cultural expression must be different from copyright on intellectual property that is individual. This means that it needs preventive and repressive efforts in its legal protection.

The term "legal protection" refers to the safeguards afforded by the law, both prophylactically and punitively. The purpose of preventive legal protection is to deter wrongdoing by imposing constraints on how the government can fulfill its responsibilities. Repressive protection is the protection given to the object of law at the final level that can be in the form of sanctions, both criminal sanctions and administrative sanctions, in the event of violations and disputes for the subject of the law, namely the violator of the law.<sup>24</sup>

One interpretation of the law is that it serves to provide such safeguards. It is a way of thinking that supports the role of law in bringing about fairness, stability, security, advantages, and predictability. Preventive protection of traditional cultural expressions is governed by Law No. 28 of 2014 on Copyright, which designates states as the enforcer of the copyright of traditional cultural expressions and thus requires states to conduct inventories of traditional cultural expressions in Indonesia and protect, preserve, and promote them.

Despite the existence of such rules, in its implementation, the legal protection of traditional cultural expression has not been optimal. This is explained in Article 28 Paragraph (4), which provides an explanation of copyright on traditional cultural expressions; state authorities need to get help from local governments, so local governments need to regulate the local government regulations on traditional cultural expression. Until now, only a few regions have regulated traditional cultural expression, specifically in the Regional Regulations.

This proves that every region in Indonesia has not been able to provide maximum legal protection for the traditional cultural expression of indigenous peoples. Thus causing other countries to be able to claim the traditional cultural expression of Indonesian society. As already described in the background. The existence of such cases should be a whip for every region in Indonesia to make the rule of protection of traditional cultural expression law in the regional regulation.

The existence of legal protection in traditional cultural expression is one way to inherit traditional culture through conservation and preservation. John Merryman argues that the existence of policies on the protection of traditional cultural expression will provide welfare and viable survival for indigenous peoples. In addition, it will preserve the object of cultural expression that is far from the reasoning of the people of developed countries.<sup>25</sup>

The community as a whole, not only the federal and state governments, should be involved in cultural activities. In his assessment of the law's treatment of traditional cultural expression, Hendry Merryman concluded that no singular theory is necessary to ensure the preservation of such expression. He made it apparent that the international community had to figure out how to safeguard conventional forms of cultural expression through legal mechanisms. Such a coordinated effort will have a significant impact on policy regarding the expression of cultural traditions at the regional, national, and international levels.<sup>26</sup>

<sup>23</sup> Dyah Permata Budi Asri, "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *JIPRO: Journal of Intellectual Property*, 2018, 17.

<sup>24</sup> Sonia Mahayani, Ahmad Zuhairi, and Moh Saleh, "Tanggung Jawab Pelaku Usaha Terhadap Barang Yang Cacat Setelah Melakukan Transaksi Ditinjau Dari Perspektif Hukum Perlindungan Konsumen," *Commerce Law 2*, no. 1 (2022).

<sup>25</sup> Ayu Citra Setyaningtyas and Endang Sri Kawuryan, "Menjaga Ekspresi Budaya Tradisional Di Indonesia," *Jurnal Ilmu Hukum Tambun Bungai* 1, no. 2 (2016): 122–132.

<sup>26</sup> Setyaningtyas and Kawuryan.

As already discussed above, one way to protect traditional cultural expression is by inventory, recording, and documentation. These ways have been done by Indonesia based on Law No.11 of 2010 on Cultural Heritage. However, not all regions do inventory in protecting regional assets in the field of intellectual property; for now, Indonesia, which has a new regional regulation on the protection of regional assets in the field of intellectual property, is only the Special Region of Yogyakarta.

### **3.2 Prospect of Legal Protection of Lampung Traditional Cultural Expression**

The motto of Bhineka Tunggal Ika on the national emblem of Garuda Pancasila of Indonesia is not without special meaning. This motto is an illustration that Indonesia is a country with a variety of tribes, languages, customs, and beliefs. This motto also introduces Indonesia as a country that is rich in culture but remains in one unity.

The rich culture in Indonesia has the potential to support the country's economy in terms of sustainable development. It is not taboo if the cultural value causes outside countries to use it without permission, even claiming the culture is theirs. More and more here, Indonesian culture is increasingly claimed by other countries, both from fine arts and dances to food, while the People of Indonesia themselves consider the culture to be an ancestral heritage.

According to data from the Central Statistics Agency, in 2010, Indonesia had 1,331 tribes. (Statistics, n.d.) Thousands of tribes with their unique customs and cultures certainly have and present intellectual creativity as a legacy for Indonesia, which is priceless. Therefore, it is important for Indonesia not to be negligent in protecting, preserving, and developing the cultural heritage of these tribes as the nation's assets with economic value.<sup>27</sup>

Having to deal with foreign parties' unilateral claims and exploitative tactics, Indonesia has progressed significantly thanks to the free expression of native culture. State officials are making an effort to strengthen Kemdikbud, the Ministry of Education and Culture Work, along with the DJKI (Directorate General of Intellectual Property) to compile a list of cultural artifacts.<sup>28</sup>

Reflecting on the experience above, there needs to be a legal instrument in applying regulations in the Copyright Law, with the cooperation of local parties. Intellectual property rights in the form of artworks, traditional culture, and others need to get their rights in terms of legal protection. The most fundamental thing in the protection of traditional cultural expression concerning intellectual property is the existence of one's efforts to create or find something and obtain its right to preserve, preserve, and control its work.<sup>29</sup>

Although traditional cultural expression has been regulated in the Copyright Law, in its contribution, there are still weaknesses in protecting the culture in Indonesia. Moreover, since Indonesia passed the Regional Autonomy Law, each region must develop its region to benefit from the original regional income for the region and the country.

"Copyright law has no practical significance for Indonesia, and also does copyright law following Indonesian culture and level of development and not in harmony with interests of the Indonesian people," writes Afifah Kusumadara in her dissertation, "Failure Analysis Application of Intellectual Property Law in Indonesia"<sup>30</sup> It is a way of life that is shared by the community, so there are community values, and it is passed down from generation to generation; (1) it is holistic, so it cannot be separated from society's construction of it; (2) it includes knowledge about the environment and its relationship to everything; (3) it is taught and implemented from generation to generation.

Planning, development control, and other obligatory regional matters must all be handled by the local government in an autonomously developed region in line with all applicable laws and regulations. Local governments' authority under the Copyright Law to craft legal strategies to safeguard regional intellectual property assets would be consistent with their role as autonomous implementers of regional law.

The government regulation on the division of government business between provincial and district governments further regulates cultural services as a mandatory affair of the government, making them one of the essential services of local governments under the local government law. As stated above, the district and municipal governments have a significant responsibility to play in the

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<sup>27</sup> Hendra Djaja, "Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional Dalam Perspektif Undang Undang Hak Cipta," *Jurnal Cakrawala Hukum* 7, no. 1 (2016): 18–29.

<sup>28</sup> Herzani, "Peran Pemerintah Dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia."

<sup>29</sup> Dionisius Tuli Bue, "Peran Kepala Adat Dan Kedudukan Masyarakat Pengemban Dalam Melindungi Nilai Upacara Reba Sebagai Ekspresi Budaya Tradisional" (UAJY, 2017).

<sup>30</sup> Widyanti, "Perlindungan Ekspresi Budaya Tradisional Indonesia Dalam Sistem Yang Sui Generis."

management and protection of their traditional cultural expression. As a result, traditional cultural expression can have a positive effect on society when its potential is used for the benefit of the people.

The central government manages the protection of intellectual property rights in culture, the local government implements national policies and makes and implements provincial policies, and the district/city manages the implementation of these policies. Additionally, that's when an expression originated. Traditional culture makes it hard to identify cultural expression creators.<sup>31</sup>

Regional regulations issued by each region have the position and force of law following the hierarchy of laws and regulations so that its information must still be sourced in the 1945 constitution, and its implementation remains under the applicable law thereby. This is done to realize harmonization and synchronization of applicable regulations in Indonesia so that there is no overlap in the implementation of policies.

Lampung is a culturally rich Indonesian province. This is seen in Lampung's social ideals, such as *nemui nyimah*, *nengah nyappur*, *piil pesenggiri*, and *sakai sambayan*. Lampung culture has shape and intangible elements. Lampung dance and traditional clothing include *Siger*, *mahkota wanita Lampung*, *gelang kano*, *gelang keruwi*, *gelang bibing*, *buang manggus*, *rantai bulan temanggal*, *selempang sabik inuh*, *buluh perindu*, *selempang pinang buah jukung*, and *bokbot bulu serati*. Lampung also has oral literature for singings like *ngehahado*, a family event to release the bride, and for food like *shavings*, *gulai taboh* from the inner sai custom of west Lampung, and *segubal* from *pepadun* custom.

While intangible cultural expressions can be documented and inherited through generations, such as *angkon muwarei*, namely the local wisdom of Lampung to appoint brothers who, in various ways, such as good and close relations between the two parties, occurred because of marital relations, and because of the conflict so that the two parties provide solutions to each other, then there's *bejuluk beadek*, that is, a call in a kinship system that is caste. The tradition of marriage is called *hibal muhibal* which in Lampung *pepadun* community occurs in how many kinds such as *nunggang* or *hibal pengatu*, *hibal bambang padang* or *intar terang*, *hibal intar badang*, *hibal sereba* or *payu*, and *sebambangan* or *larian*. Similarly, the custom of welcoming the birth of a baby in a family that is still maintained as *silih darah*, *nabor sagun*, *ruyang ruyang*, and *ngelama*. Even Lampung indigenous peoples still perform traditional rituals *kurawan*, *ngurau kebayan*, and *canggot lebaran* in welcoming the month of *shawal*.

The local government must pay special attention to Lampung's diverse practices to preserve its traditional cultural expression. The cultural field must independently protect traditional cultural expression through local government policy. The regulated policy must still comply with the above legislation, but given the government's flexibility in regulating traditional culture, Lampung's regulation and use locally, nationally, and internationally based on legislation, and in particular, the Copyright Law's content based on intellectual property rights.

Referring to the two laws above, as well as the principles on intellectual property rights, the provincial government of Lampung, in making a policy of protection of traditional cultural expression law, needs to include several main things, including the definition, scope, property rights, principles of utilization, the principle of protection and prohibition and sanctions given to violators, which are described one by one below:

#### 1. Definition

Limitations or meanings are interpreted by words, phrases, or sentences to represent meaning, description, or fundamental attributes. Legal mechanisms, such as local legislation, must clearly define the legal protection of traditional cultural expression. Local regulations define traditional cultural expression as intellectual property rights in art, verbal, and other fields that contain different characteristics of traditional heritage results to be protected, maintained, developed, and produced for economic purposes to advance the local area.

#### 2. Scope

Local laws should be enacted to limit the extent. The same applies to preserving Lampung's traditional forms of artistic and cultural expression. Lampung's local ordinances need to be more specifically drafted to cover the full range of Lampung's intangible and physical cultural expressions. To make it crystal apparent which forms of traditional cultural expression are being safeguarded by the Lampung municipal government.

#### 3. Proprietary

Another formulation that is no less important is the ownership of the right to the expression of traditional culture Lampung. In this formulation, the obligations and rights owned over the expression of traditional culture Lampung. This element also provides a clear arrangement of those who have the right to benefit from the traditional cultural expression Lampung. Ownership of this right can be seen from the existence of certain groups of indigenous peoples in Lampung Province to

<sup>31</sup> Jonathan, "Perlindungan Hukum Terhadap Lagu Daerah Yang Tidak Diketahui Penciptanya."

protect, preserve, and develop the cultural customs of the area. Indigenous peoples have the right to joint ownership for material and non-material gain over the management of traditional resources. Ownership in traditional cultural expression cannot be given exclusively to someone in that community, so no one can monopolize the results of the use of traditional cultural expressions. Property rights granted communities in Lampung indigenous communities remain principled on the principle of ownership and stakeholder rights of traditional cultural expression that applies nationally, namely property rights to cultural resources derived from traditional rights that are still alive and held by traditional indigenous peoples. The right to control traditional resources remains the right of the state in its jurisdiction, which is managed by the central government as a national authority and local government over the delegation of the central government.

4. Principle of Utilization

The principle of utilization is the principle that governs local governments in utilizing traditional resources that they have by being protected by existing regulations. Traditional cultural expression is one of the original income of the region that can be utilized by the area, as well as the expression of the traditional area of Lampung. To carry out this principle, the provincial government of Lampung, in local regulations, needs to provide rules and procedures for the utilization of traditional cultural expressions.

Things regulated in this principle include permission for the use of traditional cultural expressions to gain economic benefits. This licensing arrangement can be distinguished in the access permits used by outsiders, foreigners, state-owned legal entities, foreign legal entities, and investments provided by the Lampung Provincial Government related to the utilization and profit agreement or profit share of traditional cultural expression of Lampung.

This principle also provides a loophole for the Lampung regional government to get royalties for the use of traditional cultural expressions utilized by foreign parties. The royalties obtained can be one of the regional revenues to be deposited to the Regional Treasury of Lampung Province, whose goal is for sustainable development.

5. Principle of Protection

The principle of protection is one of Lampung's ways to protect, maintain, and preserve Lampung traditional culture that has special characteristics. Local regulations need to set up a robust system in their efforts to protect traditional cultural expression that is integrated with the local identity and culture of the local community. These protection principles include maintenance systems, inventory, documentation, prevention systems, coping systems, legal systems, and guidance on traditional cultural expression.

6. Prohibition

To protect traditional cultural expression with a solid framework, prevention and restriction must govern access and use. The regulations of local governments must protect traditional cultural expressions that foreigners can use, including preventing and prohibiting the use of traditional intellectual property accessed without permission and using traditional cultural expressions concerning intellectual property that does not provide a clear and definitive description of its origin.

7. Sanctions

Local government sanctions on traditional cultural expression restrictions should increase traditional cultural expression legislation protection. Infractions of the traditional cultural expression protection ban can result in criminal penalties from local governments. This sanction may also refer to the law on the establishment of local regulations applicable in Indonesia. In this law, it is stated that local governments are allowed to provide criminal threats in the form of confinement and fines. The threat of criminal confinement can be given a maximum of six months, while for a maximum fine of fifty million rupiah.

Principles that exist in property rights intellectual property that apply to geographical indications, namely:

- a. The principle of justice, namely a fair relationship in the rights intellectual property of a person or group, the creator has the rights to his findings or creations. Regarding geographical indications, this principle means that Legal protection must be obtained by the creator who discovers, produces, and processes natural products so that they have specific characteristics area.
- b. Economic principles, with indications of geography, will trigger the rise of a product because of its distinctiveness and quality as well as its reputation so that it becomes a product that has economic value.
- c. Cultural principles and local wisdom, in this case, geographical indications, have very important roles in the development welfare of society, and it is hoped that this will be possible to become an attraction for foreign people and locals to get to know the diversity of products and culture from each region in Indonesia with different characteristics.
- d. Principle social, with the nature of communal and collective ownership to a geographical indication, will be able to improve the welfare of the existing community areas that have it because of profit economically owned by producers in that place.<sup>32</sup>

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<sup>32</sup> Winda Risna Yessiningrum, "Perlindungan Hukum Indikasi Geografis Sebagai Bagian Dari Hak Kekayaan Intelektual," *Jurnal IUS Kajian Hukum Dan Keadilan* 3, no. 1 (2015).



#### 4. Conclusion

Based on the above discussion, the conclusions in this study are so far, Indonesia has not had specific regulations on traditional cultural expression; until now, it still refers to the Copyright Law. Traditional cultural expression is intellectual property that needs legal protection so as not to be claimed by outside countries. The current legal protection is using inventory, recording, and documentation of Indonesian culture following the heritage law.

The need for constitutional safeguards for indigenous forms of artistic expression Lampung is to make legal instruments in the form of regional regulations that regulate the legal protection policy of traditional cultural expression Lampung regarding the Copyright Law, both tangible and intangible.

#### 4.1 Suggestion

There needs to be cooperation between the community, local government, and central government in protecting traditional cultural expression, especially Lampung, so that foreign countries cannot easily claim the intellectual assets of Lampung culture to belong to it, namely by making local regulations protecting the law of traditional cultural expression Lampung.

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#### References

- [1] Andiza, D. (2020). Perlindungan Hukum Atas Ekspresi Budaya Tradisional Upacara Adat Dan Tata Rias Pengantin Tapanuli Selatan/Sibolga Ditinjau Dari Undang-undang Nomor 28 Tahun 2014 Tentang Hak Cipta. *Jurnal Hukum Responsif* 7, no. 2 (2020): 171–80.
- [2] Asri, D P B. (2018). Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta. *JIPRO: Journal of Intellectual Property*, 2018, 17.
- [3] Atsar, A. (2014). Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta. *Law Reform* 13, 2 (2017): 284–99.
- [4] Bauto, L M (2014). Perspektif Agama Dan Kebudayaan Dalam Kehidupan Masyarakat Indonesia (Suatu Tinjauan Sosiologi Agama). *Jurnal Pendidikan Ilmu Sosial* 23, no. 2 (2014): 11–25.
- [5] Brutu, S, Fadillah M P, Eka M R B S, Fahreza R T, Parlaungan G S, and Reh B B P. (2023). Pelindungan Hukum Mejan Sebagai Ekspresi Budaya Tradisional Dalam Pengembangan Peraturan Daerah Di Kabupaten Pakpak Bharat." *Media Informasi Penelitian Kabupaten Semarang* 5, no. 2 (2023): 144–55.
- [6] Bue, D T (2017). Peran Kepala Adat Dan Kedudukan Masyarakat Pengemban Dalam Melindungi Nilai Upacara Reba Sebagai Ekspresi Budaya Tradisional. *UAJY*.
- [7] Coombe, R. J. (2005). Protecting Traditional Environmental Knowledge and New Social Movements in the Americas: Intellectual Property, Human Rights, or Claims to an Alternative Form of Sustainable Development. *Fla. J. Int'l L.* 17 (2005): 115.
- [8] Djaja, H (2016). Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional Dalam Perspektif Undang Undang Hak Cipta. *Jurnal Cakrawala Hukum* 7, 1 (2016): 18–29.
- [9] Hadikusuma, H (2014). Pengantar Ilmu Hukum Adat Indonesia Edisi Revisi." *Mandar Maju, Cet. III: Bandung*, 2014.
- [10] Hasima, R (2018) Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional Masyarakat Adat Tolaki. *Literasi Hukum* 2, no. 1 (2018): 15–27. <https://jurnal.untidar.ac.id/index.php/literasihukum/article/view/753>.
- [11] Herzani, A P (2021) Peran Pemerintah Dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia. *Jurnal Hukum & Pembangunan* 50, no. 4 (2021): 956–78.
- [12] Jonathan, B. (2019). Perlindungan Hukum Terhadap Lagu Daerah Yang Tidak Diketahui Penciptanya. *University Of Bengkulu Law Journal* 4, 2 (2019): 171–82.
- [13] Kusuma, P H, and Kholis R. (2022). Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal. *Jurnal Pembangunan Hukum Indonesia* 4, 1 (2022): 107–20.
- [14] Lindati, D, Kasmawati K and Rahmatullah D (2018) Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional Menurut Undang-Undang Nomor 28 Tahun 2014. *Pactum Law Journal* 1, no. 04 (2018): 348–61.
- [15] Magdalena, R. (2021). Hidup, Seni Dan Teks. *Jurnal Desain-Kajian Bidang Penelitian Desain* 1, 1 (2021): 45–57.
- [16] Mahayani, S, Ahmad Z, and Moh S (2022) Tanggung Jawab Pelaku Usaha Terhadap Barang Yang Cacat Setelah Melakukan Transaksi Ditinjau Dari Perspektif Hukum Perlindungan Konsumen. *Commerce Law* 2, 1 (2022).
- [17] Mustika I, Made A.D, and Ni K S D. (2019) Prospek Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Perspektif Hak Cipta. *Kertha Semaya: Journal Ilmu Hukum* 7, no. 3 (2019): 1–15. <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/52750>.
- [18] Putro, G I. (2014) Perlindungan Hukum Ekspresi Budaya Tradisional Untuk Kepentingan Komersial Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta, n.d.
- [19] Rahmatullah, I (2014). Perlindungan Indikasi Geografis Dalam Hak Kekayaan Intelektual (HKI) Melalui Ratifikasi Perjanjian Lisabon. *Jurnal Cita Hukum* 2, 2 (2014): 95161.
- [20] Saidin, O K. (2010) Aspek Hukum Hak Kekayaan Intelektual:(Intellectual Property Rights)

- [21] Setyaningtyas, A C, and Endang S K (2016) Menjaga Ekspresi Budaya Tradisional Di Indonesia. *Jurnal Ilmu Hukum Tambun Bungai* 1, 2 (2016): 122–32.
- [22] Tabrani, Z A. (2018) Relasi Agama Sebagai Sistem Kepercayaan Dalam Dimensi Filsafat Dan Ilmu Pengetahuan. *Ar-Raniry, International Journal of Islamic Studies* 5, 1 (2018): 161–76.
- [23] Wedhitami, B. (n.d.) Upaya Perlindungan Ekspresi Budaya Tradisional Dengan Pembentukan Peraturan Daerah. *Law Reform* 9, 2: 32–48. <https://ejournal.undip.ac.id/index.php/lawreform/article/view/12444>.
- [24] Widyanti, Y E (2020) Perlindungan Ekspresi Budaya Tradisional Indonesia Dalam Sistem Yang Sui Generis. *Arena Hukum* 13, 3 (2020): 388–415.
- [25] Yessiningrum, W R. (2015). Perlindungan Hukum Indikasi Geografis Sebagai Bagian Dari Hak Kekayaan Intelektual. *Jurnal IUS Kajian Hukum Dan Keadilan* 3, 1 (2015).
- [26] Yuswar, C, Runtung S, and Dedi H. (2022). Kajian Filosofis Terkait Perlindungan Ekspresi Budaya Tradisional Oleh Rezim Hak Cipta. *University of Bengkulu Law Journal* 7, 2 (2022): 98–107.