

# Local Government and Traditional Cultural Expression Protection

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**Abstract**—Philosophically, traditional cultural expressions as part of community rights that cannot be owned by individuals give responsibility to local governments to protect in the right legal corridor. So that the study of this article focuses on the responsibility of local governments in providing legal protection for traditional cultural expressions in accordance with the mandate of the law. This article is a legal research with a statute approach through tracing the existence of relevant regulations governing the protection of traditional cultural expressions in the Madura region, and the content analysis approach by referring to the essence of traditional cultural expressions as objects of protection. The results of the study in this article indicate that the protection of traditional cultural expressions in the Madura region is still not carried out as mandated by the law that has the potential for the emergence of the use of traditional cultural expressions outside the corridor that is understood by the local community as something sacred.

**Keywords**—protection, traditional culture expressions, local government.

## I. INTRODUCTION

Cultural preservation is a mandate from existing laws and regulations, along with claims from other countries that recognize Indonesian national culture as well as laws and regulations in Law Number 28 of 2014 concerning Copyright related to the protection of traditional cultural expressions (hereinafter referred to as TCEs), that TCEs protection is one or a combination of forms of expression as stated in the explanation of Article 38 (1) which includes: (a) textual verbal, both oral and written, in the form of prose and poetry, in various themes and content of the message, which can in the form of literary or informative narratives; (b) music, including among others, vocal, instrumental, or a combination thereof; (c) motion, including among others, dance; (d) theater, including among others, folk puppet shows and plays; (e) fine art, both two dimensional and three dimensional forms made of various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, etc. or a combination thereof; and (f) traditional ceremonies.

Other arrangements are in Regulation of the Minister of Education and Culture Number 103 of 2013, Regulation of the Minister of Education and Culture Number 010 of 2014 related to the preservation of the Intangible Cultural

Heritage and Presidential Regulation Number 78 of 2007 concerning the Ratification of the Intangible Cultural Heritage Convention. Basically the essence of the above regulation is that the State as the right holder which is communally owned by a region requires every local government and society to preserve the wealth of traditional culture so that it is not extinct and claimed by other countries, as has happened to the claim of Ponorogo *reog*, song '*rasa sayange*' belongs to Malaysian culture, *Pedet* dance belongs to Singapore. The existence of various traditional cultural expressions that have the potential to become non-material cultural assets and inheritance nationally has been recognized as the right of communal wealth and must be preserved, both through recording, protection and sustainable use, so that it is not extinct and can maintain the values and meaning of cultural elements.

Madura Island with an area of approximately 5,250 km<sup>2</sup> and a population of 4 (four) million people covering 4 (four) districts, including Bangkalan, Sampang, Pamekasan, and Sumenep. Madurese are known to have a distinctive, unique, stereotypical, and stigmatizing culture. Typical terms indicate that ethnic Madurese entities have cultural specificities that are not similar to the ethnography of other ethnic communities. Madura has the potential of cultural values that still need to be preserved and developed. Potential of traditional cultural expressions in 4 (four) regencies in Madura which were recorded and not registered as part of the non-cultural heritage, including: From Bangkalan District there is a *tera bulan* dance, *moang sangkal*, *nyello aeng*, *reng majangan*, fishing dance, *rokat* dance. Sampang regency has *tunri mesri* drama, while from Pamekasan there are *Tandhuk Majeng* and *Melateh Pote* dance, *Gethak* mask dance, and *Rondhing* dance; and from Sumenep Regency there is *Muang Sangkal* dance. Preservation of intangible cultural heritage is an inseparable part of the existence of local wisdom in the area. To date only 9 (nine) national cultural heritages are recognized by UNESCO, including *wayang*, *keris*, *batik*, *angklung*, *Saman dance*, *noken* (Papua multifunctional knit bag), *gamelan*, *sekaten* and spring rolls. The tendency of the response from the Government and the general public to occur if there are claims from other countries, then at that time an area felt how important the protection of TCEs wealth was. Concern and active participation of the community, as well as local

cultural institutions and support from local governments play an important role in providing TCEs protection.

A total of 2562 (two thousand five hundred and sixty-two) non-cultural heritage items recorded on the page [1], but only a few regions have provided legal protection through regional regulations, including The city of Bandung protects through the Bandung City Local Regulation Number 09 of 2012 concerning the Use, Maintenance and Development of Language, Literature and Literacy. Jambi City TCEs protection is carried out through the Jambi City Regional Regulation Number 4 of 2014 Concerning Tanah Melayu Customary Institutions Select *Pusako Batuah* Jambi City, while the West Java Province Region through West Java Regional Regulation Number 16 of 2014 concerning Amendments to the Proposed Local West Java Regulation Number 7 of 2003 concerning Management of archeology, welfare, traditional values and museums. One of the Madura regions that is still trying to preserve and maintain Madurese Language in the special program '*Bherung Kopi*' which is Bangkalan Regency [2].

Preserving TCEs as an intangible cultural heritage is a means to strengthen national identity, dignity, and foster national pride and strengthen national unity in the framework of the Unitary Republic of Indonesia. Lack of preservation of non-traditional traditional cultural arts (traditions and oral expressions; performing arts; community customs, rites, and celebrations; knowledge and behavioral habits concerning nature and the universe; and / or skills and skills of traditional crafts) in regions Madura region will facilitate ownership claims from other countries as a cultural resource. For this reason, this article examines the existence of TCEs as a non-cultural property in the Madura region and the policy of the Regional Government in providing adequate protection as mandated by the law.

## II. RESEARCH METHODS

The research in this article is a legal research conducted with a statute approach, by conducting a search and review of the content of laws and regulations related to TCEs as primary legal material, as well as tracking other written documents as secondary legal material, so that they will be known to exist. or no regional regulations governing the protection of TCEs. Analysis of legal material is carried out qualitatively to answer legal issues related to the existence of TCEs protection arrangements in the area, especially the Madura Region.

## III. RESULTS AND DISCUSSION

National preservation of non-material cultural heritage is very much needed to maintain the absence of cultural

claims from Indonesia from other countries. Obligations of local and community governments to conserve are clearly regulated in related regulations, however not all regions are able to preserve (document, protect or utilize) properly, so that cultural concerns are not extinct and not maintained to be the reason for the importance of this research. The desire that non-cultural assets belonging to the Madurese people can be established as non-material cultural heritage nationally is part of the primacy of this research, so as a supporting step there is a need for regional regulations that provide legal protection and security related to non-material cultural heritage in the area to protect and utilize wealth. or the cultural heritage possessed by the region is decreasing well. Some cases that have occurred are enough to provide valuable lessons on how the richness of Indonesian culture was once recognized by the Malaysian State, for example, *Reog Ponorogo*, the song *Rasa Sayange*, and this is not expected to happen in the future.

At present, what the government needs to pay attention to is that heritage conservation issues must be carried out immediately, remembering simultaneously in the European region documenting cultural heritage initiated by European funding for research projects conducted by academics from Utrecht University to raise the issue of magic images as part of cultural heritage. and can not be separated from the use of references in the colonial era through the project 'A Million Pictures: Magic Lantern Slide Heritage project as Artefacts in the Common European History of Learning [3]. In this regard, this research is urgently needed so that it can produce legal protection for TCEs and the establishment of intangible cultural heritage in the nationally recognized Madura region even maybe international.

### A. *Traditional Culture Expression in the Perspective of the Approach to the Protection of Intellectual Property Rights*

The United Nations Education, Science and Culture Organization (UNESCO) Convention on Protection and Promotion of Diversity of Cultural Expressions (2005) Art. 4 (3) states that the cultural expressions as "the expressions that result from the creativity of individuals, groups and societies, and that have cultural content." TCEs is seen as an integral part of culture and social identity, indigenous heritage and local communities, reflecting core values and beliefs. Etymologically, culture is a product that is produced through the results of cultivated thought and human inspiration, so that in some cases it often disappears even extinct because there is no protection or utilization process. Anthropologists say the keywords of this phenomenon are "sharing and learning". As an anthropologist, since the intangible culture is destined to be lost or changed, it is meaningless to try to fix and preserve intangible culture. In this sense, there exists no intangible cultural heritage. The challenges of local governments to protect and preserve the potential of TCEs as a cultural heritage are not good objects,

starting with mapping, documenting, and utilizing the younger generation and can be a means of learning products or displaying it in official or non-official forums, such as the Saman dance from Aceh become an icon of every official activity held in the area of the land of Aceh.

The phrase Rachel Faye Giraud, that "... human beings have been tried to fix, spread and preserve their intangible cultures by handing them over to generations or recording them in various ways, for example, oral and gesture teachings, material expressions such as manuscripts, books, art objects or monuments and sites, or physical expressions, such as music, dance, drama and other performing arts. All these ways should be understood as the manifestation of efforts to hand intangible culture down to the posterity" [4]. Thoyibi through Boedhihartono states that cultural art is an embodiment of a sense of art that is entrenched and included in aspects culture, can be felt by many people in the span of the history of human civilization [5].

The diversity of TCEs potential in Madura, especially in Bangkalan Regency has a variety of types, ranging from dance, batik art to *Kerapan Sapi*, still need protection and care from the local government [6]. The importance of preserving the potential of TCEs as an intangible cultural heritage in the long term can be used as a means of tourism so as to improve the regional economy and the welfare of regional communities, as examples in some regions refer to "ethno-businesses" policies and cultural tourism. Madura has a unique culture that has the potential to be preserved, among others: batik art, dance, hand-crafted art or traditions that have developed downhill. Government policy, especially local government, is the most important thing in an effort to preserve intangible cultural heritage in the region, as well as an effort to implement relevant laws and conventions. Furthermore Kirshenblatt-Gimblett stated that "however much of this is to build the capacity for something new, including an internationally agreed-upon concept of heritage, cultural inventories, cultural policies, documentation, archives, research institutions, and the likes [7].

Protection carried out either through documentation or recording will facilitate tracking down parts of inheritance down the pride of the region and utilization of economic value by making it as a regional cultural tourism object in addition to following up on Presidential Regulation No.78 of 2007 concerning Ratification of the Intangible Cultural Heritage Protection Convention (Convention for the Safeguarding of the Intangible Cultural Heritage) and mandate of Law Number 28 of 2014 concerning Copyright related to the protection of TCEs, Regulation of the Minister of Education and Culture Number 103 of 2013, Regulation of the Minister of Education and Culture Number 010 of 2014 related to the preservation of Intangible Cultural Heritage.

In the perspective of the approach through the IPR system, TCEs protection can be carried out through 2 (two) means of approach, namely through (1) positive protection, and (2) defensive protection. Positive Protection is the granting of rights that empower people to promote their TCEs, control the use of third parties and benefit from their commercial exploitation. While defensive protection, is designed to prevent the recognition or utilization of TCEs illegally and as a means to maintain the right to TCEs recognition by third parties. Indirect TCEs protection can be done through the preparation of databases containing the potential and communal ownership of TCEs in each region or through a special policy that provides protection for illegal recognition.

Lei Sheng says that "the traditional industrial arts brand strategy, develop corporate brands and set up regional brands and cultivate enterprises which own obvious strength in the trade and develop new products with independent intellectual property rights" [8].

TCEs protection through the IPR regime is possible if examined from the diversity of types of TCEs owned by each region. Search and in-depth review will provide clarity on the type of protection that will be given to the potential of TCEs in each region, in addition to local product policies through Regional Regulations, as has been done by the City of Bandung and West Java Province. The need for protection for all the Indonesian people according to Thomas Aquinas is the principle of cumulative justice, which provides protection to all citizens of the nation.

#### *B. Preservation of Cultural Property No Substance*

Philosophically the recognition and protection of intangible cultural heritage is an inseparable part of efforts to strengthen the character and identity of the community and provide welfare for the local people who succeed in preserving it well. The existence of a variety of cultures (both in the form of objects and non-objects) around the community is often not seen as something of value or even considered not something that needs to be protected or preserved. The inherent essence of cultural heritage, in particular non-intangible culture is the existence of 2 (two) dimensions, namely the dimensions of the actors and dimensions of cultural work. As an inheritance, of course the dimension of the perpetrator can be interpreted as how the actor or society is able to preserve the existing cultural work to be maintained and protected, while the dimensions of cultural work are part of the work that has artistic value or behavior and habits that are specifically characterized as those that have been built decline and develop in society. From the perspective of the art element, the new Copyright Act in 2014 has provided a platform to protect as a right inherent in the communal nature and held by the State.

However, the 2014 Copyright Act, as well as the previous Copyright Act, has not provided clarity regarding

TCEs arrangements. The lack of clarity in formulating the provisions of the law creates a variety of interpretations, especially related to TCEs protection, among others: the formulation of article provisions is still unclear, does not distinguish TCEs and non-TCEs related arrangements that are protected by the Copyright regime and the authorized institution as for the determination of TCEs protection and only state the responsibility of the State.

From the formulation in this Copyright Law related to state responsibility, the communal ownership held by the State indirectly refers to the recognition of the existence of government in areas where the potential for cultural property is not present and developed by the community. As the expression of Anita Vaivade, that "there are two general and fundamental poles that have been important to conceptualizing culture in law: person and property. Symbolically we might put these concepts on equal grounds having both a substantial role for perceiving culture - person as creator, as owner; an alienated human expression property or appropriated part of the objective world [9].

The same thing was expressed by Ken Taylor that "The concept of place links integral components together and puts them into context with their cultural and intellectual background of which they are a product. Every country now has national legislation to protect its heritage, but not all have a guiding methodology for effective implementation of conservation practices. Therefore the existence of the region indirectly influences the existence of a culture and the influence of the legislature from the government is an important part in the effort to provide legal protection. International recognition through UNESCO has given a signal that in the existence of culture as a nation's assets must be protected and preserved through a variety of adequate legal means so that there are no claims from other countries. The mandate of the regulation clearly states that the Determination of the Indonesian Intangible Cultural Heritage aims: a. preserving Indonesia's Intangible Cultural Heritage; b. improve the dignity of the nation; c. strengthen the character, identity and personality of the nation; d. promoting Indonesia's Intangible Cultural Heritage to the wider community; and e. improve people's welfare. Regions have potential to be traced from the existence of communities or cultural communities that give attention or preserve without regard to efforts to collect data / records in accordance with the mandate of the relevant regulations.

However, the concern of the local government, related institutions and the community is still not fully maximized, even the tendency to understand misguidedly, on the other hand the existence of local cultural institutions that can represent the community still seems "suspended" because they are powerless to contribute to the preservation of non-cultural work object. The limited access to government programs and the lack of funding are problems that are

always considered dominant for the region, and the lack of adequate cultural houses has also made the lack of protection of cultural potential in the region, especially Madura. While the Copyright Act clearly states the roles and responsibilities of the State, as stipulated in Article 38, that "(1) Copyright on traditional cultural expressions is held by the State; (2) The State is obliged to inventory, maintain, and maintain traditional cultural expressions as referred to in paragraph (1) and Paragraph (3) states that "The use of traditional cultural expressions as referred to in paragraph (1) must pay attention to the values that live in the community of its development.

In Regulation of the Minister of Education and Culture Number 10 of 2014 specifically regulates Tradition Preservation Guidelines Article 5 further explains that

"(1) The provincial government and the district / city regional government carry out the preservation of Tradition in its working area. (2) Forms of Preservation of Traditions as referred to in paragraph (1) include: a. protection; b. development; and c. utilization; (3) Preservation of Tradition as referred to in paragraph (1) must pay attention to: a. religious values and beliefs; b. customs, cultural values, norms, ethics and customary law; c. the nature of secrecy and the sanctity of certain cultural elements that are maintained by the community; d. public interest, community interests, and group interests in society; e. national identity; f. benefit for the community; and g. legislation."

Article 6 states that: "(1) District / city regional governments are obliged to protect regional traditions that develop in people's lives in their working areas. (2) Tradition protection is carried out through: a. record, collect, process, and organize information systems; b. registration as communal intellectual property rights; c. examine the value of tradition and national character; and d. enforcing legislation".

As well as Article 7

- (1) Provincial governments are obliged to protect regional traditions that develop in people's lives in their working areas.
- (2) Tradition protection is carried out through: a. arranging information systems from district / city regional governments; b. compile registration as communal intellectual property rights; c. examine the traditional values and character of the nation across districts / cities; d. documenting the results of the study of the value of tradition and national character of the district / city; and e. enforcing laws and regulations.

Regulation of the Minister of Education and Culture No. 106 of 2013 concerning Cultural Heritage Not Things mention in Article 11, that:

- (1) The Government and Regional Government are obliged to guarantee the Preservation of the Intangible Cultural Heritage of Indonesia through a program of awareness raising of Preservation.
- (2) The Government and Regional Government have an action plan in preserving the Intangible Cultural Heritage of Indonesia.

Article 12, that:

- (1) Every person and customary law community plays an active role in protecting Indonesia's intangible cultural heritage through registration.
- (2) Protection as referred to in paragraph (1) is carried out in a coordinated manner between the Government, Regional Government, Everyone, and Customary Law Society.
- (3) The Government and Regional Government carry out Protection by: a. encourage participation for the Preservation of Indonesia's Intangible Cultural Heritage; b. help facilitate the development of human resources and technical guidance in the Conservation of the Intangible Cultural Heritage of Indonesia; and c. giving awards to any Customary Law People and / or Society who play an active role in protecting Indonesia's Intangible Cultural Heritage.
- (4) Protection of Indonesia's Intangible Cultural Heritage is prioritized to maintain and save its existence.

The role of the government in this understanding is a form of developing the functions and roles of the government that have been outlined in the country's legislation. The government is understood as an organ that runs the state government. The role and function of this government arises from the authority attached to government institutions as state tools. The Copyright Act 2014 and the Regulation clearly regulate the responsibility of the State, especially the local government to carry out conservation, both documenting, protecting and utilizing the potential of TCEs as an intangible cultural heritage in its territory. Because after all a great nation is a nation that respects the work of the nation's children.

As Peter A. Minang And Michael K. Mccall said, "Local knowledge has some significant characteristics: it is a spatial information system that develops from the close relationship between local people and their land and natural

resources; • members of the community are expert repositories for different categories of data, according to their experience and social status, e.g. what land is used for what purposes and when; • originally, the local community 'owns' the knowledge, • it is a scientific' system in that it consists of classification structures and particular methods of methodology [10]. Traditional and indigenous communities have long sought recognition and respect for their traditions and expressions that are part of a living culture, reflecting a community's history, cultural and social identity, values, and has become a tradition from generation to generation [11]

In reality, the attempt to fully imitate the external model will not succeed if it does not take into account the peculiarities of an area [12]. Culture is commonly recognized as the way of individual or family life such as food, clothing and dwelling, social activities, including politics and economics, humanities and science, creative activities for arts and crafts, and for performing arts, manners and customs, and various kinds of beliefs and religions.

#### IV. CONCLUSION

Madura has the potential to TCEs that can obtain protection. The role of the State through the Local Government, especially in the Madura region has not maximally provided juridical protection.

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