

Contribution of Traditional Cultural Expression on Regional Economic Assets

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ABSTRACT--*This paper aims to analyze and evaluate the expression of traditional culture to have real economic value in the area of managing regional economic assets. Traditional cultural expression as communal intellectual property whose existence is recognized internationally. Expectations Traditional culture as an asset is protected under copyright. Traditional cultural expressions are protected in copyright law in terms of economic rights and moral rights. Aspects of moral rights have been made a lot of effort so that the expression of traditional culture receives respect from the conservation side. Economic rights provide opportunities for the right owner to exploit various productive activities to obtain benefits economically, however, in reality, these economic rights have not been carried out optimally. This article is based on normative legal research focusing on secondary legal material. The results show that the economic right to traditional cultural expression has not been used optimally in efforts to improve the regional economy. Structured and comprehensive efforts are needed so that the economic potential of traditional cultural expression can contribute to the welfare of the community in the area.*

Keywords: *economic rights, regional assets, traditional cultural expressions*

I. INTRODUCTION

Indonesia consists of thousands of islands inhabited by various ethnic and ethnic groups. The development of one tribe with another is not the same, and is a unique process. Refined products in the community are a sign that the community is developing. The many tribes and ethnicities contribute to the cultural wealth that exists in Indonesian society. The culture of the Indonesian people is extraordinary wealth. This cultural wealth cannot be directly assessed economically, but the value is not in an economic sense. Culture is a value that is agreed upon and embedded in a society, which is lived in the scope of the organization, the community environment, and rooted in a habit, trust (trust), symbols, with certain characteristics that can be distinguished from one another. Culture is not only a living value in society but is also manifested in various objects or arrangements of life. Social work as an expression of the value of goodness is maintained and remains preserved from generation to generation.

At first, humans lived in groups based on cultural similarities. The struggle in life together and binds them

to be able to survive in their lives. Developments in government administration, life groups, are then given the designation as village, sub-district or district areas. Regarding culture, it can no longer be given a distinction only by community groups, but it is a culture that is limited by the administrative territory in a country.

Based on the above thought, every region throughout the world has a cultural uniqueness. Culture as a social work that is so diverse and is a whole human wealth that, the culture of one region is easily distinguished from other regions. Community culture can be seen as a wealth that has spiritual values, artistic values, social values, or other values. Culture is factually present, nurtured, developed, and lived by the community as its bearer. For example in the Special Region of Yogyakarta has a variety of cultures that until now maintained, developed, and lived by the people. The culture that is still maintained by the people of Yogyakarta, for example, dances in the palace, Gerebeg ceremony, Labuhan, and many others. It is undeniable that there are various types of cultures that are not maintained, and the current generation no longer knows it.

From some of these examples, it can be found that culture is the result of creative thought and human creation. The results of human thought can be in the form of tangible objects, but can also be activities that can be repeated from time to time. Cultural activities can be managed so that it becomes an event that has economic value. Community bearers consistently maintain and preserve the culture they have. Repeated events as traditions can unintentionally become a tourist moment, and bring economic benefits to the community. For example, dance performances or traditional music or other performance works are performed. Creative and professional management of the cultural property can provide material benefits for the community.

The regional government as the party that has certain authority in the development of culture.

Culture as a regional wealth so far is only a "pseudo" wealth. Intangible assets have a value for an equivalent to a currency that can be calculated with certainty. Acquiring economic benefits from cultural wealth is merely a coincidence, not being an engineered activity.

Based on the background of the problem, the problem discussed in this paper is how are the efforts of the regional government in exploiting the economic potential of the traditional cultural expressions they have.

II. RESEARCH METHOD

The research used to obtain the data analyzed in this article is normative law research. The subject of the study is the law, which is conceptualized in the form of norms that are applicable in society and serves as guidelines for behavior. The approach used in this study is a conceptual approach and Statute Approach. The legislative approach is carried out by studying the statutory regulations, policy regulations, or judiciary decisions that are relevant to the legal issues that are the subject of the study. Besides, this study also uses secondary legal material in the form of principles, doctrines, legal opinions published in journals or textbooks.¹ Descriptive qualitative analysis is an analysis of data that cannot be calculated. Legal materials obtained are then subjected to discussion, examination, and grouping into certain parts to be processed into information data. The results of the analysis of legal material will be interpreted using the method of (a) systematic interpretation, (b) grammatical, and (c) teleological.²

III. FINDINGS AND DISCUSSION

Traditional Cultural Expressions from the Intellectual Property Rights Perspective. Intellectual property rights as a form of appreciation for human creativity. Creative work can be created alone or by several people together. Human creative works are comprehensive in type. For example, so many technological innovations, formworks, innovations in the field of electronics. Human creativity is very diverse, and each subject who works is given the recognition that is realized in the form of legal protection. Copyright law provides protection to subjects who create creative work in the field of literary and scientific arts.

Human works, which are then categorized as traditional cultural expressions are given an understanding as a creation in the field of art that contains unique elements and characteristics, maintained and developed from generation to generation from time to time on an ongoing basis.³ The community maintains the expression of that culture on the grounds that the expression of traditional culture as a culture of society has a value of wisdom and nobility. The society maintains a tradition for generations on the grounds that there is a value of goodness in the aspect of relations between humans, humans, and nature and in relations to the creator. The traditional cultural expressions of society are unique compared to other communities. Therefore, traditional

cultural expressions can represent the identity of indigenous peoples in certain areas.⁴

The expression of traditional culture as a work of human thought should receive legal protection. This legal protection as a form of respect as a work that must be maintained, valued and prevented if used improperly or potentially damaging the value contained therein. Adequate protection can be expected to preserve the values contained in expressed in this form of cultural expression. The protection of traditional cultural expression at this point is to preserve the noble value of the relationship between humans in society, humans with the universe, and humans with God.

Legal protection based on the concept of international intellectual property law can be traced since the international conventions governing the protection of traditional culture, including the Berne Convention, The Model Provision 1982, and Refined Draft Provisions for the Protection of Traditional Cultural Expressions / Expressions of Folklore. This convention shows that there is special attention to a work that is categorized as an expression of traditional culture. Legal protection of traditional cultural expressions is urgently needed by developing countries, and this is a guarantee of the survival of traditional cultural expressions, which are communal creativity.⁵ Nationally, Law Number 28, the Year 2014 concerning Copyright, has provided protection for traditional cultural expressions. The intended protection is all forms of efforts to protect the expression of Traditional Culture against uses that are carried out without rights and violate propriety. The protection of traditional cultural expressions as part of traditional knowledge is very important, because of the potential economic benefits resulting from the use of traditional knowledge, secondly justice in the world trade system, and thirdly the need to protect the rights of local communities.⁶

The definition of traditional cultural expression is given by WIPO's⁷ interpretation, "Traditional cultural expressions or expressions of folklore have the same meaning and identify the values, traditions, and beliefs of indigenous communities. They can be described as works consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of that community. Furthermore, WIPO divides Traditional Cultural Expressions into four groups according to their respective forms:

¹ Peter Mahmud Marzuki, 2008, *Penelitian Hukum (Cet 2)*. Jakarta: Kencana, p 32

² Jimly Asshiddiqie. 1997. *Teori & Aliran Penafsiran Hukum Tata Negara*. Jakarta: Ind. Hill.Co.p.91

³ Eddy Damian, 2013, *Glosarium Hak Cipta dan Hak Terkait*, Bandung, Alumni, p. 29

⁴ Hilman Hadikusuma, *Pengantar Hukum Adat*, Mandar Maju: Jakarta, 2010, p.51

⁵ OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Right)*, PT RajaGrafindo Persada: Jakarta, 2006, p.78

⁶ Agus Sardjono, *Hak Kekayaan Intelektual dan Pengetahuan Tradisional*, Alumni, Bandung, 2006, pp. 2-3

⁷ WIPO Publication, *Consolidated Analysis of The Legal Protection of Traditional Cultural Expression/Expression of Folklore*, May 2003, pp. 21-24

- a). verbal expressions, such as folk stories, legends, and poetry;
- b) musical expressions, such as folk songs and instrumental;
- c). music expressions by action, such as popular dances, plays, and shows;
- d) tangible expressions, such as, productions of folk art, especially drawings, paintings, sculptures, pottery, jewels, costumes, musical instruments as well as architectural works.

Elucidation of Article 38 Paragraph (1) the copyright law provides a description that what is meant by "traditional cultural expression" includes one or a combination of the following forms of expression:

- a. verbal textual, 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 but not limited to, vocal, instrumental, or a combination thereof;
- c. motion, including among other things, dance;
- d. theater, including among others, wayang performances and folk plays;
- e. fine arts, both in two-dimensional and three-dimensional forms made from various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, and others or their combinations; and
- f. traditional ceremonies.

The principles of copyright law contained in the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention 1967) regulate the concept of ownership of anonymous works. Although it does not specifically regulate TCE protection, the provisions in the 1967 Berne Convention can be applied, especially in this case to cultural expressions of unknown creators. The provision of "anonymous works" in the Bern Convention is a provision of intellectual property law that can be applied indirectly to TCE in Article 15 paragraph 4: "that the parties to the Bern convention have the obligation to appoint competent authorities based on national provisions to provide protection for the work - published works of unknown author to represent the interests of the creator and protect the rights of the creator.

Protection of traditional cultural expressions, copyright law, places the state as the holder of the right to traditional cultural expression (paragraph 1). The state's position as the holder of this right can be interpreted as an effort to protect in terms of the expression of traditional culture that is used or violated by a foreign country. The position of the state can act to represent the interests of society to defend it from violations committed by other countries. It is certainly understandable that it is indeed impossible if indigenous peoples or bearers of traditional cultural expression must deal with foreign countries.

The state, as the subject that must provide protection for the expression of traditional culture, must certainly have certainty about the object. (verse 2) What must, of course, be done initially is to take an inventory of existing

traditional cultural expressions. Inventory is the first step to find out which tiger or type of TCE must be protected. The results of the inventory are then the state is burdened with the obligation to maintain and maintain it. Indonesia as a country that has so many traditional cultural expressions that have been recorded according to data from the directorate general of intellectual property is as many as 748 pieces⁸. It must be acknowledged that developing a protection system does not yet have a proper and adequate protection system as well as limited TCE data, documentation, and information. This certainly has to be the State's business in maintaining and maintaining it. Concerning the period of protection for TCE, Article 60 (1) of the UUHC for traditional cultural expressions held by the state, as referred to in Article 38, paragraph (1) applies indefinitely. This means that control and management in order to take economic advantage over TCE⁹ can be carried out at any time. Traditional Cultural Expressions in the framework of copyright thinking there are two dimensions, the first is the dimension of moral rights that is reflected in the inventory, preservation, development and economic rights dimensions that are evident from the utilization activities. The real situation that occurs is that the community in assisting by the local government develops and utilizes TCE economically. The community actually receives economic benefits from TCE.

1. The role of local governments

The state by the UUHC has been designated as the subject of authority in managing traditional cultural expressions. If it is then explored further, the question that arises is who can be the personification of the state at a concrete level. If noted in the UUHC, the role of the state in managing intellectual property is generally carried out by the Minister, who organizes government affairs in the legal field. The ministry currently handling matters in the field of intellectual property is the ministry of Law and Human Rights.

The Directorate General of Intellectual Property is an implementing element which is under and is responsible to the Minister of Law and Human Rights, headed by a Director-General. The Directorate General of Intellectual Property has the task of carrying out the formulation and implementation of policies in the field of intellectual property in accordance with statutory provisions.¹⁰

If examined further from the aspect of its substance, the expression of traditional culture becomes the realm of management of the ministry of education and culture. The organizational structure of the Ministry of Education and

⁸<http://kikomunal-indonesia.dgip.go.id/index.php/penelusuran>, Retrieved 4 October 2019

⁹Ahmad Ubbe, 2009, Laporan Tim Pengkajian Hukum Tentang Perlindungan Hukum Kebudayaan Daerah, BPHN Depkumham: Jakarta, p 1.

¹⁰<https://dgip.go.id/struktur-organisasi> Retrieved 7 November 2019

Culture is explicitly stated that the Directorate General of Culture¹¹ is given the task of organizing the formulation and implementation of policies in the fields of culture, film, arts, traditions, history, cultural heritage, museums, cultural heritage, and other cultures.

Both ministries, based on the mandate of the law are given the task of carrying out joint management. This situation is not overlapping management of Traditional Cultural Expressions, and each ministry has a role by the field of duty it is carrying. The Ministry of Law and Human Rights has the task of providing legal protection for Traditional Cultural Expressions from the aspect of Intellectual Property Law. In contrast, the Directorate General of Culture has the task in the substance aspect of traditional cultural expression as the culture of society. Both of these ministries in the regions have regional governors who carry out central government affairs in the regions.

The expression of traditional culture, which is one form of culture, is a matter of Regional Government, referring to Law No. 23 of 2014 concerning the Regional Government. Government power, which becomes the authority of the president, is carried out by the Ministry of Home Affairs and the organizers of the Regional Government through the Office of Culture, to protect, serve, empower and prosper the community. Division of Government Affairs based on Law 23/2014 that government affairs can be divided into three, namely absolute affairs, general government affairs, and concurrent affairs, which are divided between the central and regional governments. The basis of the implementation of regional autonomy includes basic /mandatory and optional services. Culture is one of the substances of basic service. Based on this foothold, the local government has substantial authority to regulate and manage the cultural expression of the local traditional culture.

The expression of traditional culture, which is one of the elements in culture, is a matter for both the central and regional governments. The management of culture by the central government is carried out by the ministry of culture and the ministry of law and human rights. This matter is explicitly stated in report V Government Regulation No. 38/2007 number 1 letter b states that the Central Government has internal authority. Protection of communal intellectual property rights (IPR) in the field of culture. The Regional Government has the authority in managing the culture that the community performs in the Region.

The expression of traditional culture is inherent in the community of its development. Cultural locality will determine the subjects who are supposed to preserve their development and utilization. The regional government as a party, which in real terms has a joint obligation with the community to develop, preserve, and utilize traditional cultural expressions for the welfare of the community.

Traditional Cultural Expressions in the framework of copyright there are two dimensions, the first is the dimension of moral rights that is reflected in the inventory, preservation, development and economic rights dimensions that are evident from the utilization activities. This dimension of economic rights has the potential to contribute to local revenue. The original opinion of the region as a basic capital in the efforts of the regional government to prosper the local community The real situation that occurs is that the development community, with the assistance of the local government, develops and utilizes TCE economically. Society, in real terms, gains economic benefits from TCE.

2. Traditional Culture Expression as a Regional Asset

Various articles¹² and official statements of state officials said that TCE is a regional asset. TCE is an asset that is the regional capital for the welfare of the community. The definition of regional assets is unknown in Indonesian laws and regulations. The term used is the term regional property. The asset is given an understanding as A financial contract or physical object with a value that is owned by an individual, company, or sovereign, which can be used to generate additional value or provide LIQUIDITY¹³. Broader opinions related to traditional cultural expressions state that assets are economic resources that are controlled and / or owned by the government as a result of past events and from which future economic and / or social benefits are expected to be obtained, both by the government and the community , and can be measured in units of money, including non-financial resources needed for the provision of services to the general public and resources maintained for historical and cultural reasons.¹⁴ This understanding is the word belonging to or owned by both individual and institutional subjects.

Understanding property if it is related to the understanding of the regional property that shows the relationship between regional assets, there is a difference. Government Regulation Number 27 of 2014 concerning Management of State / Regional Property Provides Definition Regional assets are all goods purchased or obtained at the expense of the Regional Budget or derived from other legitimate acquisitions. Legal gains include:

- a. goods obtained from grants/donations or the like;
- b. goods obtained as an implementation of the agreement/contract;
- c. goods obtained under the provisions of the law; or

¹²Abdul Rachman Patji, 2010, "Pengembangan Dan Perlindungan Kekayaan Budaya Daerah: Respon Pemerintah Indonesia Terhadap Adanya Klaim Oleh Pihak Lain", Jurnal Masyarakat & Budaya, Edisi Khusus, Pp. 167-188

¹³<https://thelawdictionary.org/asset-2/>Retrieved 4 October 2019

¹⁴<https://bpkad.bekasikota.go.id/2016/11/07/pengelolaan-aset-daerah/>Retrieved 4 October 2019

¹¹<https://www.kemdikbud.go.id/main/informasi-publik/tugas-dan-fungsi>Retrieved 4 October 2019

- d. goods obtained based on court decisions that have obtained permanent legal force.

Overall, what is meant as a regional property is an only movable property in the form of tangible objects. Legislation in the area of objects belonging to the region does not recognize intangible objects. The expression of traditional culture as regional wealth apparently cannot be included in the concept of regional property as regulated in the legislation. This formation makes the regional government has no basis to include the expression of traditional culture as regional assets. This is very ironic because, in reality, TCE as a potential asset contributes to the welfare of society.

There is new thinking that links the economy with culture. The real facts show that there are community activities that increase their welfare because they actualize the expression of their traditional culture. Cultural Economy of Cultural Economy is an economic sector around cultural goods and services, which was born because humans have a need for meaning, aesthetics, and pleasure. If the cultural economy ecosystem of a developed and developing country is well, this will be able to increase the happiness of society as a whole.¹⁵ Managing cultural expressions may not bring financial benefits, because the community's demand for the cultural sector is not able to cover its production costs, for example, cultural heritage such as temple maintenance and research costs are not comparable to the income derived from ticket visitors to the temple visitors. The situation certainly cannot give rise to optimism in the efforts to enhance the expression of traditional culture into regional assets. Traditional cultural expressions still have the potential to contribute to the welfare of society. The emergence of economic benefits from traditional cultural expression is very dependent on the ability and creativity of local governments in managing these assets. The step that needs to be done is the political will of the local government to adopt TCE in the concept of regional property. Certainty to include TCE in regional property is the basis for the management and utilization of TCE by the regional government.

3. Assessment of Traditional Cultural Expression Assets

Historical assets are an essential asset for an area because they have a high cultural and historical value of the nation and can be used as an identity for the region or country that owns them. Historic assets are also assets with historical, artistic, scientific, technological, geophysical, or environmental qualities that are held and maintained by the government to contribute ideologically to science and culture. Historical assets are referred to as assets that are unique because they have a variety of ways to obtain, not only through development but also the purchase, donation, inheritance, seizure, or confiscation,

and management and maintenance are protected by local governments. The problem faced by the government in managing historic assets is how the government must recognize historical assets, how the valuation model is used, and how the disclosure of historical assets in the financial statements.¹⁶

The expression of traditional culture as intellectual property has similarities in several respects to the Characteristics of Historic Assets known in the International Public Sector Accounting Standard. Traditional cultural expressions as part of historical assets can be classified into fixed assets, there are differences in several respects. Following the International Public Sector Accounting Standard (IPSAS) 17- Property, Plant, and Equipment in Heritage Assets, which are set out in paragraphs 9 to 12. Paragraph 10 explicitly does provide the characteristics of historic assets as follows:¹⁷

- (a) Their values in cultural, environmental, educational, and historical terms are unlikely to be fully reflected in a financial value based purely on a market price;
- (b) Legal and statutory obligations may impose prohibitions or severe restrictions on the disposal by sale;
- (c) They are often irreplaceable, and their value may increase over time, even if their physical condition deteriorates; and
- (d) It may be not very easy to estimate their useful lives, which in some cases could be several hundred years.

Historic assets in IPAS do refer to assets of physical objects, not material assets that are not bodied. This recognition in accounting standards certainly opens up opportunities for valuing assets in the form of traditional cultural expressions.

IV. CONCLUSION

Providing Protection for Traditional Culture Expression by establishing the state and local government as rights holders are only the first step. Arrangements in copyright only lay the foundation for legal protection. The regulation does not have any meaning if the state or regional government is not carried out in a professional management step. Authority for the state or local government to carry out an inventory, preservation, and management. The state or local government fails to be the subject of rights holders if it does not carry out professional and structured management of traditional cultural expressions. The copyright, which has a dimension of economic rights, must be the goal in

¹⁵<https://www.kompasiana.com/fery87654/5d7326a80d82304470736603/meng-ekonomi-kan-budaya?page=2> Retrieved 14 October 2019

¹⁶Said Ikhsan Ridha, Hasan Basri, 2018, "Analisis Pengakuan, Penilaian, Penyajian Dan Pengungkapan Aset Bersejarah Pada Laporan Keuangan Entitas Pemerintah Daerah Aceh (Studi Kasus Pada Masjid Raya Baiturrahman)" Jurnal Ilmiah Mahasiswa Ekonomi Akuntansi (Jimeka) Vol. 3, No. 1, (2018) pp 156-166

¹⁷<https://www.ifac.org/system/files/publications/files/A11-IPSAS-17.pdf>, Retrieved 4 October 2019

managing traditional cultural expressions, although it must not neglect the moral rights dimension. The change in paradigm that objects belonging to the state/region must be changed and accommodate the concept of non-bodily material in the form of traditional cultural expression. Asset valuation in the form of traditional cultural expression can be done with a model in evaluating historical objects that already exist in the state financial accounting guidelines.

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