THE CONSTRUCTION OF LEGAL PROTECTION OF TRADITIONAL CLOTH “TAPIS LAMPUNG” IN THE INTELLECTUAL PROPERTY RIGHTS REGIME

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Abstract

Indonesia is known for its cultural diversity and traditional wealth which is full of beneficial values. Legal protection of cultural assets and traditional assets is the obligation and responsibility of the Indonesian government. One of Indonesia's cultural and traditional wealth assets that need to be protected is the traditional cloth Tapis Lampung. Legal protection for the Tapis Lampung is part of the protection of the communal intellectual property rights of the Lampung people which are part of traditional cultural expressions and must be protected by the government so that they are not recognized by other countries. However, the problem is that until now Indonesia does not have laws and regulations that specifically regulate traditional cultural expressions. So that there are two means that can be done in protecting the traditional cultural expression of this Tapis Lampung, namely through preventive and repressive legal protection. Preventive protection is carried out by means of an integrated cultural system data collection in cultural recording and documentation so that it cannot be recognized by other countries. In repressive legal protection, it is carried out by suing the commercial court that copyright infringement has been committed.

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

1. INTRODUCTION

Indonesia is known for its cultural diversity and traditional wealth which is full of values ​​and benefits. Where the diversity and wealth is then passed on by the ancestors so that it can be preserved and utilized by the generations that follow. As part of an intellectual work, it will result in losses for Indonesia if the Indonesian nation itself is still not aware of the importance of protecting this asset. This is because the Indonesian people are the holders of the exclusive rights to these works. Therefore, legal protection of cultural assets and traditional assets is an obligation and responsibility of the Indonesian government.

Talking about intellectual property rights, from a historical perspective, although initially intellectual property rights were centered on individualistic rights such as trademarks and patents, in their development they also recognized the existence of communal intellectual property rights. At the global level, the discourse on Intellectual Property Rights (HKI) received serious attention after the inclusion of the Trade Related of Intellectual Property Rights (TRIPs) agreement into the Marrakesh Agreement of World Trade Organization (WTO). The member countries of this agreement (including Indonesia) are obliged to carry out all agreements without exception, where this obligation has a certain time frame and is binding in nature which must be fulfilled by each member country.[[5]](#footnote-5)

Returning to the issue of the importance of legal protection of cultural assets and traditional assets as described earlier. In this paper, the explanation on legal protection will focus on one type of traditional wealth, namely the Lampung Tapis. As a cultural expression of the people of Lampung, tapis symbolizes holiness that protects the wearer.[[6]](#footnote-6) Each pattern and shape of the Tapis motif contains the philosophical values ​​of life to the economy of the people of Lampung. However, the problem is, until now the special laws and regulations governing traditional cultural expressions (EBT) have not been owned by Indonesia. At the national level, the rules regarding traditional cultural expressions are included in Law Number 28 of 2014 concerning Copyright and there are only 2 (two) articles that regulate it.

Another problem is that because the Copyright Law regulates EBT, regulating the use of EBT intellectual property rights and regulating its commercialization is part of the politics of EBT law. This clearly deviates from the objectives of EBT protection echoed by international forums that focus on maintaining (preservation) of EBT. In addition, because the tendency is to be heavier on the economic aspect, the legal politics of EBT are also different from what the majority of people want, which basically wants a balance between providing protection to their culture and giving access to everyone to be able to use it so as to increase creativity. and new innovations and being able to transmit their culture to the next generation by providing assurance.[[7]](#footnote-7)

At the provincial level, there is still no clear regulation and protection related to the potential that comes from traditional knowledge and local cultural expressions. The provincial government is only limited to carrying out the process of recording local works. This condition is exacerbated by the emergence of claims of ownership and use from outsiders of traditional Indonesian cultural expressions. For example, claims made by Malaysia on ancient texts of the indigenous peoples of South Sulawesi and Southeast Sulawesi have resulted in disputes and tensions between the two countries.[[8]](#footnote-8) This situation can actually be prevented or overcome if there is a guarantee of legal protection provided for EBT.

Based on this background and problems, the authors are interested in conducting a study on the legal protection of Lampung Tapis cloth which is one of the EBT. Departing from the question of how the construction of the traditional Lampung tapis cloth legal protection, this study aims to construct a pattern of legal protection for the traditional Lampung tapis cloth.

The research conducted is a normative-empirical legal research through statute, observation, interview and conceptual approaches.[[9]](#footnote-9) The data in this study consisted of primary data and secondary data which were then processed systematically and analyzed qualitatively by examining legal concepts and legal norms related to research problems.

2. LITERATURE REVIEW

According to Satjipto Raharjo, legal protection is to provide protection to human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law.[[10]](#footnote-10) Legal protection carries out and provides a place or container in its implementation which is often referred to as a means of legal protection, means of legal protection are divided into two types that can be understood, as follows:[[11]](#footnote-11)

Preventive Legal Protection Means, In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision takes a definitive form. The goal is to prevent disputes. By preventive legal protection the government is motivated to be careful in making decisions based on discretion. Repressive Legal Protection which aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia is included in this category of legal protection. The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights.

Intellectual Property Rights is a right that comes from the work, initiative, and creativity of human intellectual ability which has benefits and is useful in supporting human life and has economic value. The real form of the work, initiative, and intellectual creativity of humans can be in the form of science, technology, art and literature.[[12]](#footnote-12) Divided into 2 (two) Personal Intellectual property rights consists of copyrights also brands rights and Communal Intellectual property rights consists of Traditional Cultural Expressions, Traditional Knowledge, Geographical Indications and Genetic Resources. The objectives of protecting intellectual property through IPR in general include:[[13]](#footnote-13)

a. Provide legal clarity regarding the relationship between wealth and inventors, creators, designers, owners, users, intermediaries who use it, the working area of its use and who receive the consequences of the use of IPR for a certain period of time;

b. Give awards for the success of an effort or effort to create an intellectual work;

c. Promote the publication of inventions or works in the form of IPR documents that are open to the public;

d. Stimulating the creation of information transfer efforts through intellectual property and technology transfer through patents;

e. Provides protection against the possibility of being imitated because there is a guarantee from the state that the implementation of intellectual works is only given to those who are entitled.

Traditional Cultural Expressions (folklore) are part of cultural heritage and identity. whose protection and preservation are related to the recognition of cultural diversity and human creativity. Folklore as part of traditional knowledge is an expression that includes 4 groups, namely: expression by words ("verbal"), expression by musical sounds ("music"), expression of the human body ("by action"), and expressions incorporated in a material object ("tangible expression”).[[14]](#footnote-14)

3. RESEARCH METHODOLOGY

This research is a normative-empirical legal research which primarily examines not only national, sectoral and regional laws and regulations relating to the protection of intellectual property rights, but also looks at the realities in society through observation, interviews and other necessary matters. The approach model used is statute, observation, interview and conceptual approach. Because this study is a normative-empirical legal research, the data used are not only secondary data, but also primary data. Primary data is data obtained directly by researchers when they go to the field and come into contact with their social reality. Meanwhile, secondary data consists of primary legal materials and secondary legal materials. The primary legal materials used are laws and regulations that are relevant to the formulation of the problem to be discussed, while the secondary legal materials are books and journals that are in accordance with the research focus.

Data collection is carried out by going down the field to observe social phenomena and conducting some necessary interviews in addition to collecting data from library research (library research). The next step, data materials were collected through procedures for identification, inventory, classification and systematization of data materials according to research problems. The analysis of the data was carried out qualitatively by means of prescriptive-analytic, namely examining legal concepts and legal norms related to research problems.

4. RESULTS AND DISCUSSIONS

1. The Concept of Legal Protection and a Brief History of Tapis Lampung

Regarding to the concept of legal protection, according to Satjipto Rahardjo, legal protection is to provide protection to the community to be able to enjoy the rights provided by law and to protect human rights that have been harmed by others.[[15]](#footnote-15) Legal protection in its implementation is carried out in an instrument called the means of legal protection. The instrument for means of legal protection is divided into two types, namely preventive and repressive.[[16]](#footnote-16)

On the subject of preventive protection law is given the opportunity to submit their opinion and objections before the government decision gets a definitive form with the aim of preventing disputes. With this preventive protection, the government is encouraged to be careful when making discretionary decisions. Meanwhile, repressive protection aims to resolve disputes. This principle of protection is a source that rests on the concept of protection and recognition of human rights.On the subject of preventive protection law is given the opportunity to submit their opinion and objections before the government decision gets a definitive form with the aim of preventing disputes. With this preventive protection, the government is encouraged to be careful when making discretionary decisions. Meanwhile, repressive protection aims to resolve disputes. This principle of protection is a source that rests on the concept of protection and recognition of human rights.

The limitation and placement of the obligations of the community and government were the initial sources for the birth of the concept of recognition and protection of human rights. Recognition and protection of human rights is the basis for regulating the objectives of the rule of law. Law functions to protect the interests of mankind, which must pay attention to the elements, namely:[[17]](#footnote-17) legal justice (gerechtigkeit), legal benefits (zeweckmassigkeit), legal certainty (rechtssicherkeit) and legal guarantees (doelmatigkeit).

Furthermore, with regard to the history of Lampung Tapiss, according to Van der Hoop, since the 2nd century BC the people of Lampung have only started to recognize weaving.[[18]](#footnote-18) Meanwhile, in the 7th century, weaving crafts using cotton were introduced by the orientalist historians Robyin and John Maxel, to foreign travelers and traders to Lampung. Initially, the Tapis cloth pattern was influenced by maritime nuances and expressions of worship of ancestors and natural forces. The kingdoms in Indonesia are very thick with a system of religiosity that was carried from India through the Indian Ocean. Shipping is a gateway for interaction between regions and between countries.

Tapis cloth is identical to the Lampung Pepadun customary community, while the Lampung Sebatin custom is more identical with ship cloth. Tapis and ships with motifs of humans, animals, plants were known at that time. These various features form mythology. Some of the influences that Hindu culture brings through traders can also be found in the forms of beliefs, legends, and decorative flora and fauna associated with Hinduism. According to Van Heekeren, the ornamental use of iron and bronze in Lampung was influenced by Dongson and Chou.

As soon as Islam entered in the 16th and 17th centuries, new patterns appeared on woven fabrics. However, there are old motifs with new meanings such as tumpal. The simple tumpal motif is a shoot of bamboo shoots which symbolizes a power that comes from within. But there are also those who argue that the triangular motif is a human abstraction. The strong influence of Islam on the culture of the people of Lampung is reflected in the writings before the 19th and early 20th centuries, including the obligation to pray five times in the introduction to the Book of Kuntara Raja Niti. Apart from the influence of Islam, the people of Lampung are also related to the culture of other countries, as reflected in Article 46, the Book of Ketara Raja Niti which means as follows: [[19]](#footnote-19)"There are three main cases of human matters: Islam, Sarani and Kapir. Descendants of our clan (Lampung) prioritize all laws. Descendants of the Puranggi children prioritize all evidence. Nice derivative of writing, pictures and treasures. Derivatives of the Malay children use dedok punita (?), Have good language and speak a lot. Descendants of Javanese children prioritize the Earth Keraton system. Descendants of Arab children hold the Pillars of Islam. “

With the existence of this Islamic influence, the indigenous people of Lampung Pepadun slowly reduce their motives that are worshiping nature and the gods. So that many geometric patterns become motifs on existing Tapis fabrics. Gold threads beautify the Tapis cloth more and more along with the increase in the economy of the community at that time. Pepper is an export commodity so that people can import various products from other countries, including gold thread. The existence of Dutch recognition of indigenous peoples (marga-marga) fosters culture. The Tapis cloth used for traditional ceremonies or traditional ceremonies or processions of the life cycle of the Lampung people is more beautiful. Gold and glass threads add shine to the Tapis cloth. The Tapis cloth gets even more festive with the ringgit money accessories on the bottom edge. The luxury is even more lit when side by side with the siger and other accessories. In the 1960s, the Tapis cloth was in the form of a sarong with a plain or line motif in the form of fields of color and embroidered with bright colored decorative threads. This motif Tapis cloth is widely used at traditional events or what is also known as the begawei, cakak pepadun, descending cangget, welcoming guests, as well as the bride's clothes at the wedding ceremony. The basic Tapis cloth, is a woven product that comes from cotton threads on a gedongan loom which is also called pattek (panthok). The red and brown colors derived from the sap of the sepang fruit (caeselpinia sappan), noni root (morinda citriflora), and tamarind (tamarindus indica) are the basic colors of the Tapis cloth used at that time. Besides that, there is also a yellow color that comes from turmeric (curcuma domestica), tamarind and whiting. As well as the blue color that comes from indigo (indigofera), talom leaves and dadukuk fruit.

The width of the woven fabric obtained has a length of approximately 60 cm. While the lines and fields of color obtained are done horizontally when used as a sarong. The embroidery on the Tapis cloth uses gold thread which is done by placing the cloth on the teukang, which is a fabric fastener. Embroidering is done using the sawat technique, which is inserting decorative threads into the fabric threads and then tying the twine through decorative threads on the base cloth to form the desired texture and decoration on the fabric that has been fastened to the teukang. The beauty of the Tapis cloth emerges from the combination of the basic fabric colors, the decorative shapes and textures and the sparkle of the gold thread. Likewise with the various Tapis motifs and all of them are motifs derived from the legacy of the ancestors to beautify the Tapis cloth which was originally just a plain sarong woven cloth. For ethnic groups, the types and motifs of these Tapiss vary, depending on their function and use for each indigenous community.[[20]](#footnote-20) Lampung tapis weaving crafts have social and economic functions in the lives of the people. Social function shows its status in social groups and members of society. This cloth has a high value and is a symbol of the status of the family group which shows the difference in the status of its users, including the Tapis cloth worn by the family of traditional leaders / tribal leaders at traditional wedding ceremonies and taking titles. There are also types of Tapis cloth that can only be worn by certain people at certain traditional ceremonies, for example, the Tapis cloth for different brides. The use of a Tapis cloth that is not in accordance with their status will receive sanctions or reprimands from members of the community. However, the use of this Tapis cloth has changed its function and has begun to enlarge. Economically in the past, Tapis crafts were a necessity made only for the customary interests of the family group itself. However, nowadays Tapis cloth has started to be marketed. The results of this Tapis weaving craft have been widely traded to the public. This is because the times have made economic interests related to social interests. However, now the symbolic meaning of the Tapis cloth motif has begun to be neglected since it is traded to the general public.[[21]](#footnote-21) Natural rights that arise from social processes and are passed on from generation to generation are the rights of indigenous peoples. The consequence arising from the protection of these rights by the state is legalizing these rights into a written statutory law. Traditional rights from the existence of indigenous peoples become a dilemma, because they require legalization, these rights will be recognized if regulated in written law made by state institutions. It can be said with a contratio that the existence of indigenous peoples is considered non-existent if they are not legally recognized. Whereas the existence of indigenous peoples and their traditional rights will always be attached to them. The traditional rights of indigenous peoples will always exist in indigenous peoples.

Likewise with the indigenous people of Lampung who exist until now. The indigenous people of Lampung consist of two large groups with the Pepadun tradition consisting of Abung Siwo Migo, Pubian Telu Suku, Raem Mega Pak, Bunga Mayang Sungkai, Way Kanan Lima, Kebuwaiyan as well as Melinting and Jabung; and those who live in Sebatin in West Lampung, West Coast, Semaka Tanggamus and Kalianda. The indigenous people of Lampung also have a customary government, where the Pepadun people use a system of mercy based on the male lineage (patrilineal). There are 3 (three) levels of balance in the Lampung Pepadun customary community, namely: (1) having a clan or paksi that oversees the tiyuh (village), (2) having a tiyuh which oversees several tribes or rooms, and (3) having a tribe that oversees several level is one of which regulates the use of Tapis cloth as traditional clothing that adjusts social status. In addition, there are customary penalties or sanctions for community members who break them or commonly known as cepalo. Judging from the history of the manufacture of Tapis cloth to the values contained therein, namely social, economic, cultural and historical values, the Tapis cloth must receive appropriate protection, not only as a result of the protection of its economic value but also the moral value maintained by the custodian. Where the state holds the copyright to historical works and cultural products of indigenous peoples that belong together.

b. Construction of the Lampung Tapis Cloth Legal Protection

As explained in the previous sub-discussion, legal protection for the Lampung Tapis cloth can be pursued using two means, namely preventive and repressive protection. With regard to the first means, the implementation is carried out based on the legal regime of Law Number 5 of 2017 concerning Cultural Advancement and the Copyright Law. Whereas in 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 flow chart of the construction of the Lampung Tapis cloth legal protection below:

Diagram 1: The Pattern of Legal Protection for Lampung Tapis Cloth

Perlindungan Hukum Kain Tapis Lampung

Perlindungan Hukum Preventif

(UU Pemajuan Kebudayaan + UU Hak Cipta)

(UU Pemajuan Kebudayaan) Dilakukan dengan menyelenggarakan sistem pendataan kebudayaan terpadu

(UU Hak Cipta) Dilakukan dengan mendaftarkan hak cipta ke DIrjen HKI

Perlindungan Hukum Represif

(UU Hak Cipta)

Melakukan gugatan ke pengadilan niaga

In preventive legal protection in the regime of the Cultural Advancement Law, protection is carried out by implementing an integrated cultural data collection system that carries out cultural recording and documentation efforts with the aim of preventing claims of IPR protection against culture.[[22]](#footnote-22) The same principle applies to preventive legal protection in the Copyright Law regime, where the Lampung Tapis cloth is registered with the Director General of IPR as proof of ownership of the Lampung Tapis cloth. In repressive legal protection, protection is carried out by filing a lawsuit at the commercial court that there has been a violation of copyright.[[23]](#footnote-23)

The construction of Lampung Tapis cloth legal protection based on the Copyright Law regime actually contains problems. In principle, copyright protection requires four things, namely authenticity (originality), an identified creator (identification of author), a tangible work (fixation work) and a limited period of time (period of time). The requirement for works to be in the form of material or fixation work will become an obstacle in the application of protection of Traditional Cultural Expressions because most of the works based on traditional culture have oral transmission (unwritten) characters such as most legends, myths, fairy tales, dances and folk songs. . In other words, the copyright regime cannot completely protect the works of Traditional Cultural Expressions, except for the category of non-verbal Traditional Cultural Expressions. In fact, these creations still exist and live in traditional societies.

In the concept of intellectual property rights, especially in the Copyright Law, providing protection for Traditional Cultural Expressions is different from providing protection for other types of Copyright such as books, music works and paintings. This is because the ownership of traditional cultural expressions is not individual in nature, but rather these traditional cultural expressions are communal ownership. This means that traditional cultural expressions are owned by a group of indigenous peoples in a certain area or place, so that individual legal protection cannot be applied.

5. CONCLUSION

Based on the results and discussion above, it can be concluded that the legal protection for the Lampung Tapis cloth can be reached using two means, namely preventive and repressive legal protection. In preventive legal protection in the regime of the Cultural Advancement Law, protection is carried out by implementing an integrated cultural data collection system that carries out cultural recording and documentation efforts with the aim of preventing claims of IPR protection against culture. The same principle applies to preventive legal protection in the Copyright Law regime, where the Lampung Tapis cloth is registered with the Director General of IPR as proof of ownership of the Lampung Tapis cloth. In repressive legal protection, protection is carried out by filing a lawsuit at the commercial court that there has been a violation of copyright.

The construction of Lampung Tapis cloth legal protection based on the Copyright Law regime actually contains problems, because it has not been able to protect the works of Traditional Cultural Expressions as a whole, except for the category of non-verbal Traditional Cultural Expressions. Therefore, it is necessary to make rules that can provide a legal basis for parties who will file claims against outsiders who are considered to have taken or acknowledged against the rights of cultural heritage assets in a clear and systematic manner.

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