

The Optimization of Legal Protection of Costums Intellectual Property Traditional Cultural Expressions of Malay Customs

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Abstract. *This research aims to discuss Costums Intellectual Property in the field of Traditional Cultural Expression of Malay Customs which has promising economic potential in the field of tourism, both domestic tourism and foreign tourism potential. But until now it has not been protected optimally. This can be seen every year when the Malaysian Visit year will be displayed in many brochures promoting their tourist visits, traditional cultural expressions belonging to the indigenous Malay Peoples of Indonesia The purpose of this study is to analyze how many inventories and registrations of Costums Intellectual Property of Traditional Cultural Expressions of Malay Customs have been protected in the Regional Office of North Sumatra. The approach used in this study is a normative and empirical approach, namely through the review of laws and regulations related to the Protection of Costums Intellectual Property (KIK), especially related to Traditional Cultural Expressions of the Malay Indigenous Peoples of North Sumatra and conducting direct interviews with the head of the Intellectual Property Registration division of the North Sumatra KUMHAM Regional Office. The results showed that the level of awareness of indigenous peoples and local governments to protect their Costums Intellectual Property specifically in the field of traditional Malay Customary Cultural Expressions was very low, as seen from the data of the last three years, the inventory and registration of traditional Cultural Expressions of Malay indigenous peoples only amounted to twelve types of traditional culture.*

Keywords: *Customs; Intellectual; Optimization; Property; Traditional.*

1. INTRODUCTION

The Costums Intellectual Property is intellectual property in the form of traditional knowledge, traditional cultural expressions, genetic resources, and potential geographical indications¹. The word costumes indicates that ownership of costumes intellectual property is a collective thing owned by a costumes group of indigenous

¹Communal Intellectual Property Inventory Handbook, [https://ntt.kemenkumham.go.id/attachments/article/10546/Inovasi%20Unggulan Manual%20B ook%20KIK.pdf](https://ntt.kemenkumham.go.id/attachments/article/10546/Inovasi%20Unggulan%20Manual%20B ook%20KIK.pdf)

peoples². Preservation of Customs Intellectual Property as the basic capital of development³. Also as the identity of the nation so that it is the responsibility of the state to maintain and protect it to avoid piracy and violations committed by foreign parties. At this time the recognition of costumes intellectual property, especially traditional cultural expressions, is being enhanced. The Traditional Cultural Expression consists of; textual verbal; music; motion; theater; Art; Ceremonies; architecture; and landscape ⁴ is a valuable asset derived from indigenous peoples who can advance the economy of a nation.

The birth of the Intellectual Property Rights Law in Indonesia was motivated by there are 2 (two) reasons. The first reason is related to the issue of Indonesia's obligations as a member The World Trade Organization (WTO) must provide better regulations regarding protection of intellectual property rights of handicraft craftsmen. Second, relate to the government's determination to provide effective protection against various forms violations of the intellectual property rights of handicraft craftsmen such as plagiarism, piracy or imitation.⁵

Intellectual Property plays a role in providing legal protection for ownership intellectual work, both communal and personal, is the basis creative economic development. Protection of intellectual property is therefore part important in future national development and contribute significantly to national and international economic development.⁶

Indonesia is very rich in traditional culture. Traditional culture of economics for the betterment and welfare of society⁷. One form of intellectual work from traditional culture is the expression of traditional culture or *expression of folklore*.

Indonesia has 1,128 tribes spread throughout Indonesia with more than 300 dialects of regional languages, more than 3000 (three thousand) native Indonesian dances⁸, and there are various other arts such as traditional songs, traditional musical instruments, traditional arts, and so on Of the many traditional cultural expressions, researchers will specialize in researching indigenous Malay cultural expressions on the grounds that Malay culture is 4 (four) cultures The largest in North Sumatra, one of whose cultures is in the form of verbal culture "pantun" has gone global, namely by submitting a certificate from UNESCO establishing pantun as one of the Intangible Cultural Heritage (WBTb) and

² Nizwana, Y. (2022). Communal Intellectual Property in the Perspective of Property Rights Theory. *JUDAKUM: Journal of Legal Dedication*, 1(2), 86-101.

³ RaditaAjie, https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=4642:kekayaan-intelektual-komunal-sebagai-modal-dasar-pembangunan-nasional&catid=268&Itemid=73&lang=en

⁴ Article 7 Government Regulation No.56 of 2022 concerning KIK

⁵ Ida Nadirah. (2020). Perlindungan Hukum Kekayaan Intelektual Terhadap Pengrajin Kerajinan Tangan, *De Lega Lata: Jurnal Ilmu Hukum*, 5 (1), 38.

⁶ Ismail Koto. (2023). Perkembangan Hak Kekayaan Intelektual Komunal Di Indonesia. Seminar Nasional Hukum dan HAM (SANKSI), 167.

⁷ Agus Sardjono, 2010, *Intellectual Property Rights and Traditional Knowledge*, Bandung, PT. Alumni, p. 35.

⁸ Ahmad Ubbe, 2009, *Legal Studies on the Protection of Regional Cultural Law*, Jakarta: BPHN Department of Law and Human Rights, p. 1.

included in the list of UNESCO intangible cultural heritage at the 15th session online on December 14-18, 2020⁹.

Many challenges faced are related to the problem of indigenous cultural expression because of economic problems and the habits of Indonesian people moving to Malaysia by bringing their customs so that the cultural customs of a country are almost the same as each other. Every year when it comes to *the Malaysian Visit year*, there will be many displays of Indonesian cultures in promotional brochures for tourist visits to Malaysia.

Infringement of intellectual property of Traditional Cultural Expressions is most common in Indonesia because recording and inventory have not been carried out properly¹⁰. This has resulted in obstacles in protecting indigenous peoples' costumes rights to their traditional intellectual works. Protection of costumes intellectual property of indigenous peoples against their traditional cultural expressions in the era of globalization must be implemented quickly to get maximum recognition and protection for this reason, breakthroughs need to be made from local governments, the Regional Office of the Ministry of Law and Human Rights and indigenous stakeholders to cooperate on appropriate protection to protect the traditional cultural expressions of indigenous peoples.

2. RESEARCH METHODS

The research methods used is empirical juridical research, namely: The research process goes directly to the field with a statutory approach and legal principles. The data taken were sourced from primary data taken directly from the KumHAM Regional Office, Malay customary stakeholders and Malay indigenous peoples in North Sumatra and secondary data (literature studies) from various supporting literature and journals. The results of these data are then analyzed qualitatively.

3. RESULTS AND DISCUSSION

The Costums Intellectual Property is the cultural diversity and natural wealth of Indonesia in the form of traditional cultural expressions, traditional knowledge, genetic resources, indications of origin, and potential geographical indications which are the basic capital of national development. Costums Intellectual Property needs to be inventoried, safeguarded and maintained by the state.

Legal protection The existence of costumes intellectual property (KIK) has been regulated within the framework of intellectual property law but its protection has not been optimal. Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Costums Intellectual Property Data defines KIK as Intellectual Property in the form of Traditional Knowledge (PT), Traditional Cultural Expressions (EBT), Genetic Resources (SDG), and Potential Geographical Indications. This provision was later updated with PP

⁹ <https://infopublik.id/kategori/nusantara/658203/gubri-resmi-terima-sertifikat-pantun-dari-unesco>

¹⁰ Nendrawan, P., & Rastika, G. (2021). The implementation of legal protection of Intellectual Property Rights (IPR) against traditional cultural expressions (EBT) is reviewed from Law Number 28 of 2014 concerning Copyright. *Journal of Pacta Sunt Servanda*, 2(1), 36-47.

No. 56 of 2022 concerning KIK by adding Indications of Origin as Costums Intellectual Property as well.

3.1. Traditional Cultural Expressions

Legal Protection of Traditional Cultural Expressions which are Costums Intellectual Property is contained in Article 38 of Law No.28 of 2014 concerning Copyright. Traditional culture teaches traditions, wisdom, values, costums knowledge that are packaged and passed down to posterity through stories, legends, arts, ceremonies, which gradually shape the social norms and living order of the Indonesian nation¹¹.

All these values are respected by traditional communities so that Traditional Cultural Expressions can represent the identity of indigenous peoples in a particular area⁶. In Government Regulation No.56 of 2022 concerning Costums Intellectual Property, it can be seen that Traditional Cultural Expressions can include one or a combination of verbal textual, music, motion, theater, fine arts and traditional ceremonies¹². In the Draft Law on Traditional Knowledge and Traditional Cultural Expressions (RUUPTEBT), traditional cultural expressions are intellectual works in the field of art including literary expressions that contain elements characteristic of traditional heritage produced, developed and maintained by the community or society¹³. The government plays an active role in providing legal protection for these Traditional Cultural Expressions by providing inventory and registration services online so that this NRE can be well documented which is the first step in preventing other parties' exploitation of the NRE¹⁴

3.2. The Indigenous Malay peoples in North Sumatra

The indigenous Malay people in Indonesia make up about 15% of the entire population, most of whom inhabit the provinces of North Sumatra, Riau, Riau Islands, Jambi, South Sumatra, Bangka Belitung, and West Kalimantan. North Sumatra is famous for its diverse ethnicities. In reality these ethnicities are: (a) local ethnicities consisting of: Malay, Karo, Pakpak Dairi, Simalungun, Batak Toba, Mandailing-Angkola, Pesisir, and Nias. In general, ethnic Malays are located in coastal areas. Therefore, the Malays in North Sumatra are often referred to as the coastal communities of East Sumatra¹⁵.

Community Malay customs in North Sumatra Province are widely found in 1.Stabat Lama Village, Wampu District, Langkat Regency; Secanggang District, Langkat Regency; 2. Sei Sakat Village, Panai Hilir District, Labuhanbatu Regency; 3. Cinta Air Village, Perbaungan District, Serdang Bedagai Regency; 4. Hamparan Perak Village, Hamparan Perak District,

¹¹ Afifah Kusumadara, 2011. Maintenance and Preservation of Traditional Knowledge and Expressions of Indonesian Traditional Culture: Protection of Intellectual Property Rights and Intellectual Property Rights, Journal of Law No. 1 Vol. January 2011: 20-41

¹² Rahbungana beru Perangin-angin, 2017, Protection of Traditional Cultural Expressions in Indonesia, Proceedings of the National Seminar on Fisip State University of Medan

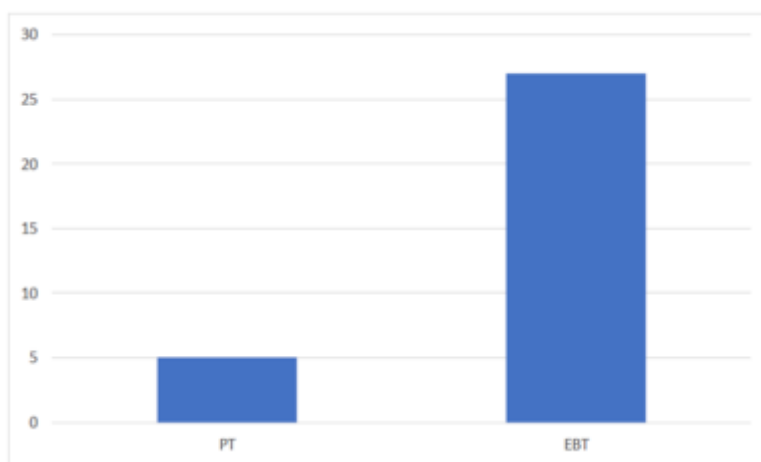
¹³ Abdul Atsar, 2017. Legal Protection of Traditional Cultural Knowledge and Expression to Improve Community Welfare Reviewed from Law No. 5 of 2017 concerning the Promotion of Culture and Law No. 28 of 2014 concerning Copyright, Journal of Law Reform, Vol 13 No. 2 of 2017, 284-299

¹⁴ Herzani, A. P. (2021). The role of the government in taking inventory of traditional Indonesian cultural expressions. Journal of Law & Development, 50(4), 956-978.

¹⁵ <http://digilib.unimed.ac.id/22914/8/8.%20NIM.%202113142076%20BAB%20I.pdf>

Deli Serdang Regency; 5. Dolok Manampang Village, Dolok Masihul District, Serdang Bedagai Regency; 6. Asahan Mati Village, Bagan Asahan Village, Bagan Asahan Baru Village, and Bagan Asahan Pekan Village, Tanjung Balai District, Asahan Regency; 7. Muara Sipongi District, Mandailing Natal Regency; 8. Sorkam Village, Sorkam District, Central Tapanuli Regency; 9. Binjai District, Langkat Regency; 10. South Tapanuli Regency; 11. North Labuhan Batu Regency; 12. South Labuhan Batu Regency; 13. Padang Sidempuan Regency; 14. Binjai City; and 15. Medan City¹⁶. Especially for the Malay community as indigenous people of Medan, it is estimated that there are 6.5 percent or around 159,955.77 people from other ethnicities in Medan¹⁷.

Table 1. KIK / Costums Intellectual Property Registration in North Sumatra Regional Office¹⁸



Description: PT. Traditional Knowledge EBT: Traditional Cultural Expressions

Source: Kanwil KUMHAM SUMUT

Data-Driven It can be seen above that Costums Intellectual Property in the form of Traditional Cultural Expressions is registered more than Traditional Knowledge. Types of Traditional Knowledge (PT) consist of: Daun sabung Nyawa, Pongat Jelok, Anyang, Sarak Terong and Anyang Terubuk. While Traditional Cultural Expressions consist of: Ni'Ogama, Ulos Rangidup Silindung, Ni'Ohulayo, Ni'Obiku, Ni'odofi, Ni; bowo gafasi, Gonjong, Bulang, Ampu, Ni'Oroto, Baru hada, Ni'obotelai, Ni'obuaya, Ni' Otalinga woli-woli, Ni' osori, Ni'otawola, Ni'oboha, Ni'o kiliwi, Keteng keteng, Ni'Oi Ozasai, Ni'O bowo sofo Sofo, Piso Surip dance, Sinandung Asahan, Gubang dance, Monsak Hoda Hoda Samosir dance and Tor-Tor pangurason.

Especially on the expressions of Malay Traditional Culture that have been inventoried and registered at the Regional Office of the Minister of Law and Human Rights as follows:

¹⁶https://www.google.com/search?q=Peta+etnik+melayu+di+sumatera+utara&rlz=1C5CHFA_enID969ID969&oeq=Peta+etnik+melayu+di+sumatera+utara&aqs=chrome..69i57j0i546l3.13089j0j7&sourceid=chrome&ie=UTF-8#vhid=4T3ZNiFKTJxU3M&vssid=l

¹⁷ <https://medan.inews.id/read/239080/kota-medan-mayoritas-suku-apa-ini-jawabannya/2>

¹⁸ Interview with Mrs. Dessy, Head of KIK KanwilKUmHam SUMut on June 25, 2023

1. Traditional Game of *Tong Along-Along* (Motion Category)

It is a game that was often played in the 90s. But unfortunately, along with the development of the era traditional games began to be forgotten. The rise of the use of gadgets has become children who will forget traditional Indonesian games that were often played.

2. *Rimau* Game (Motion Category)

It is a game that is often played in the 90s. But unfortunately, along with the development of the era, traditional games began to be forgotten. The rise of the use of gadgets has made children forget about traditional Indonesian games that used to be often played.

3. *Songket* Weaving (Fine Art Category)

It is historically associated with Malay settlement and culture, and according to while the technique was introduced by Indian or Arab traders, the origin of songket cloth is from ancient trade between China and India. The Chinese provided silk thread while the Indians contributed gold and silver thread then be songket.

4. *Mangahoi ahoi* game (Motion Category)

It is a game that is often played in the 90s. But unfortunately, along with the development of the era, traditional games began to be forgotten. The rise of the use of gadgets has made children forget about traditional Indonesian games that used to be often played.

5. *Sinandong Bilah* (Music and Motion Category)

There was originally one of the fishermen's rituals by chanting verses to find out where the wind was going because in ancient times fishing boats had not used engines only relying on wind power, by sneezing this way fishermen at that time believed that the wind would take them to the right place. But at this time the art of sinandong bilah is rarely used by fishermen but instead carried out at wedding receptions as verses / rhymes advice.

6. *Sikantan* legend (Verbal and Textual Category)

The folklore of the coast of Labuhanbatu has been passed down for generations to the next generation. The legend of Sikantan tells the story of a boy named Kantan who disobeyed his mother so that he was cursed and became an island in the Barumun River. The people of Labuhanbatu uphold the Sikantan legend not to disobey parents.

7. *Bordah* (Music and Movement Category)

It is a traditional Malay tradition from ancient times, especially during the sultanate period. This tradition is carried out at the wedding reception. Bordah consists of 9 (nine) members by beating drums and chanting verses of praise and prayer to the Prophet

Muhammad SAW as a sign of gratitude for the implementation of the reception which has been held for generations in Labuhanbatu until now.

8. *Pilandok Takial-Kial* (Music and Motion Category)

The dance, which is usually performed at the night of the bride and groom, is danced by 5 women accompanied by accordion music, Pakpung drums and a singer with the song *Pilandok* which contains *Pantun* and Advice from the Blade / Panai.

9. *Yeye Lapoi* Game (Motion Category)

It is a traditional game that has often been played by the people of Tanjung Balai City, where this game is usually played in groups or groups. This permianan uses material or tools from rubber bands that are woven into a rope. And can be played in groups or per group. This game can be played from children to adults.

10. *Sinandong Tanjungbalai* (Music and Customs Ceremony)

It is a traditional song or *langgam* from Tanjung Balai City. Which is a song or *langgam* performed on sacred occasions such as in weddings, swinging, or in songs in folk entertainment. *Sinandong Tanjungbalai* has been passed down for generations in the people of Tanjung Balai City, and this *Tanjungbalai sinandong* song is one of the traditional songs of Tanjung Balai city.

11. *Bangsi* (Traditional Music and Ceremony Category)

It is a traditional musical instrument of Tanjung Balai City, which is a traditional *trurun temurun* instrument performed by the people of Tanjung Balai City. This musical instrument is commonly used in ritual events and celebration events in weddings and banquets of the Asahan sultanate in Tanjung Balai City.

4. CONCLUSION

The Traditional Cultural Expressions of Malay indigenous peoples are one of Costums Intellectual Property that has economic potential to improve community welfare through tourism visits, but has not been optimally protected. The level of awareness of indigenous peoples and local governments to register and inventory their respective regional Malay Traditional Cultural Expressions is very low, as can be seen from the last three years of data on the inventory and registration of traditional Cultural Expressions of Malay indigenous peoples only numbering twelve types. The community does not know that these customary Traditional Cultural Expressions must be registered with the KUMHAM Regional Office to be protected. Local governments are also less responsive and anticipate the preservation of their regional Traditional Cultural Expressions. For this reason, socialization and education are expected to the community and local governments to register the expressions of Traditional Culture of their respective regions.

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Regulation:

Government Regulation No. 56 of 2022 concerning KIK

Interview:

Mrs. Dessy, Head of KIK KanwilKUmHam of Nort Sumatera on June 25, 2023