

Fashion Products Based on Intellectual Property as a Cultural Tourism Object (Study of Specific Art of Pamekasan Batik)

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ABSTRACT

The art of batik motifs provides identification for regions in introducing distinctive characters both through colouring and various designs. This distinguishing feature provides an attraction for batik lovers and at the same time an icon of a potential cultural tourism object. This article provides a study of the urgency of copyright registration and the potential for geographical indications as a form of defensive protection for batik art in Pamekasan. Through the recording of Copyright and potential geographical indications, it will have an influence on increasing appreciation of the cultural values inherent as regional icons. This article is sociological juridical by conducting a study Copy Right Act and Trademarks and Geographical Indications Act as well as field studies to identify the existence and diversity of batik art in the area Pamekasan. The results showed that the distinctive character of batik art in the Pamekasan region as one of the hereditary heritages was difficult to find, so that efforts to register through geographical indications experienced difficulties and obstacles, except for simply registering as a potential geographical indication of communal intellectual property. However, protection in the perspective of Copyright is very possible because there are many batik craftsmen who are able to create innovations on designs that describe a contemporary batik art motif that follows the development of cultural acculturation.

Keywords: *Batik, Copyright, geographical indication.*

1. INTRODUCTION

Batik as an Intangible Cultural Heritage of Humanity unique to Indonesia and a certificate of validation of batik as a representation of Indonesian culture by UNESCO. Batik is not just a typical Indonesian culture, but the intellectual property of the Indonesian people and the breath and driving force of the lives of some Indonesian people, so that it should not only be considered as part of the cultural heritage, but requires legal protection efforts in the perspective of the IPR regime.

Judging from its history, batik has been rooted in the history of the Indonesian nation. Batik does not only grow and develop on the island of Java, but also outside Java such as Padang on the island of Sumatra. Batik patterns and motifs are very diverse, showing the uniqueness of each region. These motifs are not only characteristic of the area, but also a symbol of the culture of the area. In East Java, for example, the basic motifs

and colours of Surabaya batik are different from those of Malang or Mojokerto batik. Surabaya batik motifs represent the culture of Surabaya as a coastal area, while Malang batik certainly depicts the cool culture of the Malang people.

Besides being dubbed the Gate of Greetings, Pamekasan has another nickname for the City of Pamekasan, namely the City of Batik. Starting from the breakthrough of the Pamekasan Regency Government which held the "Pamekasan Batik" activity which was held at the Arek Lancor Monument. The batik activity was included in the Indomesia Record Museum in the category of the World's Longest Batik with a length of 1,530 meters which was the birthday of Pamekasan City at that time. This activity is a symbol that Pamekasan is the City of Batik, as well as an effort to promote and preserve Pamekasan batik.

In Pamekasan itself, there are many centers for making batik which are famous for their unique batik products. Until now, the people in Kowel village still maintain the knowledge passed down from generation to generation to preserve Pamekasan batik. Madurese batik in general does have patterns, motifs and patterns that describe the characteristics of Madura culture. However, not all regions understand and know about the form of protection associated with the uniqueness of Pamekasan batik.

Regarding the issue of Intellectual Property Rights, it is suspected that traditional batik motifs have recently been imitated by craftsmen from other countries. This condition occurs because the protection of intellectual property rights in this country has not been maximized. In this regard, the community has carried out many batik motif documentation activities, even the Ministry of Industry has documented as many as 2,788 batik motifs and traditional weaving in the form of CD (Compact Disc).[1]

The Ministry of Trade has tightened the import of textiles and textile products for batik and batik motifs due to the increase in imports of these products which reached 24.1 percent in the period January to April 2015.[2] In the regulation, the regulated commodities are sheet cloth and batik apparel and batik motifs with a limit of at least two colours, where every company that will import batik textiles and batik textiles must have a designation as a Registered Importer of batik textile and textile products. batik motifs as an effort to preserve batik as part of cultural heritage, by inhibiting the import of batik-patterned textiles. Based on data from the Ministry of Trade, imports of batik textiles and batik motifs from 2012-2014 increased by 17.9 percent or 13.2 million US dollars. Imports recorded in 2013 reached 80.8 million US dollars and in 2014 it became 87.1 million US dollars.

From the description above, this article examines whether Pamekasan batik has been protected by the intellectual property rights regime?

2. RESEARCH METHOD

A. Types of Research

This article is sociological juridical research, a combination of legal and social research by conducting a study of legal regulations and connecting it directly with the data needed in the community. In the research, the data were obtained from the factual approach in the field to find the distinctive of batik art directly related to the determination of compliance with the requirements for copyright protection or geographical indications. The data analysis method used is a qualitative method, namely the data obtained are arranged systematically and analysed qualitatively to obtain clarity of the problems discussed. Researchers actively participate in collecting

data, researchers are planners, implementers of data collection, data analysis, and become reporters of the results of research that has been carried out.

B. Data Source

Primary data:

Primary data is data obtained directly from the community in the Pamekasan Regency area. The selection of Pamekasan Regency is related to the designation that Pamekasan is the City of Batik, so that primary data in the field is carried out by means of in-depth interviews (indept interviews) with relevant agencies, stakeholder, and batik craftsmen in Pamekasan, especially in the Propo District area which is the center of batik to determine the character, motifs, patterns and coloring in Pamekasan batik.

Secondary Data:

Secondary data as supporting data that can strengthen data analysis can be obtained through: study of documents or literature related to the object of research, review and interpretation of laws and regulations related to batik protection and study of other documents obtained from literature, related journals. The author conducts a document study of secondary data to obtain a theoretical basis that can be used to analyse the legal issues of this research.

To obtain data validation, the researcher used triangulation technique as a data checking technique.[3] The data obtained were analysed qualitatively, to describe the implementation of laws and regulations related to the potential protection of Pamekasan batik through the Intellectual Property Rights regime, in particular copyright and geographical indication.

3. RESULT AND DISCUSSION

Pamekasan batik is considered to have patterns, motifs and patterns that describe the cultural characteristics of community. As part of regional superior products and handicraft products that are in great demand by the community, batik has the potential to be imitated by other parties which can harm craftsmen and local governments as a regional pride.

Batik has been known since ancient times. This can be seen from the clothes of kings or royal officials who always use batik cloth as their great clothes. Every great event when facing the king, empress, patih, nobles and royal officials will use formal clothes, namely jarik (bottom kebaya cloth) made of batik. Batik cloth is also worn by royal courtiers (employees) who always wear beskap, which is traditional Javanese clothing by wearing jarik, beskap shirt and blangkon (a head covering made of batik cloth).[4] Batik is an Indonesian cultural heritage that has been recognized by UNESCO or the United

Nations Educational, Scientific and Cultural Organization.[5]

With the recognition of UNESCO, batik has not been well covered in terms of legal protection. Batik artworks require regulation to protect people's copyrighted works, by joining Indonesia with the WTO in the TRIPs [6], batik artworks created by the community, especially batik craftsmen, can be protected in the international realm. And in the national sphere, Indonesia itself has ratified it with Law No. 7 of 1994 concerning Ratification of the Agreement Establishing The World Trade Organization, and in terms of Rights. Copyright Indonesia has produced a product of the Copyright Law, namely Law Number 28 of 2014 concerning Copyright which has been through the previous revision of Law Number 19 of 2002.

A. Copyright Protection For Batik Motifs, Patterns And Colorings Based On Copy Rights Act

Copyright is the exclusive right [7] consisting of moral rights and economic rights are rights that are only reserved for the Creator, so that no other party can take advantage of these rights without the permission of the Creator.

Especially for batik art, neither the Berne Convention nor the TRIPs explicitly mention it. However, if you pay more attention to the provisions of Article 2 paragraph (1) of the Berne Convention, which states that The expression "literary and artistic works" shall include every production in the literary, works of drawing, painting, ...works of applied art, ... architecture or science. The convention regulates the scope of works of artistic and literary creativity. It can be argued that batik works of art actually receive international copyright protection. This is based on the consideration that batik artwork contains artistic value in the form of image creation or motifs and color compositions used.

The creation of batik art has been regulated in Article 40 paragraph (1) (j) Copy Rights Act The batik artwork referred to in Copy Rights Act is a contemporary batik motif that is innovative, contemporary, and not traditional. The work is protected because it has artistic value, both in terms of images, patterns, and color compositions.[8] Then the Copy Rights Act has added another motif art word in the article, because in the old Copy Rights Act namely Law Number 19 of 2002 concerning Copyright, there is no other motif art word. Other art motifs referred to are motifs which are the wealth of the Indonesian people found in various regions, such as songket art, ikat motifs, tapis motifs, ulos motifs, and other art motifs that are contemporary, innovative, and continuously developed. Furthermore, copyright protection for the creation of batik art or other motif art

is valid for the life of the creator and continues for 70 (seventy) years after the creator's death.[9]

B. Protections of Geographical Indications Motif, Pattern and Coloring of Batik Based on Trademark Law and Geographical Indication

Geographical indication (hereinafter referred to as GI) is one form of legal protection in intellectual property, geographical indication is a universal concept that shows the origin of an item. Legal protection in GI is given to goods that show the uniqueness of goods from an area. GI is a sign that can be in the form of a name (label/brand) associated with the regional origin of the product, the origin of the product shows the characteristics that arise due to geographical factors of an area.

The legal basis for GI [10] is regulated in Law Number 20 of 2016 concerning Trademark and Geographical Indications, while further regulation is contained in Government Regulation Number 51 of 2007 concerning Geographical Indications and Regulation of the Minister of Law and Human Rights Number 12 of 2019 concerning Geographical Indications.

The regulation explains that "marks used as geographical indications can be in the form of an etiquette or label attached to the goods produced". The definition of name, place, can be derived from the name listed on the geographical map or the name which, due to continuous use, is known as the name of the place of origin of the goods concerned. The protection of geographical indications includes goods produced by nature, agricultural products from handicrafts, or certain other industrial products. The motifs, patterns and colouring of batik can show the uniqueness of the region and have the potential to be protected by geographical indications.

From the cultural aspect, batik is a high-level art. Batik is not just a cloth written using wax (liquid wax). The patterns in batik, he continued, have a philosophy that is very close to the culture of each society.[11] The potential of regional goods/products that have unique characteristics to be protected by geographical indications is a wealth that has added value or economic benefits that can increase welfare and profits for the local community. Essentially, geographical indications are protected because of the influence of geographical factors (natural factors, human factors, or a combination of these two factors) which give the unique characteristics, reputation and quality of goods produced by a particular region/region. Reputation factors, or exclusive characteristics attached to goods that will receive geographic indication protection, provide added value for products produced by certain regions/regions.[12]

C. The Uniqueness of Pamekasan Batik

The style of Madurese batik itself cannot be separated from the influence of foreign cultures such as China. Bright colours are one of the interventions of the Chinese people. Madura batik has a striking colour, such as yellow, red or green. Each colour has its own meaning. For example, red symbolizes the strong and tough character of the Madurese community, green symbolizes the colour of religion where several Islamic kingdoms were founded and developed in Madura, yellow symbolizes the agricultural rice grains of its inhabitants. Madurese batik also has a diverse repertoire of motifs. For example, spearheads, rhombuses and knitting. In fact, there are several of motifs that elevate the various flora and fauna that exist in the daily life of the Madurese community.

The uniqueness of Pamekasan Madura batik lies in its colour, which is mostly bright red in floral or leaf motifs. This classic colour has become the legendary colour trend of Klampar Madura batik. In general, the development of the batik industry in Pamekasan is influenced by batik craftsmen, namely the creativity of batik craftsmen, Madurese batik products that maintain good quality, and the concern of craftsmen to preserve batik. The role of the Department of Industry and Trade in empowering batik in Klampar Village, Proppo District, Pamekasan Regency, Madura has been implemented and some are still in planning.

The results of the search and field observations show that batik in the Pamekasan area is more prone to copyright protection than the protection of geographical indications. Copyright protection considering the many motifs that are contemporary in nature. Meanwhile, the fulfilment of the protection of geographical indications can still be fulfilled, considering that the fulfilment of the requirements for the protection of geographical indications of Pamekasan batik is constrained by several things, including: (1) there is no compilation that mentions or describes the existence of Pamekasan batik motifs as original works from the community for generations ; (2) Pamekasan batik motifs still tend to follow the trend of Pekalongan batik motifs and the personal development and innovation of craftsmen. Local government support is one of the important things in increasing the protection of regional superior potential based on intellectual property rights, as is the case with the Pekalongan Regional Government Regulation Number 6 of 2014 concerning Labeling of Batik Products from Pekalongan, Pasuruan Regional Regulation Number 10 of 2003 concerning Stipulation Typical Pasuruan Batik, as well as the Lasem Regional Government which protects Lasem's batik through Regional Regulations.[13]

4. CONCLUSION

Pamekasan batik can potentially be protected by Copyright if the results of field observations show different motifs, patterns, and coloring from the previous ones, or are contemporary batik made by craftsmen who have high innovation.

Pamekasan batik also has the potential to protect geographical indications, if in the way of making, patterns, motifs and coloring are activities that take place from generation to generation and show the cultural authenticity of the Pamekasan people.

ACKNOWLEDGMENT

Research and membership at the International Conference on Social Science (ICSS) of 2021 can be held with financial assistance from the Faculty of Law, Universitas Trunojoyo, Indonesia.

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- [2] Vicky Febrianto, "Kemendag Perketat Impor Tekstil Motif Batik", *Pojok Media*, Jumat, 31 Juli 2015, <http://www.kemendag.go.id/>, In this regard, the Government issued a tightening of imports of TPT batik and batik motifs as stated in the Minister of Trade Regulation No. 53/M-DAG/PER/7/2015 concerning Provisions on the Import of Batik Textiles and Textile Products and Batik Motif. In the regulation, the regulated commodities are sheet cloth and batik apparel and batik motifs with a limit of at least two colors, where every company that will import batik textiles and batik textiles must have a designation as a Registered Importer of batik textile and textile products. batik motifs as an effort to preserve batik as part of cultural heritage, by inhibiting the import of batik-patterned textiles.
- [3] Triangulation is a technique of checking the validity of data that utilizes something other than the data, for checking purposes or as a comparison against the data. The triangulation technique used is to compare and check the degree of trustworthiness of information obtained through different time and tools with qualitative methods.
- [4] Herry Lisbijanto, *Batik*, Yogyakarta, Graha Ilmu, 2013, pp.1
- [5] Antara News.Com, "Batik Indonesia Resmi Diakui UNESCO", <http://www.antaraneews.com/berita/156389/batik-indonesia-resmi-diakui-unesco>.

- [6] Sentosa Sembiring, *Prosedur dan Tata Cara Memperoleh Hak Kekayaan Intelektual di Bidang Hak Cipta Paten dan Merek*, Bandung, Yrama Widya, 2002, pp. 11.
- [7] Article 1 (1) Copy Rights Act, Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations
- [8] Elucidation of Article 40 paragraph (1) j Copy Rights Act.
- [9] Article 58 paragraph (1) Copy Rights Act.
- [10] The definition of GI is a sign that identifies an area of a member country or region or area within the region regarding the origin of the goods, where the reputation, quality and characteristics of the goods in question are largely determined by these geographical factors.
- [11] Rindia Fanny Kusumaningtyas, “Perlindungan Hak Cipta Atas Motif Batik Sebagai Warisan Budaya Bangsa”, *Jurnal Pandecta*, Volume 6. Nomor 2. Juli 2011, pp. 192.
- [12] Djulaeka, *Perlindungan Hak Kekayaan Intelektual (Perspektif Kajian Kepemilikan HaKI Kolektif-Komunal)*, Setara Pers, 2014, Malang, pp. 78.
- [13] Agus Sigit, “DPRD Rembang Terbitkan Perda Batik Lasem”, http://www.krjogja.com/web/news/read/272416/dprd_rembang_terbitkan_perda_batik_lasem.