



## The Challenges of Legal Protection on Traditional Cultural Expressions of Lampung

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### Article Info

### Abstract

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*Traditional Cultural Expressions are creations in the field of art that contain elements of traditional heritage characteristics as a national culture which are shared resources developed and maintained or preserved by certain traditional communities. In Lampung, there are various traditional cultural expressions of Lampung indigenous people that still exist. It needs to be protected due to it has unique characteristics and different from other intellectual works. Based on article 38 of Law No 14 of 2018 on Copyright, the Government of Lampung must protect and prevent unauthorized claims and misappropriation of Lampung Traditional Cultural Expression. Using the socio-legal approach, the research aims to examine and analyze kinds of legal protection done by Lampung Government for protecting TCE in Lampung, and the challenges of it.*

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### A. Introduction

In addition to the Intellectual Property Rights (IPRs) that have been known so far, in its development a new field has emerged, namely, The New Emerging Intellectual Property Rights which includes the protection of genetic resources, Traditional Knowledge (TK), and Traditional Cultural Expressions (TCE). Negotiations in this new field have often been conducted by the World Intellectual Property Organization (WIPO) since 2000. WIPO defines Traditional Cultural Expressions as a creation in the field of art which contains elements of traditional heritage characteristics as a national culture which is a shared resource developed and maintained or preserved by

certain traditional communities or certain traditional social organizations in a period of time on an ongoing basis.<sup>1</sup>

Legally, the definition of TCE is affirmed in the Elucidation of Article 38 paragraph (1) of Law Number 28 of 2014 concerning Copyright (Copyrights Law) which states that TCE includes one or a combination of forms of expression as follows:

- a. Textual verbals, both oral and written, in the form of prose and poetry, in various themes and content of messages, which can be in the form of literary works or informative narratives;
- b. Music, including vocal, instrumental, or a combination thereof;
- c. Motion, including dance;
- d. Theater, including puppet shows and folk plays;
- e. Fine art, both in two-dimensional and three-dimensional forms made from various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, etc. or a combination thereof; and
- f. Traditional ceremonies.

Actually, the concept of TK and TCE is very closely related to the region as the “owner” of traditional knowledge, so that the regional government, both provincial and district/city holds important duties and functions in its protection. The implementation of government in the concept of regional autonomy emphasizes the tasks and functions of government that are divided between the central government authority, provincial government and district/city government. However, regions in carrying out the authority to regulate and manage their households (regional autonomy) without being separated from the frame of the Unitary Republic of Indonesia (NKRI) as mandated in Article 1 paragraph (1) of the 1945 Constitution.

Article 38 of Law Number 28 of 2014 concerning Copyright states that:

1. The State holds the Copyright of traditional cultural expressions.
2. The State is obligated to take inventory, preserve, and maintain traditional cultural expressions as referred to in section (1).
3. The use of traditional cultural expressions as referred to in section (1) considers the values that live in the custodian that practice them.
4. Further provisions regarding Copyrights held by the State on traditional cultural expressions as referred to in section (1) are regulated in a Government Regulation.

The role of the State in protecting Traditional Cultural Expressions must also pay attention to the provisions of Article 18 paragraph (1) of the 1945 Constitution (the second amendment) which stipulates that "the Unitary State of the Republic of Indonesia shall be divided into provinces and those

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<sup>1</sup> Eddy Damian, *Glosarium Hak Cipta dan Hak Terkait* (Bandung: Alumni, 2012), 29-30.

provinces shall be divided into regencies and municipalities, each of which shall have regional authorities which shall be regulated by law.<sup>2</sup>

The state as the highest authority, and the regional government as the state's representative in the protection and regulation of Traditional Cultural Expressions are expected to prevent monopolies or commercialization as well as acts that damage or utilize commercialization by outside parties without the permission of the state as the copyright holder. This provision is also intended to avoid the actions of foreign parties. They can damage the cultural value and make commercial use without permission from the owner of Traditional Cultural Expressions.<sup>3</sup>

Expressions of Traditional Culture or that in the discourse at the International level has often used the term expressions of folklore is a small part of "culture" which generally exists in Indonesia does have unique characteristics and is different from other intellectual works. Besides that, Traditional Cultural Expressions can also be included in a product of the existing social system of society, to produce works in a communal society.<sup>4</sup> The protection of traditional cultural expressions against the use of which is done without rights can violate propriety, because what is contained in the protection of traditional cultural expressions is economic rights and social rights. Therefore, it must be understood that by providing adequate legal protection to the knowledge that is maintained and maintained by each generation, for generations, it will be able to improve the welfare and prosperity of the wider community, the owner of traditional cultural expressions, and the state.

In Lampung, there are various cultures of the Lampung traditional community that still exist. This can be seen in traditional events such as marriage processions, child counts, coronation against traditional customs, meetings of traditional leaders, etc. The Lampung Indigenous People consist of two major groups: Papadun and Saibatin communities.<sup>5</sup> The existing indigenous Lampung culture must receive protection and preservation so that it is not extinct and not misused by unauthorized parties. Based on the background, the main point of view to be analyzed is the challenges of legal protection on traditional cultural expressions of Lampung held by Lampung

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<sup>2</sup> Jimly Asshiddiqie, *Konsolidasi Naskah UUD 1945 Setelah Perubahan Kedua* (Jakarta: Pusat Studi Negara, Fakultas Hukum UI, 2002), 23.

<sup>3</sup> Julinda Idriaty, "Perlindungan Hukum Ekspresi Budaya Tradisional oleh Negara Sebagai Pemegang Hak Cipta Kekayaan Intelektual Komunal Masyarakat Sulawesi Tenggara Dikaitkan Dengan Hak Ekonomi Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta", *Thesis*, Magister Hukum Universitas Padjajaran, 2015.

<sup>4</sup> Arif Lutviansori, *Hak Cipta dan Perlindungan Folklor di Indonesia* (Yogyakarta: Graha Ilmu, 2010), 1.

<sup>5</sup> Rita Laslubiati Puspawijaya, "Peranan Pemerintah Daerah Kabupaten Tulang Bawang dalam Memberikan Perlindungan Hukum Terhadap Kain Maduaro yang Memiliki Potensi indikasi Geografis", *Thesis*, Magister Hukum Universitas Padjajaran, 2014, 4.

Provincial Governments. As for the problems, in this case, are as follows: How is the legal protection of Traditional Cultural Expressions by Lampung Provincial Government? What are the challenges in Protecting Traditional Cultural Expressions of Lampung Indigenous Peoples by Lampung Provincial Government? This research uses the socio-legal approach. The socio-legal approach is used to study and explore research problems by conducting a study of the norms, legal doctrine and social phenomena related to the protection of Traditional Cultural Expressions of Lampung. Data collection was carried out through in-depth interviews with stakeholders in Lampung province. Then, data analysis conducted prescriptive-analytic, namely examining legal concepts, legal principles, legal norms and legal systems relating to the administration and fostering of local government towards regional culture.

## **B. Discussion**

### **1. Legal Protection of Traditional Cultural Expressions by Lampung Provincial Government**

Traditional Cultural Expressions are assets that must be protected, promoted, preserved and utilized by the people of Indonesia. As a national asset, Traditional Cultural Expressions also have social and economic potential. The social potential that is related to the formation of the character and image of an area as well as economic potential through the development of tourism, to achieve that goal the importance of the active role of local governments to protect the Traditional Cultural Experiences in the local area. In national scope, Traditional Cultural Expressions are protecting under Law Number 28 of 2014 concerning Copyright. Article 38 of the Copyright Law states that:

- a. The State holds the Copyright of traditional cultural expressions.
- b. The State is obligated to take inventory, preserve, and maintain traditional cultural expressions as referred to in section (1).
- c. The use of traditional cultural expressions as referred to in section (1) considers the values that live in the custodian that practice them.
- d. Further provisions regarding Copyrights held by the State on traditional cultural expressions as referred to in section (1) are regulated in a Government Regulation.

The state as the highest authority, and the regional government as the state's representative in the protection and regulation of Traditional Cultural Expressions are expected to prevent monopolies or commercialization as well as acts that damage or exploit commercialization by foreign parties without the permission of the state as the copyright holder. Its also intended to avoid the actions of foreign parties who can damage the cultural value and

make commercial use without permission from the owner of Traditional Cultural Expressions.<sup>6</sup>

Based on an interview with R. Hari Widiyanto Jayaningrat as Head of Arts Section of the Education and Culture Office of Lampung Province, said nowadays in Province of Lampung there are a variety of traditional cultural expressions that still exist, such as dance, *siger*, traditional ceremonies, traditional customs, etc. The expression of traditional culture needs to get legal protection by the local government through cultural preservation and the making of a policy contained in a regional regulation both at the provincial level and at the regency/city level in Province of Lampung.

The Province of Lampung Education and Culture Office has now inventoried and listed several Lampung cultures as intangible cultural heritage such as fabrics, equipment, folk songs, traditional dances, and cultural reserves in the Lampung area. However, R Hari Widiyanto Jayaningrat said that there is still a part of Lampung's cultural heritage that has not been recorded, so it is necessary to make efforts to collect data and record Lampung culture in various regions in Province of Lampung.

Meanwhile, based on the results of an interview with Masriakromi as Head of the Intellectual Property Services Sub-Division in the Regional Office of the Ministry of Law and Human Rights in Lampung Province that up to now the Regional Office of Kemenkumham in Lampung Province has carried out various efforts to protect the communal cultural, intellectual property of Lampung, such as making visits to various Governments Regional Regencies/Cities in Lampung Province to socialize the importance of protecting traditional cultural expressions and to discourage inventorying and recording of Lampung cultural heritages in their area. Masriakromi further stated, there are 4 (four) types of Lampung culture that have been inventoried and recorded in the communal intellectual property data centre, namely Tapis Lampung, Pesta Sekura, Pesta Radin Jambat, and Cangget Agung. The wider community can directly know the Lampung cultural data by accessing it through the official portal of the Directorate General of Intellectual Property.

Furthermore, the protection of the Traditional Cultural Expressions of the Lampung indigenous people by the Lampung Provincial Government itself according to an interview with Dwi Aprilia Lestari as Head of the Legislative Subdivision of the Lampung Provincial Representative Council Secretariat, so far the preservation and protection of the Lampung culture has been outlined in the form of a Regional Regulation the province. These regulations include Lampung Province Regional Regulation Number 2 of 2008 concerning the Maintenance of Lampung Culture; Regional Regulation of the Province of Lampung Number 27 of 2014 concerning Architecture of

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<sup>6</sup> Julinda Idriaty, *Ibid.*

the Lampung Tower Building; and the last is the enactment of Province of Lampung Regional Regulation No. 4 of 2016 concerning Protection of the Intellectual Work of Lampung People.

The efforts and concrete steps that have been taken by the Regional Government of Lampung Province to protect and preserve the cultural heritage of the indigenous peoples of Lampung as described above, this is in view of the obligation of the state including local governments to inventory, preserve, and maintain the Traditional Cultural Expressions as mandated by Article 38 paragraph (2) of Law Number 28 of 2014 concerning Copyright that the State is obliged to inventory, preserve, and maintain the Expression of Traditional Culture.

## **2. The Challenges in Protecting Traditional Cultural Expressions of Lampung Indigenous Peoples by Lampung Provincial Government**

Starting from the understanding that the law is a series of tools to realize government policy<sup>7</sup>, this means that the implementation of government policy is largely determined by the existence of law in society. For the law to exist in society, the legal components, as stated by Lawrence M. Friedman must support each other in support of one another. According to Lawrence M. Friedman, that law is a combination of structural, substance and cultural components.<sup>8</sup> The fundamental component is the institution created by the legal system with a variety of functions in order to support the operation of the system. The substantive component is the output of the legal system in the form of regulations, decisions used by both regulating and regulated parties. In contrast, the cultural component consists of values and attitudes that influence the operation of law. This component is distinguished between internal legal culture, namely the legal culture of lawyers and judged, and external legal culture, which is the legal culture of the wider community.<sup>9</sup> The legal components theorized by Lawrence M. Friedman as described above are very relevant if used as a knife of analysis to discuss the challenges faced by the Lampung Provincial Government in protecting the traditional cultural expressions of the indigenous Lampung people. So, the discussion is as follows:

### **a. Factors of Legal Substance**

Lampung Province has provided various legal protections related to the cultural heritage of Lampung indigenous people. This is indicated by the existence of local regulations pertaining to the protection of Lampung

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<sup>7</sup> Bambang Sunggono, *Hukum dan Kebijakan Publik* (Jakarta: Sinar Grafika, 1994), 77.

<sup>8</sup> Lawrence M. Friedman, *The Legal System, A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 14–15.

<sup>9</sup> Esmi Warassih Pujirahayu, *Pranata Hukum Sebuah Telaah Sosiologis* (Semarang: Suryandaru Utama, 2005), 82.

culture. As Zulfikar said as the Head of the Lampung Provincial Secretariat Legal Bureau stated that regional legislation products that can be used as a legal basis to protect the results of the Lampung traditional culture are: (1) Regional Regulation No. 2 of 2008 concerning the Maintenance of Lampung Culture; (2) Regional Regulation Number 5 of 2012 concerning the Implementation of Religious and Cultural Based Education; (3) Regional Regulation Number 5 of 2013 concerning Institutions of Lampung Indigenous Peoples; (4) Regional Regulation Number 27 of 2014 concerning Architectural Buildings in Lampung Ornamental Buildings; (5) Regional Regulation Number 4 of 2016 concerning Protection of Intellectual Property People of Lampung.

However, from the various regional regulations that have been there, no one regulates the protection of traditional cultural expressions of Lampung indigenous peoples explicitly. As an example the formation of Lampung Province Regional Regulation No. 4 of 2016 concerning Protection of Intellectual Works of the Lampung Community with the intent and purpose of providing protection, use, and development of intellectual works from the Lampung community. The intellectual work referred to in Article 1 letter (13) of the Perda of the Protection of the Intellectual Property of the Lampung people is the work of human thought in the fields of industry, technology, science, art, and literature. It can be said in the regulation that protects not only traditional cultural exposures but also protects all aspects of the intellectual property rights of Lampung indigenous peoples such as copyrights, patents, brands, geographical indications, etc.

Article 38 of Law Number 28 of 2014 concerning Copyright explains that a cultural object can be said to be a traditional cultural expression if it includes one or a combination of the following forms of expression:

- 1) textual verbal, both oral and in writing, in the form of prose or poetry, in various themes and content of the message, which may be a literary work or an informative narrative;
- 2) music, including, among others, vocal, instrumental, or any combination thereof;
- 3) motion, including, among others, dance;
- 4) theatre, including, among others, puppet shows and folk plays;
- 5) fine art, either in the two-dimensional or three-dimensional form made of various kinds materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textile, et cetera or a combination thereof; and
- 6) traditional ceremonies.

Although the Copyright Law above has defined what is said to be an expression of traditional culture, the elements of authenticity and manifestation of a traditional cultural expression are difficult to fulfil. This is because traditional cultural expressions are not owned by individuals but are communally owned by the Lampung traditional people for generations. In

addition, the nature of traditional society that is open and ignores the economic rights of Traditional Cultural Expressions must also be paid attention to so that irresponsible parties do not misuse the expression of traditional culture.

The existence of conditions that have not yet been maximized by Regional Regulations specifically as a legal umbrella to protect the expression of traditional culture in Lampung Province is currently seen as one of the causes of the occurrence of obstacles in the implementation of regional government policies to protect the existence of Lampung's cultural heritage today. The consequences from such conditions is that although there have been various efforts that have been made by the Provincial and Regency/City Governments to protect the existence of Lampung's cultural heritage, on the other hand, there are still actions or attitudes of some community members in Lampung who use and utilize the cultural expression of Lampung is out of place which solely is only seen from economic interests, without regard to the philosophical aspects of the Lampung culture.

#### **b. Factors of Legal Structure**

Components of the legal structure are the institutions that carry out enforcement or legal services. In relation to the implementation of the Lampung Provincial Government's policy to protect the Traditional Cultural Expressions of the Lampung indigenous people, ideally based on the Perda as discussed in the legal compliance section above, special institutions must be formed whose main task and function is to deal with activities related to inheritance protection policies Lampung culture. Considering that there is no follow-up from the existing regulations, in practice, there are no specific institutions that have a specific task of carrying out activities related to Lampung culture.

Institutions that carry out activities related to Lampung culture both at the provincial and district and city levels in practice are the Office of Culture and Tourism as well as a private institution called the Regional National Crafts Council (Dekranasda) chaired by the Governor's wife for the Provincial level. In contrast, at the district and city levels, the city is headed by the wife of the Regent and Mayor. However, coordination between the two institutions is seen as lacking. It can be seen that the activities carried out by the Lampung Province Dekranasda are not or have not been reported to the Lampung Province Culture and Tourism Office.

The absence of an institution that has a special duty is also seen as one of the factors constraining the implementation of regional government policies in the context of protecting the traditional cultural expressions of the Lampung indigenous people. This is given the importance of the role

of law enforcers in realizing abstract ideas and values that exist in law to become empirical reality.

### **c. Factors of Legal Culture**

Law enforcement is always involved with values, ideas, attitudes and behaviour related to law. This is what Friedman conceptualized as a legal culture. This legal culture is distinguished between internal legal culture, namely the legal culture of lawyers and judged, and external legal culture, which is the legal culture of the wider community. In this research, more emphasis on the legal culture of the wider community relating to the protection of the cultural expression of the indigenous Lampung community itself.

Lampung society consists of indigenous people and migrants. The condition of heterogeneity or diversity of the Lampung community is believed to cause its own obstacles in the implementation of Local Government policies in Lampung Province in protecting the traditional cultural expressions of the Lampung indigenous people. The existence of long-standing relationships between indigenous people and migrants will lead to an attitude for the indigenous people of Lampung not to rigidly maintain the patterns of life that prevail in their circles. The attitude of the indigenous people of Lampung who no longer maintain the longstanding tradition of Lampung culture; this reality is one example of the influence of heterogeneity.

The change in attitudes towards the existence of Lampung cultural heritage, especially for the younger generation of indigenous Lampung people, is also influenced by the times, which is more concerned with foreign cultures that are in demand by the younger generation today, rather than knowing and studying various cultural heritage of Lampung in their regions. The reasons above are in accordance with the opinions of the sources of this study, which are as follows:

- 1) R. Hari Widiyanto Jayaningrat as Head of the Arts Section of the Lampung Province Education and Culture Office said that the concern of the younger generation about customs has begun to fade due to the development of the times. There must be an exception for all parties to preserve this ancestral culture.
- 2) Masriakromi as Head of Sub Division of Intellectual Property Services at the Regional Office of the Ministry of Law and Human Rights in Lampung Province believes that the current condition of historical relics began to disappear because of the influence of foreign cultures entering Lampung Province so that this affects the lifestyle of the people of Lampung, the community lacks appreciation traditional cultural values, lack of attention from the community and related parties to maintain and preserve Lampung culture, and a lack of awareness of the importance of inventorying and recording Lampung's cultural heritage because the

community and local government feel there is still no urgency to carry out such data collection.

The conditions, as stated by the resource persons above, must be immediately responded to by the Customary Leaders, especially for the Lampung Provincial Government and the Regency and City Governments in Lampung Province. This is in addition to the obligation of the state, including the regional government to protect and preserve national cultural heritage, in this case, the expression of traditional culture as mandated by Article 38 of Law Number 28 of 2014 concerning Copyright, also bearing in mind the importance of Lampung's cultural heritage which must be preserved and preserved for generations in the future.

### C. Conclusion

The efforts of the Regional Government in Lampung Province in protecting the traditional cultural expressions of Lampung indigenous people are carried out legally which is realized by 1) Making and enacting Regional Regulation No. 2 of 2008 concerning Maintenance of Lampung Culture; 2) Making the *Tapis* and Siger fabric motifs as decorative elements and building elements in Lampung ornamental buildings, 3) Making and enforcing Regional Regulation No. 4 of 2016 concerning Protection of Intellectual Property of Lampung People.

The challenges in the protecting of Lampung traditional cultural expressions is that in Lampung Province there are no Regional Regulations that comprehensively regulate the traditional cultural expressions of Lampung customary communities, there are no institutions/agencies that have specific tasks to carry out activities related to the protection and preservation of traditional cultural expressions of Lampung traditional communities, there is an attitude for some of the indigenous people of Lampung who do not maintain the prevailing patterns of life among them.

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