

PROTECTION OF TRADITIONAL CLOTH TAPIS LAMPUNG IN COMMUNAL INTELLECTUAL PROPERTY RIGHTS REGIME

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ABSTRACT

Lampung Province has a Traditional Cultural Expressions (TCE) heritage in the form of cloth "Tapis"; if it is not appropriately maintained, it will be vulnerable to being recognized by other countries that can take advantage of its existence. Currently, Indonesia regulates cloth protection in the copyright regime. However, the copyright regime has limitations in protecting it, for example, the limited time of protection provided. In addition, Tapis has Intellectual Property Rights (IPR) potential, not only in copyright-protected motifs but also in original materials and crafts that Geographical Indications can protect. So it can maintain the existence and the work of art and culture itself. In addition, the community can get economic benefits and cultural developments in Indonesia as a developing country. Based on the background above, this research will analyze the development of IPR and the construction initiative to protect Tapis Lampung. In this study, the empirical normative legal method examines and interviews the cloth weaver group through historical approaches. The data used are from

laws, regulations, and interviews. Protection for Tapis Lampung can be achieved by using two measures: preventive legal protection by implementing an integrated cultural data collection system that carries out cultural recording and documentation efforts to prevent claims of intellectual property rights protection against culture. Furthermore, in repressive legal protection, rules can provide a legal basis for parties who will take action against outside parties that are considered to have taken or recognized the rights to cultural property clearly and systematically.

Keywords: Intellectual Property Rights, Traditional Cultural Expressions, Tapis, Legal Protection

I. INTRODUCTION

Indonesia is known for its cultural diversity and traditional wealth. Without realizing it, many local assets and intellectual property have been widely recognized as belonging to foreigners. This lack of awareness of the importance of intellectual property assets has resulted in enormous losses for Indonesia. The intellectual property assets are part of the intellectual property rights whose ownership must be protected. Intellectual property rights in its development recognize not only individual intellectual rights but also communal intellectual property rights. One part of communal intellectual property rights are traditional cultural expressions (TCE). Based on article 40 Law No. 28 of 2014, these traditional cultural expressions include all forms of drawings, paintings, carvings, calligraphy, collages, sculptures, and sculptures, commonly referred to as fine arts.

The Marrakech Convention of the World Trade Organization (WTO) contained in the Trade Related of Intellectual Property Rights (TRIPs) was the initial agreement in the emergence of the Intellectual Property Rights (IPR) regime. One of its members, Indonesia, must implement all agreements reached without exception. This obligation is binding and must be fulfilled by member countries within a specific time frame.

Indonesia, one of the developing countries, is granted waivers in implementing the IPR agreement, namely in the form of a ten-year arrangement and implementation period, which is different from that given to developing countries, which is only five years.¹ At first, this issue did not receive much attention because it was considered not to bring many benefits to developed countries. In addition, there are other issues within the scope of IPR that are not accommodated in the WTO, such as genetic resources, traditional knowledge, and folklore expression. Attention to these three issues becomes more intense when there are several cases regarding using genetic resources, traditional cultural expressions, and knowledge.

The recognition of communal intellectual property rights is already contained in the UNESCO Convention 2003 Convention, namely the Convention for the Safeguarding of the Intangible Cultural Heritage by regulating intangible cultural heritage in various practices, representations, expressions, knowledge, skills and instruments, objects, artifacts and The associated cultural environment includes the various communities, groups and, in some cases, individuals who are recognized as part of their cultural heritage. This intangible cultural heritage, passed down by various communities and groups in response to their history, environment and interactions with nature gives them a sense of identity and sustainability in promoting human creativity and respect for cultural diversity.² However, in Indonesia itself, there is no specific legislation that regulates the issue of traditional cultural expression because it is part of the copyright law, which is part of personal intellectual property rights.

Protection for traditional cultural expressions in Indonesia has received more attention after the emergence of Malaysia's ownership claims to several folklore that the Indonesian people have recognized for generations as cultural heritage, such as wayang, reog ponorogo, and pendet dance. In addition, the ancient manuscripts digitized by Malaysia on the culture of the indigenous peoples of South Sulawesi and Southeast Sulawesi.³ Furthermore, the dispute between Indonesia and Japan regarding the

¹ Krisnani, et.al, *Hak Kekayaan Intelektual dan Tantangan Implementasinya di Perguruan Tinggi*, Bogor: IPB, 2005, hlm. 135.

² Article 2 (8) of Convention for The Safeguarding of The Intangible Cultural Heritage 2003.

³ Tim Pengkajian Hukum, "Laporan Tim Pengkajian Hukum Tentang Perlindungan Hukum Kebudayaan Daerah", https://www.bphn.go.id/data/documents/pkj_perlindungan_hukum_kebudayaan_daerah.pdf, accessed on 1 February 2020.

patenting of traditional Indonesian knowledge focuses on the Japanese cosmetic company (Shisheido) patented 11 types of traditional Indonesian medicinal plant ingredients. Then in 2002, after being sued by several Indonesian NGOs, such as BioTani PAN Indonesia, Shisheido canceled the patents registered at the European Patent Office.⁴ Thus, the Indonesian government has begun to seek to protect the rights of traditional Indonesian cultural expressions.

WIPO (World International Property Organization) uses the term Traditional Cultural Expression as a model for implementing the TRIPS Agreement in various international forums. The meaning of TCE given by WIPO is intended to limit the traditional cultural works owned by traditional community groups as intellectual works. Giving this meaning becomes a reference in determining an intellectual work of traditional culture and linking it to a community group as the custodian.⁵

Since the first time, the Indonesian government has recognized the intellectual property's values in the expression of Indonesian culture, namely Article 10 of Law no. 6 of 1982 concerning copyright, which is also recognized in Article 10 of Law no. 19 of 2002 on copyright and the last in Article 13 of the 2014 Law on copyright. In this Law, it is stated that the state holds historical, cultural, and cultural heritage works of the people, and the state is obliged to protect them from being used by foreigners. In 2007, the Indonesian government held the Asia Africa Forum on the Protection of Genetic Resources, Traditional Knowledge, and Folklore in Bandung. The Asia-Africa Forum is based on the Declaration on the New Asian African Strategic Partnership (NAASP), which was agreed previously in Bandung on 24 April 2005. In 2009, the government was active in every WIPO-IGC meeting. The government held a Meeting of Like-Minded Countries (LMCs) on International Legal Instruments for the Protection of Genetic Resources, Traditional Knowledge, and Folklore to reach a mutual agreement between developing countries and developed countries at the WIPO-Intergovernmental

⁴ Afifah Kusumadara, "Pemeliharaan dan Pelestarian Pengetahuan Tradisional dan Ekspresi Budaya Tradisional Indonesia: Perlindungan Hak Kekayaan Intelektual dan non-Hak Kekayaan Intelektual", *Jurnal Hukum*, Volume 18 No. 1, 2011, hlm. 20-41.

⁵ Adrial and Larasati Pristi Arumdan, "Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional (EBT) berdasarkan Undang-undang No. 28 Tahun 2014 di Kabupaten Lebak-Provinsi Banten.", *wisataMuh (Journal of Tourism)*, Volume 1 No. 1, 2020, hlm. 1-74.

Committee (IGC) meeting in Bali.⁶ The main result of the meeting was the consolidation of the text of the treaty protecting Traditional Knowledge and Folklore. The consolidation of these texts is expected to guide developing countries in text-based negotiations at WIPO. Indonesia asks developing countries to be more synergistic in fighting for an international regime to protect genetic resources, traditional knowledge, and cultural expressions.

However, in the end the government realized that there was no common ground between developing and developed countries on many aspects of the protection of Traditional Cultural Expressions in various international meetings. There are differing views between groups of developing and developed countries on many aspects of the protection of Traditional Cultural Expressions.⁷ The primary purpose of Indonesian national law is to regulate the commercialization and use of intellectual property rights (IPR) in TCE, not to regulate the preservation and maintenance of TCE.⁸ So that the purpose of TCE protection in this national Law is different from the goal of TCE protection being pursued in international forums, the purpose of TCE protection in international forums is to maintain TCE preservation. In contrast, IPR protection is a consequence of TCE preservation.⁹

Furthermore, the purpose of TCE protection in national Law differs from what the community wants.¹⁰ The issue of government recognition and attention to minimizing the risk of TCE extinction is more important than the mere commercialization of TCE and efforts to document TCE and its custodian.¹¹ Cultural sustainability, existence of a system that can maintain and transmit culture to the next generation, balance between providing protection to culture and giving everyone access

⁶ Afifah Kusumadara, *Op.Cit.*, hlm. 2.

⁷ Prasetyo Hadi Purwandoko, Adi Sulistiyono, and M. Hawin, "The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright," *Indonesian Journal of International Law*, Volume 18 No. 4, 2021, hlm. 543–570.

⁸ Bayangsari Wedhatami and Budi Santoso, "Upaya Perlindungan Ekspresi Budaya Tradisional Dengan Pembentukan Peraturan Daerah," *Jurnal Law Reform*, Volume 9 No. 2, 2014, hlm. 32–48.

⁹ Hendra Djaja, "Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional Dalam Perspektif Undang-Undang Hak Cipta," *Jurnal Cakrawala Hukum*, Volume 7 No. 1, 2016, hlm. 18–29.

¹⁰ Kholis Roisah, "Perlindungan Ekspresi Budaya Tradisional Dalam Sistem Hukum Kekayaan Intelektual," *Masalah-Masalah Hukum*, Volume 43 No. 3, 2014, hlm. 372–379.

¹¹ Reh Bungana Beru Perangin-angin, Ramsul Nababan, and Parlaungan G. Siahaan, "Perlindungan Pengetahuan Tradisional Sebagai Hak Konstitusional di Indonesia," *Jurnal Konstitusi*, Volume 17 No. 1, 2020, hlm. 178–196.

to use it for the creation of new creativity and innovation is a major concern for them. The purpose of the law in protecting TCE should be to regulate these three things.¹² In international forums, the law should be able to maintain the nation in maintaining the existing situation (preservation), which prohibits the holding of changes, the survival of the nation that creates a dynamic from time to time so that it can defend itself and develop itself against attacks and changes. Changes that come from outside.¹³

Lampung Province, part of the Unitary State of the Republic of Indonesia, has various traditional cultural expressions ranging from art, culture, and language. One of its artistic and cultural heritage is the Tapis Lampung which, if not maintained and maintained correctly, will become extinct and vulnerable to the recognition of other countries that take advantage of its existence. Because the cloth itself is now starting to be brought and exhibited at international events, be it official state or informal events. The state is the highest authority, and local governments, therefore, make the state a representative in regulating and protecting TCE. This can prevent commercialization and monopolies by foreign parties without the state's permission as the copyright holder. This provision is intended to avoid the actions of foreign parties that can damage cultural values and use them commercially without the permission of the TCE owner. The problem is that traditional community culture, laws, and regulations do not recognize copyright. The cultural values of society do not recognize individual ownership of copyrighted work in the fields of science, art, and culture. However, it is necessary to have the initiative and creativity of the Regional Government to protect the community's TCE, which is associated with IPR, especially copyright. So far, the local government's attention to TCE is still limited to administration through data collection. Moreover, there is no precise regulation and protection for the potential derived from traditional knowledge and its expression, both from the moral and economic aspects, including Lampung Province.

¹² 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*, Volume 13 No. 2, 2017, hlm. 284–299.

¹³ Sunaryati Hartono, *Hukum di Indonesia Pada Akhir Abad ke 20*, Bandung: Alumni, 1994, hlm. 112.

Tapis is one of Lampung's traditional cultural expressions that can be protected under the IPR law. Currently, regulations in Indonesia regulate cloth's protection in the copyright regime. However, the copyright regime has limitations in protecting Tapis, for example, the limited protection time provided. In addition, Tapis handicrafts have IPR potential, not only on motifs that are protected by copyright but also on other IPR potentials, such as the originality of the material and the origin of the craft that Geographical Indications can protect. Therefore, the author is encouraged to conduct a more profound study regarding the conditions, options, potential, and challenges of Tapis Lampung protection.

Based on the description of the background, the problems to be solved in this study are (1) the development of IPR protection for Tapis Lampung and (2) construction initiative to protect Tapis Lampung. Hence, the aim of this research are (1) knowing the development of the protection of Tapis Lampung and (2) outlining the construction initiative for Tapis Lampung Protection.

1. Construction of Legal Protection Model

The Big Indonesian Dictionary or Kamus Besar Bahasa Indonesia (KBBI) explains construction as the arrangement (model, layout) of a building.¹⁴ Legal construction can be associated with a building or arrangement of regulations that regulate legal objects and, in this case, can take the form of a model. A model represents ideas, objects, and objects in a simplified form of natural phenomena. The model contains information about the phenomena made to study the existing system. The model can imitate a system, object, or event containing vital information to be studied.¹⁵

¹⁴ Badan Pengembangan dan Pembinaan Bahasa, Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi Republik Indonesia, "Konstruksi", <https://kbbi.kemdikbud.go.id/entri/konstruksi>, accessed on 18 February 2020

¹⁵ Sarliaji Cayaray, "2014 Model layanan perpustakaan sekolah luar biasa Universitas Pendidikan Indonesia", http://repository.upi.edu/11779/11/T_PKKH_1104495_Chapter2.pdf, accessed on 10 February 2019.

Types of Model	Criteria Classification
Mechanistic	Based on the underlying mechanism/phenomena.
Empirical	Based on input-output data, experiments or experiments.
Stochastic	Contains probabilistic model elements
Deterministic	Based on cause-and-effect analysis.
Lump parameter	The dependent variable is not a function of spatial position.
Variable parameter	Distributed parameter variable is a function of the spatial position.
Linear	The principle of linear superposition applies
Non-linear	The principle of non-linear superposition does not apply to the dependent variable.
Continuous	Defined more continuous space-time
Discrete	Defined for discrete values of time and space.
Hybrid	Contains continuous and discrete behavior

Table 1. Model and Classification

2. Definition of Legal Protection

Protection is the provision of guarantees for peace, security, and prosperity against all dangers that threaten the protected party. The definition of protection is a place of refuge, things to protect (Indonesian Dictionary, 1990: 526). The word protection, rooted in the bare word "protect," gets the confix "ke a" so that it becomes a formed noun and has an abstract meaning. According to Gorys Keraf, the confix "role" function is to form a noun. The meaning of the word formation with the confix "role" is: to state the result of the action, the event itself, or the thing of action (Gorys Keraf, 1984: 116). In this context, "protection" refers to the event itself or the thing of action. Legal protection is a guarantee provided by Law to obtain security, peace, and prosperity.¹⁶

According to Satjipto Raharjo, legal protection is given to the community so that they can enjoy all the rights granted by Law and provide protection for human rights that others have harmed. Philips M. Hadjon argues that legal protection is an acknowledgment of human rights and the protection of the dignity of legal subjects. Furthermore, CST Kansil said that Legal Protection is a legal effort to feel mentally and physically safe from disturbances and various threats from any party that law enforcement officials must provide.¹⁷

Legal protection is often referred to as a means of legal protection when carrying out and providing a place or container in its implementation. The definition of legal protection is divided into two types, namely¹⁸ (a) Preventive Legal Protection aims to prevent disputes. Preventive legal protection encourages the government to be careful in making decisions based on discretion. The reason is that legal subjects can file objections or opinions before a government decision gets a definitive form. However, in Indonesia, there is no specific regulation regarding preventive legal protection. (b) Repressive Legal Protection aims to resolve disputes. This protection principle is based on the recognition and protection of human rights and the rule of Law. Associated with the recognition and protection of human rights, the recognition, and protection of

¹⁶ Mahfiana Layyin, "Perlindungan Hukum Terhadap Tersangka Anak Sebagai Upaya Melindungi Hak Anak", *MUWAZAH: Jurnal Kajian Gender*, Volume 3 No. 1, 2011, hlm. 386-397.

¹⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 1984, hlm. 133.

¹⁸ Philipus M. Hadjon, *Perlindungan Bagi Rakyat di Indonesia*, Surabaya: Bina Ilmu, 1987, hlm. 1-2.

human rights is the goal of the rule of Law. The General Court and Administrative Court provide this means of protection.

Justice and Law must be upheld based on Positive Law to achieve a safe and peaceful society. Justice is formed by correct thinking, is carried out fairly and honestly, and is responsible for the actions taken. Justice must be built under the ideals of Law (*Rechtidee*) in a state of Law (*Rechtsstaat*), not a state of power (*Machtstaat*). The law functions to protect human interests, so law enforcement must pay attention to 4 things, namely:¹⁹ (a) Justice of the law (*Gerechtigkeid*), (b) Legal expediency (*Zweckmässigkeit*), (c) Legal certainty (*Rechtssicherheit*), (d) Legal guarantee (*Doelmatigheid*).

The community expects legal certainty to create an orderly, safe, and peaceful society. The Law is given to humans, so its implementation must provide benefits and uses for the community, not cause social unrest. Solid legal protection will realize the legal objectives: security, order, welfare, peace, truth, justice, and peace. Excellent and correct treatment will create a safe and peaceful society. Legal certainty contains two meanings, namely the existence of general rules so that everyone knows what can and cannot be done and legal security for everyone from government arbitrariness because, with these rules, everyone can know what is allowed by the government. Legal certainty is not only a law but also a consistency in the decisions of the new judges with the decisions of previous judges for similar cases that have been decided.²⁰

3. Intellectual Property Rights

Intellectual property (IP) is a property that arises or is born from human intellectual abilities. These works are born and can be in the form of works in science, technology, art, and culture. These works are produced based on human intellectual abilities through creativity, taste, intention, time, energy, and thought. This distinguishes intellectual property from other types of property that can also be owned by humans but are not produced by human intellect. Wealth in the form of work resulting from the ability to think or human intelligence has economic value and benefits for human life, so it can

¹⁹ Ishaq, *Dasar-dasar Ilmu Hukum*, Jakarta: Sinar Grafika, 2009, hlm. 43.

²⁰ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Jakarta: Kencana, 2008, hlm. 157-158.

also be considered a commercial asset. Works produced on human intellectual abilities through creativity, taste, intention, time, energy, and thought are naturally secured by creating a legal protection system for such property as the Intellectual Property Rights (IPR) system.²¹

Intellectual Property Rights are rights that come from human creativity, taste, and intellectual initiative that have benefits, are helpful in human life, and produce economic value. The simple form of the results of human intellectuality can be in the form of science, technology, art, and literary culture.²² HKI is divided into 2 (two), namely: (a) Personal Intellectual Property Rights consist of Copyright and Industrial Property Rights, (b) Communal Intellectual Property Rights consist of Geographical Indications, Traditional Knowledge, Traditional Cultural Expressions, and Genetic Resources.

The general objectives of IPR protection are:²³ (a) Giving awards for a success in creating an intellectual work, (b) Promote the publication of works in the form of IPR documents that are open to the public, (c) Provide legal clarity regarding the relationship between assets and inventors, creators, designers, owners, users, intermediaries who use them, the working areas of their use and those who receive the consequences of using IPR for a certain period of time, (d) Stimulate the creation of efforts to transfer information through intellectual property and transfer of technology through patents, (e) Provide protection against the possibility of being imitated because there is a guarantee from the state that the implementation of intellectual work is only given to those who are entitled.

In addition, the IPR system has also caused a change in the culture and perspective of a nation by (a) Encouraging scientists' creativity through incentives that allow them to concentrate and prosper as researchers without having to become entrepreneurs. (b) Encouraging a spirit of competition. (c) Encourage good documentation of research activities. (d) Creating awareness and concern for the global economic system because IPR is related to trade and industrial issues. (e) Encouraging the protection of research results and their implementation or commercialization. (f) Legislation regarding IPR

²¹ *Ibid*, hlm. 1.

²² *Ibid*, hlm. 2.

²³ *Ibid*, hlm. 3.

was first related to patents in Venice, Italy, in 1470. Then the rules related to patents were adopted by the British Empire in the 1500s, which later gave birth to the Statute of Monopolis (1623), the first patent law in Indonesia. English. Furthermore, the new patent law appeared in 1791 in America. Internationally, the first regulation related to IPR was the birth of the Paris Convention in 1883 for patents, trademarks, and designs. Then the Berne Convention agreement in 1886 for copyright issues. The result of the two conventions was the establishment of an administrative bureau called The United International Bureau for the Protection of Intellectual Property, later known as the World Intellectual Property Organization (WIPO). WIPO is an international organization under the United Nations (UN) agency that deals with IPR issues. Furthermore, from 1986-1994 there were negotiations in Uruguay, also known as the Uruguay Round. The Uruguay Round discussed tariffs and world trade or the General Agreement on Tariffs and Trade (GATT), which later formed the world trade organization or the World Trade Organization (WTO). In addition, intellectual property rights and trade aspects are also known as TRIPs. In 1994 Indonesia ratified the WTO agreement through Law no. 7 of 1994.²⁴

In 1844, the Dutch Colonial government introduced the IPR protection law. Subsequently, the Dutch Government enacted the Trademark Rights Act (1885), the Patent Rights Act (1910), and the Copyright Law (1912). At that time, Indonesia was still called the Netherlands East Indies. Indonesia then was a member of the Paris Convention for the Protection of Industrial Property since 1888, the Madrid Convention from 1893 to 1936, and the Berne Convention for the Protection of Literary and Artistic Works since 1914. The Law on IPR was passed on 11 October 1961 for the first time in Indonesia, namely Law no. 21 of 1961 concerning Corporate Marks and Commercial Marks to replace the Dutch colonial trademark law in protecting the public from counterfeit goods. In the field of copyright, the government passed Law no. 6 of 1982 concerning copyright on 12 April 1982 to replace the Dutch colonial Copyright Law in protecting the work of his creation.²⁵

²⁴ *Ibid*, hlm. 8.

²⁵ Direktorat Jenderal Kekayaan Intelektual, "Sejarah Perkembangan Perlindungan Kekayaan Intelektual", <https://dgip.go.id/sejarah-perkembangan-perlindungan-kekayaan-intelektual-ki>, accessed on 16 February 2020.

Subsequently, the Government of Indonesia passed Law no. 7 of 1987 on 19 September 1987 as an amendment to Law no. 6 of 1982 concerning copyright. It then passed Law no. 6 of 1989 concerning patent rights. The Indonesian government passed Law no. 19 of 1992 concerning Marks on 28 August 1992 to replace the 1961 Trademark Law. The Government of Indonesia signed the Final Act Embodying the result of the Uruguay Round of Multilateral Trade Negotiations, which included the TRIPS Agreement, on 15 April 1994. Then the Government of Indonesia revised the set of laws and regulations – legislation in the field of IPR in 1997, namely the Copyright Law 1987 jo. UU no. 6 of 1982 Law, 1989 Patent and 1992 Trademark Law. At the end of 2000, four new laws were passed in the field of Intellectual Property Rights, namely Law no. 29 of 2000 concerning the Protection of Plant Varieties, Law no. 30 of 2000 concerning Trade Secrets, Law no. 31 of 2000 concerning Industrial Design and Law no. 32 of 2000 concerning Integrated Circuit Layout Design. In 2001 the Government of Indonesia passed Law no. 14 of 2001 concerning Patents and Law no. 15 of 2001 concerning Marks to harmonize all laws and regulations in the field of Intellectual Property Rights with the TRIPs Agreement. These two laws replace the old laws in related fields. In mid-2002, Law no. 19 of 2002 concerning copyright replaced the old Law and became effective one year after its promulgation.²⁶ However, the Law has trademark rights, Law N0.13 of 2016 concerning patent rights, and Law No.28 of 2014 concerning copyright.

4. Communal Intellectual Property Rights (*Traditional Cultural Expressions*)

Communal Intellectual Property Rights are intellectual property rights wholly owned by a group of people who live and settle in one place. IPRs that are communal include (a) Geographical Indication (*Geographical Indication*), (b) Traditional Knowledge (*traditional knowledge*), (c) Traditional Cultural Expression (*traditional cultural expression*), (d) Biodiversity (*Biodiversity*).

Traditional Cultural Expression is part of cultural identity and heritage whose protection and preservation are related to recognizing human creativity and cultural

²⁶ *Ibid*, hlm. 12.

diversity. Traditional cultural expressions as part of traditional knowledge are expressions that include four groups, namely: expressions by words ("verbal"), expressions by musical sounds ("music"), expressions of the human body ("by action"), and expressions incorporated in a material object ("tangible expression").²⁷ The meanings of these traditional cultural expressions are created solely for artistic and cultural reasons, but many are also symbols of a belief system. Therefore, when a traditional singer sings a traditional song, the melody or style of the song follows the rules preserved from previous generations. Hence, it displays a song that is entertaining and teaches current listeners about the unification of today's society with past societies.

Traditional Cultural Expressions contain elements of traditional heritage characteristics that are maintained, developed or produced by the bearer (Customary Law Community). In this case, the copyright for works of historical heritage and the results of people's culture is held by the state for the common interest: (a) Life cycle ceremonies, traditional ceremonies related to natural events, (b) traditional arts, (c) Folklore, saga, legend, chronicle, (d) Folk Games, (e) Traditional expressions, (f) oral traditions and expressions, (g) Language, (h) Traditional architecture, (i) Traditional clothing, (j) Batik, weaving, (k) Dance, (l) Traditional calligraphy and other traditional works of art.

Protected Traditional Cultural Expressions include one or a combination of the following forms of expression:²⁸ (a) music, including: vocal, instrumental or a combination thereof, (b) movement, including: dance, martial arts, and games, (c) theater, including: puppet shows and folk plays, (d) verbal textual, both oral and written, including prose and poetry, in various themes and content of messages, which can be in the form of literary works or informative narratives, (e) fine arts, both in two-dimensional and three-dimensional forms made of various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, and others or a combination thereof, (f) traditional ceremonies, including the manufacture of tools and materials.

²⁷ Article 2 of TRIPS, World Intellectual Property Organization, 2001.

²⁸ Kevin Mitchell, "Gullah Cuisine: Is It a Story of Cultural Appropriation or Cultural Appreciation?" *Tourism Culture & Communication*, Volume 21 No. 1, 2021, hlm. 55–61.

This research is normative-empirical legal research that mainly examines national, sectoral, and regional laws and regulations that regulate the protection of intellectual property rights but also looks at the reality in society through observation, interviews, and other necessary matters. The approaches used are the statute, observation, interview, and conceptual approach.

Because this research is classified as normative-empirical legal research, the data used is not only secondary data but also primary data. Researchers obtain primary data directly when they go to the field, in contact with social reality. Meanwhile, secondary data consists of primary legal materials and secondary legal materials. The primary legal materials used are laws and regulations relevant to formulating the problem to be discussed. In contrast, the secondary legal materials are books and journals per the research focus. Secondary data in this study were obtained from literature studies and searches on the internet network.

Data is collected through the field to observe social phenomena and conduct necessary interviews. In addition, collecting data from library research by reading, quoting, taking notes, and understanding various kinds of literature related to the object of research in the form of primary and secondary legal materials. In the next step, the data material is collected through the procedures for identification, inventory, classification, and systematization of data materials according to research problems. The collected data were checked for completeness (editing), then classified thematically (according to the subject matter) for further analysis.

From the aspect of dogmatic Law, the analysis of legal materials is carried out in two stages. First, by way of exposure and analysis of the content (structure) of the applicable Law, systematization of legal phenomena that are presented and analyzed, interpretation, and assessment of the applicable Law. Data analysis was carried out qualitatively by means of prescriptive-analytic, namely examining legal concepts and norms related to research problems.

II. DISCUSSION

1. The development of the protection of intellectual property rights of Tapis Lampung

Regarding the history of Tapis Lampung, according to Van der Hoop, since the 2nd century BC the people of Lampung have only just begun to know about weaving.²⁹ While in the 7th century, the craft of weaving using cotton was introduced by orientalist historians Robin and John Maxel to foreign travelers and traders to Lampung. Initially, the pattern of Tapis was influenced by maritime nuances and expressions of worship of ancestors and the forces of nature. The kingdoms in Indonesia are very thick with the system of religiosity, which was brought from India through the Indian Ocean. Shipping is a door for interaction between regions and between countries. Tapis Lampung is identical to the indigenous people of Lampung Pepadun, while the Lampung Sebatin is more identical to ship cloth. Cloth with motifs of humans, animals, and plants was a known fabric at that time. These various patterns are from mythology. Some of the influences brought by Hindu culture through traders can also be found in the forms of beliefs, legends, and decorative flora and fauna related to Hinduism. According to Van Heekeren, the decorative use of iron and bronze in Lampung was influenced by Dongson and Chou. Cloth in the 1960s was in the form of a sarong with plain motifs or lines in the form of color fields and embroidered with light-colored decorative threads. The motif is widely used in traditional events, the begawei event, cakak pepadun, descending cangget, welcoming guests, and the bride's attire at the wedding ceremony. Tapis, basic cloth, is a woven product from a cotton thread on a gedongan loom, also called pattek (panthok). The red and brown colors that come from the sap of the Sepang fruit (*Caesalpinia sappan*), noni root (*Morinda citrifolia*), and tamarind (*tamarindus indica*) are the primary colors of the cloth.

In addition, there is also a yellow color that comes from turmeric (*curcuma domestica*), tamarind, and whiting. Moreover, the blue comes from indigo (*indigofera*), talom leaves, and dice. The width of the woven obtained has a length of approximately 60 cm. While the lines and areas of color obtained are done horizontally when used as a sarong. Embroidery on cloth uses gold thread which is done by placing the cloth on the teukang, which is a fabric fastener. Embroidery is done by sawat technique, namely inserting decorative threads on fabric threads and then tying the threads through decorative threads on the base fabric to form the desired texture and decoration on the

²⁹ Mentari Novialista, *Pesan Pesan Dakwah Motif Kain Tapis Lampung dalam Pandangan Budayawan Lampung*, Skripsi UIN Raden Intan Lampung, 2019.

fabric that has been tightened on the teukang. The beauty of Tapis Lampung emerges from the combination of basic cloth colors, decorative shapes, textures, and gold thread luster. Likewise, the various tapis motifs and of them are motifs that come from the heritage of the ancestors to beautify the Tapis, which was initially just a plain woven sarong. For ethnic groups, the filter's types and motives vary, depending on the indigenous people's needs.³⁰ Tapis Lampung weaving has social and economic functions in people's lives. The social function shows its status in social groups and members of society. This cloth has a high value and is a status symbol of the family group that shows the different status of its users, including the filter cloth used by the family of traditional leaders or tribal leaders at traditional marriage ceremonies and taking titles. There are also types of Tapis that may only be used by certain people at certain traditional ceremonies, for example, for different brides. The use of cloth that is not by its status will be subject to sanctions or reprimands from community members. However, the use of this cloth has changed its function and has begun to shift. Economically, in the past, tapis craft was a necessity that was made only for the benefit of the custom of the family group itself. However, nowadays, cloth has begun to be marketed. Natural rights born from social processes and passed down from generation to generation are the rights of indigenous peoples. The consequence of the state's protection of these rights is to legalize these rights into a legal entity.

Traditional rights from the existence of indigenous peoples become a dilemma because they require legalization. These rights will be recognized if they are regulated in written laws made by state institutions. It can be said in a contradiction that the existence of indigenous peoples is considered non-existent if it is not legally recognized. The existence of indigenous peoples and their traditional rights will always be attached to them. The traditional rights of indigenous peoples will always live in indigenous peoples. Judging from history, Tapis values are included in social, economic, cultural, and historical values. The cloth must receive appropriate protection, not only due to the protection of its economic value but also the moral values maintained by its custodian. The state holds the copyright on historical works and cultural products of indigenous peoples, who are common property. Intellectual property rights or IPR is a term derived

³⁰ Junaidi Firmansyah, *et. al*, *Mengenal Sulaman Tapis Lampung*, Lampung: Gunung Pesagi, 2007, hlm. 67.

from Intellectual Property Rights (IPR), a system of recognition and protection of works produced by humans due to their thinking power. In the legislation, there is no standard definition to define IPR. When viewed from the number of ownership parties, intellectual property rights can be divided into individual and communal intellectual property rights. The types of individual intellectual property rights consist of (a) Patent, (b) Copyright, (c) Brand, (d) Trade secrets, (e) Integrated circuit layout design, (f) Plant varieties, and (g) Other similar rights.

Communal intellectual property rights can be divided into four forms, namely (a) Traditional knowledge, (b) Traditional cultural expressions, (c) Geographical indications, and (d) Genetic resources.

Currently there are laws and regulations related to personal intellectual property such as (a) Law number 28 of 2014 concerning Copyright, (b) Law Number 20 of 2016 concerning Marks and Geographical Indications, (c) Law Number 30 of 2000 concerning Trade Secrets, (d) Law Number 31 of 2000 concerning Industrial Design, (e) Law Number 32 of 2000 concerning Layout Design of Integrated Circuits, (f) Law Number 13 of 2016 concerning Patents.

Communal intellectual property rights mean an intellectual property right whose ownership is jointly or communally owned. However, other intellectual property, such as traditional knowledge, traditional cultural expressions, and genetic resources as communal intellectual property, does not yet have special regulations. So we need a set of rules that can protect this communal wealth from abuse by other parties, such as the recognition of culture by other countries. Indonesia, as a country rich in culture and natural resources and others, has many communal intellectual property treasures, of course. Traditional Cultural Expressions or TCE, which are intellectual works in the field of art, including literary expressions containing elements of traditional heritage characteristics produced, developed, and maintained by their custodians (Customary Law Community), need to receive attention. Of course, it is still fresh in our minds that the Malaysian government claims several types of traditional wealth belonging to the Indonesian people. In addition to dances, one of them is batik cloth. Batik cloth, the traditional cloth of Indonesian society originating from Java, is recognized as a cultural heritage belonging to Malaysians. Based on this claim from the Malaysian government,

the Indonesian government should take firm steps to address this issue. One day the traditional wealth belonging to the Indonesian nation may be recognized as belonging to another nation.

One of the actions that the government can take in order to protect the treasures of communal intellectual property can be taken through legal protection. This legal protection can be achieved through instruments in the form of the formation of legislation. Intellectual property rights indirectly intersect with three aspects: intellectual property, commercialization, and legal protection. Regarding the protection of intellectual property rights in the form of traditional knowledge, at the international level, WIPO mandates its members to discuss Genetic Traditional Knowledge and Folklore (GRTKF) in international forums. In the WIPO document, traditional knowledge is not limited to one particular knowledge but refers to a wide variety of knowledge. Traditional knowledge is the knowledge that is important to an identity in a community so. In essence, traditional knowledge is an innovation, creation, and cultural expression produced and maintained for generations by indigenous people, local communities, or individuals in the local community of a country (Sofyarto 2018).

Regarding the protection of traditional cultural expressions and genetic resources, at the international and national levels, there is no legal instrument to guarantee the protection of communal intellectual property rights. However, basically the concept of protection in the protection of communal intellectual property rights, there are two models of protection that can be provided, namely (a) Defensive protection refers to efforts to prevent other parties from granting intellectual property rights without the knowledge and permission of the communal intellectual property owner. (b) Positive protection can be carried out in the form of legal remedies, namely by using laws related to communal intellectual property rights or by forming special laws for each existing intellectual property right.

As the state administrator, the government needs to provide concrete guarantees to provide certainty for each of its citizens that the state protects them. One way is to take government action. Government actions generally consist of 3 actions (HR 2017), namely in making laws and regulations or regelling. Government actions in issuing decisions or *beschikking*, and the last is government actions in civil Law or *materiele*

daad. The right instrument for government action in protecting communal intellectual property rights is the formation of legislation.

2. Construction of intellectual property rights protection for Tapis Lampung

As explained in the previous sub-discussion, legal protection for Lampung filter cloth can be achieved using two means, namely preventive and repressive protection. Concerning the first facility, its implementation is based on the legal regime of Law Number 5 of 2017 concerning the Promotion of Culture and Copyright Law. As for repressive legal protection, its implementation is based on the legal regime of Law Number 28 of 2014 concerning Copyright. To make it easier to understand, please see the construction flow chart for Tapis Lampung legal protection below:

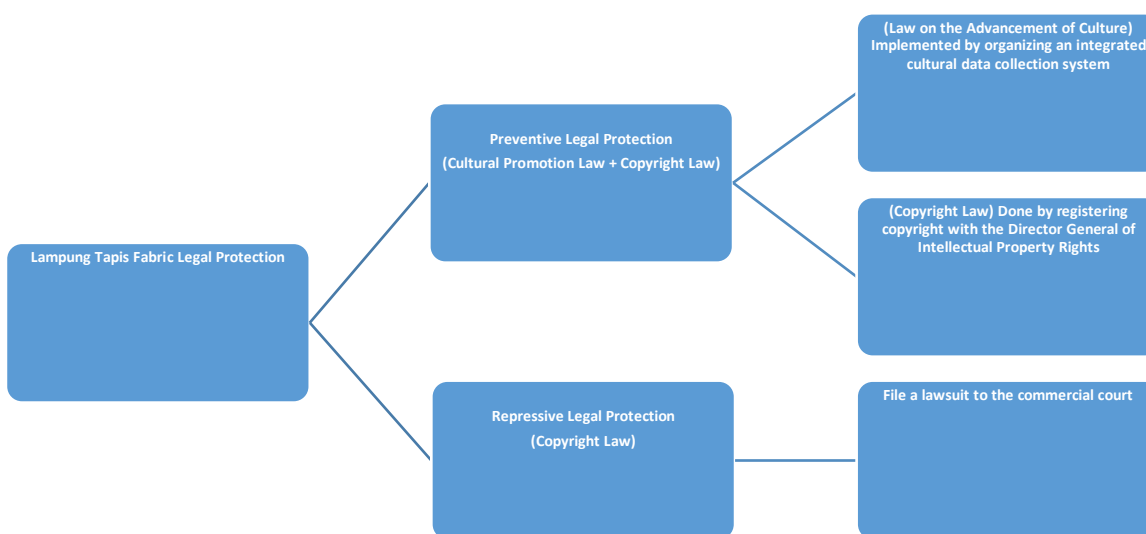


Diagram 1: Tapis Lampung Legal Protection

In preventive legal protection of the Cultural Advancement Law regime, protection is carried out by implementing an integrated cultural data collection system that carries out efforts to record and document culture to prevent claims for the protection of

intellectual property rights against culture.³¹ A similar principle applies to preventive legal protection in the Copyright Law regime, where the Tapis Lampung is registered with the Director General of Intellectual Property Rights as proof of ownership of the Tapis Lampung. In repressive legal protection, protection is carried out by filing a lawsuit to the commercial court that there has been a copyright infringement.³² The construction of Tapis Lampung legal protection based on the Copyright Law regime contains problems. In principle, copyright protection requires four things: originality, identification of the author (identification of author), tangible work (fixation work), and a limited time. The fixation work will be an obstacle in applying the protection of Traditional Cultural Expressions because almost most works based on traditional culture have an oral transmission character (unwritten), such as most legends, myths, fairy tales, dances, and folk songs. In other words, the copyright regime cannot fully protect the works of Traditional Cultural Expressions, except for the non-verbal Traditional Cultural Expressions category. These creations still exist and live in traditional societies.

In the concept of intellectual property rights, especially in Copyright Law, protecting Traditional Cultural Expressions differs from protecting other types of copyright, such as books, musical works, and paintings. This is because the Traditional Cultural Expression ownership is not individual, but the Traditional Cultural Expression is communal ownership. This means that traditional cultural expressions are owned by a group of indigenous peoples in a particular area or place, so individual legal protection cannot be applied.

III. CLOSING

Based on the results and discussion above, it can be concluded that legal protection for Tapis Lampung can be achieved using two means, namely preventive and repressive legal protection. In preventive legal protection of the Cultural Advancement

³¹ Retnani Amurwaningsih, "Perlindungan Budaya Indonesia Melalui Pencatatan Dalam Sistem Pendataan Kebudayaan Terpadu", *Jurnal Jurist-Diction*, Volume 1 No. 1, 2018, hlm. 319.

³² Fajar Alamsyah Akbar, "Perlindungan Hukum Terhadap Hak Cipta Pasal 12 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta di Indonesia", *JOM Fakultas Hukum*, Volume 3 No. 2, 2016, hlm. 13.

Law regime, protection is carried out by implementing an integrated cultural data collection system that carries out efforts to record and document culture to prevent claims for the protection of intellectual property rights against culture. A similar principle applies to preventive legal protection in the Copyright Law regime, where the Tapis Lampung is registered with the Director General of Intellectual Property Rights as proof of ownership of the Lampung cloth. In repressive legal protection, it is necessary to make rules that can provide a legal basis for parties who will make demands against outside parties which are considered to have taken or recognized the rights to the cultural heritage clearly and systematically. So that a lawsuit can be filed in court if there has been a copyright infringement.

The suggestions that can be given from the results of this study are that the Indonesian government needs to immediately form legislation in the form of laws governing communal intellectual property rights, mainly traditional cultural expressions. This is due to the acceleration of legal protection for various communal intellectual property rights in Indonesia. In addition, at the international level, the Indonesian government should pioneer the movement of countries worldwide to form a new international legal instrument specifically to regulate communal intellectual property rights.

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