

# Traditional Cultural Expression as an Embodiment of Indigenous Communities and Regional Identity (Semarang Indonesia Case)

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## Traditional Cultural Expression as an Embodiment of Indigenous Communities and Regional Identity (Semarang Indonesia Case)

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### ABSTRACT

Traditional Cultural Expressions include forms of Communal Intellectual Property, which can become an identity for an indigenous people. Traditional Cultural Expressions have a potential for Intellectual Property protection which is beneficial for the economy of indigenous peoples. This study aims to find out and analyze the existence of Traditional Cultural Expressions as the embodiment of indigenous peoples and regional identity in the Semarang Residency and the influence of its development on the regional economy in the Semarang Residency. The results of this study indicate that a Traditional Cultural Expression in the Residency of Semarang has



shown its existence in terms of its art and traditional culture which has become an identity that differentiates it from arts/culture in other areas, so that it has the potential to improve the economy in the Residency of Semarang. In view of the Regulations to protect <sup>13</sup> Traditional Cultural Expressions it is appropriate to be able to register Traditional Cultural Expressions as Intellectual Property. However, there are still obstacles in implementing the law, such as the lack of activeness of the Government in providing socialization and <sup>42</sup> coordination of data collection and identification to protect <sup>7</sup> Traditional Cultural Expressions with Communal Intellectual Property and the lack of role and knowledge of the community in identifying <sup>7</sup> traditional arts and culture in obtaining protection by way of register Intellectual Property, especially Copyrights that have existed for generations.

**Keywords:** Traditional Cultural Expressions, Indigenous Peoples, Regional Identity, Communal Intellectual Property

## INTRODUCTION

<sup>28</sup> The territory of the Republic of Indonesia is an expansive and diverse country, rich in extraordinary natural resources from the fisheries and agriculture sectors. Additionally, Indonesia's cultural wealth is a valuable asset that contributes to the nation's economy. Culture, as an inherent form of wealth, belongs not only to the Indonesian state but also to its people, permeating throughout the entire country. However, the extensive range of ethnic groups and cultures across Indonesia's territory makes the development of a unified culture

susceptible to infringements, necessitating the protection of this cultural heritage, including the cultural protection in the context of intellectual property rights.<sup>1</sup>

Intellectual Property Rights or IPR, as a right that is made and given to someone to respect and value the work of the human brain, as a material right, the right to an object that originates from the work of the brain, the work of ratios, the work of the work of human ratios reason, so that the owner of said right can enjoy economically the

<sup>1</sup> Culture protection under Intellectual Property Rights (IPR) is essential to safeguard the cultural heritage and traditional knowledge of a nation. IPR provides legal mechanisms and frameworks that can help protect and preserve cultural expressions, traditional practices, and indigenous knowledge from unauthorized use, misappropriation, and exploitation. One of the main forms of IPR that contributes to cultural protection is copyright law. Copyright allows creators, artists, and cultural practitioners to have exclusive rights over their original works, such as music, literature, visual arts, and traditional expressions. By securing copyright protection, cultural creators can control the use, reproduction, and dissemination of their cultural works, ensuring that they are properly attributed and respected. See Karjala, Dennis S., and Robert Kirkwood Paterson. "Looking Beyond Intellectual Property in Resolving Protection of Intangible Cultural Heritage of Indigenous Peoples." *Cardozo Journal of International and Comparative Law* 11 (2003): 633-670; OseiTutu, J. Janewa. "Emerging Scholars Series: A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law." *Marquette Intellectual Property Law Review* 15, No. 1 (2011): 147-215; Irawan, Candra. "Protection of traditional knowledge: A perspective on Intellectual Property Law in Indonesia." *The Journal of World Intellectual Property* 20, No. 1-2 (2017): 57-67. In the further context, the protection is also on digital format, in which that one of the key aspects of cultural protection in the digital format is copyright law. Copyright grants creator exclusive rights over their original works, including those in digital form. In Indonesia, the Copyright Law governs the protection of digital content, including literary, artistic, and musical works. This law safeguards digital cultural expressions such as digital artworks, e-books, digital music, and audiovisual content from unauthorized reproduction, distribution, and public performance. See also Setiawan, Andry. "Dissemination of Copyright Law in Digital Products in Semarang City." *Journal of Private and Commercial Law* 2, No. 1 (2018): 47-54. <https://doi.org/10.15294/jpcl.v2i1.14217>; Fuadi, M. Zulvi Romzul Huda, and Ayon Diniyanto. "Written Quotations and Its Legal Protection: How Indonesian Law Reform on Copyrights Law?." *Journal of Law and Legal Reform* 3, No. 1 (2022): 1-16. <https://doi.org/10.15294/jllr.v3i1.53630>; Setiawan, Andry, Rindia Fanny Kusumaningtyas, and Ivan Bhakti Yudistira. "Diseminasi Hukum Hak Cipta Pada Produk Digital Di Kota Semarang". *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal Legal Community Engagement)* JPHI 1, No. 1 (2018): 53-66. <https://doi.org/10.15294/jphi.v1i01.27279>.



results of an intellectual creativity that he creates. Protection of IPR is carried out to respect the intellectual results of its creators, including the results of traditional creativity owned by residents of a region which are better known as Traditional Cultural Expressions.

The law in the field of intellectual property includes communal rights and personal rights. Traditional Cultural Expressions are a form of thoughts, ideas, and habits that grow and develop in people's lives; therefore, traditional cultural expressions are included in communal intellectual property. Intellectual property produced by indigenous or traditional communities includes a number of things ranging from traditional knowledge systems, works of art, literary works, philosophy, history, languages, notes on the development of art, customary laws, medicines, batik, folk games, dances, and traditional architecture. Communal intellectual property rights are jointly or communally owned by indigenous communities which are structured, guarded, and maintained by tradition.

Traditional Cultural Expressions have enormous cultural value as a form of cultural heritage that continues to develop even in modern societies around the world. The nature of the Traditional Cultural Expression itself is "*religio magis agraris ruralis*" which means that it has developed and declined from generation to generation and is not a novelty, only in the form of repetition, carried out communally by certain communities and not always meaningful in culture. industry. Traditional culture is one of the things that cannot be separated from people's lives, this is because culture is very inherent in everyone, and culture is something that has been passed down from generation to generation, and is directly related to the social life of the community. Even from the time humans are in the womb until

they die, there are still influences from culture, even to the funeral ceremony.<sup>2</sup>

In recent times, there has been an increasing focus on international intellectual property laws aimed at protecting, promoting, and securing Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). These legal frameworks are designed to ensure that indigenous communities, who are directly impacted by these forms of knowledge and expressions, can derive the intended benefits from them and prevent their misappropriation or distortion. The introduction of these laws demonstrates a growing recognition of the value and importance of TK and TCEs, which are deeply rooted in the cultural heritage of indigenous communities worldwide. These legal measures aim to safeguard the rights of these communities, enabling them to have greater control over their traditional knowledge and cultural expressions. Furthermore, these legal frameworks address the issue of misappropriation or distortion of TK and TCEs by establishing mechanisms to prevent unauthorized use, improper commercial exploitation, or disrespectful misrepresentation. They promote respect for the cultural significance and integrity of indigenous knowledge and expressions, fostering a greater understanding and appreciation of diverse cultural traditions.<sup>3</sup>

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- <sup>2</sup> Sakul, Priscilia. "Perlindungan Hukum Terhadap Hak Cipta Warisan Budaya Batik Bangsa Indonesia: Ditinjau dari Perspektif Hukum Internasional." *Lex Privatum* 8, No. 3 (2020): 184-192; Asri, Dyah Permata Budi. "Implementasi Pasal 38 ayat (1) Undang-Undang Nomor 28 Tahun 2014 terhadap Ekspresi Budaya Tradisional di Kabupaten Sleman." *Jurnal Hukum Ius Quia Iustum* 23, No. 4 (2016): 612-632; Widyanti, Yenny Eta. "The legal instrument of protecting traditional cultural expressions ownership in intellectual property rights law." *Technium Social Sciences Journal* 21, No. 1 (2021): 492-501.
- <sup>3</sup> Mogos, Abiyot. "Revitalizing Intellectual Property Right Protection for Traditional Knowledge and Cultural Expression in Ethiopia: A Lesson from Kenya." *Oromia Law Journal* 10, No. 1 (2021): 120-159.

Several countries around Asia have traditional cultural expressions that are protected by intellectual property laws. As a comparison between the cultural expression's protection owned by Indonesia and the diversity of cultural expressions protection that exist in the Asian region, in the following, several intellectual property protection laws are presented in the Southeast Asia region, from this it can be seen that countries outside Indonesia are also trying to protect their cultural expressions as a variety of intellectual property.<sup>4</sup> These are the types of indigenous and other examples when discussing this, refer to traditional and cultural communities traditional creativity and cultural expression needs more intellectual property protection.<sup>5</sup>

- 1) Singapore is a signatory to the UNESCO Convention for the Protection of Cultural Heritage and the World Trade Organization's TRIPS Agreement and has been a member of WIPO since 1990. Singapore's state copyright law is the Intellectual Property Office of Singapore (IPOS), which was established on 1 April 2001 under the jurisdiction of the Singapore government. IPOS provides the infrastructure to advise and administer intellectual property (IP) law, raise awareness of intellectual property and promote intellectual property development in Singapore. One of the copyrights regulated by the IPOS Copyright Act protects works such as novels, computer

<sup>4</sup> Putri, Ria Wierma, et al. "The Legal Protection Towards Traditional Clothes: Intellectual Property Regimes in ASEAN." *Substantive Justice International Journal of Law* 5, No. 1 (2022): 49-68.

<sup>5</sup> Ibe, Ikenna U., and Chukwubuike I. Obianyo. "Traditional Knowledge, Traditional Cultural Expression and Intellectual Property in Nigeria." *De Juriscope Law Journal* 1, No. 2 (2021): 124-140; Santyaningtyas, Ayu Citra, and Mahmood Zuhdi Mohd Noor. "Preserving of traditional culture expression in Indonesia." *Asian Social Science* 12, No. 7 (2016): 59-65; Purwandoko, Prasetyo Hadi, Adi Sulistiyono, and M. Hawin. "The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 regarding Copyright." *Indonesian Journal of International Law* 18, No. 4 (2021): 543-570.

<sup>2</sup> programs, plays, music, films, photographs and paintings. Copyright owners have the right to <sup>2</sup> control the commercial use and exploitation of their works and to prevent others from copying, publishing, performing, publicly communicating, or adapting their works. However, Singapore does not yet have specific legislation governing TCE or cultural protection.<sup>6</sup>

- 2) Although Myanmar is not a signatory to the Berne Convention, it is a signatory to the World Trade Organization's <sup>4</sup> TRIPS Agreement. Burma's basic copyright laws are the Copyright Act 1911 (promulgated in 1914 and sometimes known as the 1914 Act) and the Trade Marks Act 1889. never came into force. It is also regulated by Law No. 15/2009 of Pyidaungsu Hluttaw. However, according to Law No. 15 of 2019 on Copyright, Myanmar has so far, no laws or regulations related to TCE or other cultural protection measures.<sup>7</sup>
- 3) The Philippines has the Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371) and the Copyright Act (Republic Act No. 8293) to protect the rights of indigenous cultural communities. However, the law was silent <sup>18</sup> on the protection of the traditional cultural expressions of the community. Additionally, the Philippines has Regulation 6 of IPOPHL-NCIP Joint Administrative Order No. 1 <sup>24</sup> of 2016 (or Regulations on Application and Registration of Intellectual Property Rights to Protect ICSPs of Indigenous Peoples and Indigenous Cultural Communities and rules) are also available. which provides TCE

<sup>106</sup>  
<sup>6</sup> Foo, Gavin, and Edmund Chew. "Singapore's biggest copyright reform in 30 years." *WIPO MAGAZINE* 4 (2019): 15-19; Cl <sup>64</sup>, Kit B. "The Economic Contribution of Copyright-Based Industries in Singapore." *Review of Economic Research on Copyright Issues* 2, No. 2 (2005): 127-148.

<sup>7</sup> Aung, May Thida. "Limitations of the Myanmar Government in Reforming Copyright Law to Meet Local Author's Concerns and the Standard of Article 15 (c) of ICESCR." *Thammasat Review* 21, No. 2 (2018): 91-110.

protection. The Scope of Protection of the Regulation is a mandatory disclosure when registering intellectual property rights and a statement of compliance with the free and prior informed consent requirement. If registration is not required, attribution is required when IP is published.<sup>8</sup>

- 4) Malaysia is a federation of 13 states and 3 federal states in Southeast Asia. On 16 September 1963, Singapore, Sarawak, North Borneo, or the area now known as Sabah, was converted into a newly formed federal state called Malaysia in accordance with United Nations General Assembly Resolution 1514 in the process of decolonization. became. Malaysia is also considered one of the 18 countries with the highest biodiversity in the world. Malaysians make up the majority of Malaysia's population. There are also sizeable Chinese-Malaysian and Indian-Malaysian communities. The three main ethnic groups in Malaysia are Malay, Chinese and Indian. Malaysian TCE example: Carving, weaving, silversmithing, batik, songket, East Malaysia is famous for its wooden masks, sumazaw dance and limbai dance.<sup>9</sup>

Under Article 31(1) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), indigenous peoples have the right to preserve, manage, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions to preserve, manage and protect the intellectual property of this

<sup>71</sup> Fitschen, Thomas. "Protecting indigenous peoples and communities in the Philippines: the indigenous peoples rights act of 1997." *International Journal of Cultural Property* 7, No. 2 (1998): 526-537.

<sup>9</sup> Mukhtar, Sohaib, Zinatul Ashiqin Zainol, and Sufian Jusoh. "Enforcement of trademark law in Malaysia." *Pertanika Journal of Social Sciences and Humanities* 26, No. 3 (2018): 1775-1796.



heritage.<sup>10</sup> Indonesia is rich in traditional culture such as TK and TCE. As of August 2020, the Intellectual Property Directorate has recorded at least 794 TCEs and 135 TKs. Indonesia is susceptible to illegal exploitation of TK and TCE by irresponsible foreigners and local actors, often to disproportionate harm to Adat society. However, as there is no legal basis to protect TK and TCE, the government has not fully protected these TK and TCE yet. More specifically, the two main obstacles are the lack of TK and TCE protection in Indonesia, regulatory and practical factors.<sup>11</sup>

In Indonesia, the protection of Traditional Cultural Expressions is regulated in the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright which is one of the regimes of Intellectual Property law. Article 38 of the law is one of the articles that specifically regulates Traditional Cultural Expressions, where in that article it is stated that the copyright holder for Traditional Cultural Expressions is held by the State. But basically, a Traditional Cultural Expression develops and is owned by a group of people who are in a certain area, or better known as indigenous peoples.

Traditional Cultural Expressions (TCEs) are a defining characteristic of customary law communities, as they encompass various expressive works derived from traditional culture. These expressions encapsulate the distinct cultural heritage identities and local wisdom values, thereby serving as reflections of accumulated knowledge and skills rooted in fundamental beliefs and values. In this

<sup>10</sup> Musiza, Charlene. "Weaving gender in open collaborative innovation, traditional cultural expressions, and intellectual property: The case of the Tonga baskets of Zambia." *International Journal of Cultural Property* 29, No. 1 (2022): 45-62.

<sup>11</sup> Kasih, Desak Putu Dewi, et al. "The exploitation of indigenous communities by commercial actors: Traditional knowledge and traditional cultural expression." *Journal of Ethnic and Cultural Studies* 8, No. 4 (2021): 91-108; Kasih, Desak Putu Dewi, et al. "Policies Concerning Sacred and Open Traditional Cultural Expressions: Tourism and Creative Economy in Bali Context." *Jatiswara* 38, No. 1 (2023): 14-27. <https://doi.org/10.29303/jtsw.v38i1.475>



context, TCEs assume a significant role as they contribute to the social identity and serve as a tangible manifestation of cultural expression within a society.

Indonesia, renowned for its diverse indigenous ethnic groups, is intrinsically tied to its rich cultural heritage. Within the Semarang Residency area, comprising Semarang City, Semarang Regency, Salatiga City, Kendal Regency, Demak Regency, and Grobogan Regency, an abundance of traditional cultural expressions can be found. Among these, Gambang Semarang holds a significant place as an entertainment form deeply rooted in the Indonesian people's enduring traditional culture. Passed down through generations, Gambang Semarang represents a blend of music, vocals, dance, and comedy, resulting from cultural acculturation. With the Residency of Semarang embracing a multitude of cultures, it becomes imperative to protect and preserve these cultural expressions, commonly referred to as Traditional Cultural Expressions. Such safeguarding is crucial for maintaining social identities and ensuring that cultural expressions continue to flourish within society, while mitigating potential conflicts arising from competing claims over cultural heritage among diverse ethnic groups and even nations.<sup>12</sup>

By protecting and valuing Traditional Cultural Expressions, the unique social fabric of the Residency of Semarang can be upheld. This involves recognizing and respecting the intellectual property rights associated with Gambang Semarang and other cultural expressions, while simultaneously fostering cultural appreciation and understanding. Such measures aim to prevent misappropriation,

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<sup>12</sup> Chasanah, Noor. "Eksistensi Gambang Semarang dan Perlindungan Hukumnya Menurut Undang-Undang Hak Cipta." *Law Reform* 4, No. 2 (2009): 61-80; Njatrijani, Rinitami. "Kearifan Lokal dalam Perspektif Budaya Kota Semarang." *Gema Keadilan* 5, No. 1 (2018): 16-31; Raharjo, Eko, and Utami Arsih. "Gambang Semarang Music as a Cultural Identity of Semarangs Community." *2nd International Conference on Arts and Culture (ICONARC 2018)*. Atlantis Press, 2019.

promote cultural diversity, and encourage collaboration and dialogue among different communities. In doing so, the preservation of Traditional Cultural Expressions within the Semarang Residency area not only safeguards the heritage of local communities but also contributes to the broader tapestry of Indonesian culture. By cherishing and protecting cultural expressions, conflicts arising from competing claims can be averted, fostering an environment of mutual respect, harmony, and cultural enrichment.<sup>13</sup>

With the fact that a Traditional Cultural Expression can become an identity for an indigenous people, and with the low legal understanding of indigenous peoples regarding their Traditional Cultural Expressions and their legal protection, especially for people in the Semarang Residency area, it is necessary to study more deeply about how can a traditional cultural expression be a manifestation of indigenous peoples and regional identity, and what is the government's role in traditional cultural expressions in the Semarang Residency area.

This study adopts a sociological juridical approach, which is a legal research method that explores the interplay between law and other social institutions. It focuses on understanding law in action through non-doctrinal and empirical scientific investigation. In conducting this research, the researchers not only relied on the provisions of the law governing Traditional Cultural Expressions as the Embodiment of Indigenous Peoples and the Identity of the Semarang Residency area but also engaged directly with the field to observe the actual occurrences. By utilizing this approach, the study

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<sup>13</sup> Roisah, Kholis. "Perlindungan Ekspresi Budaya Tradisional dalam Sistem Hukum Kekayaan Intelektual." *Masalah-Masalah Hukum* 43, No. 3 (2014): 372-379; Aulia, M. Zulfa. "Perlindungan Hukum Ekspresi Kreatif Manusia: Telaah terhadap Perlindungan Hak Kekayaan Intelektual dan Ekspresi Budaya Tradisional." *Jurnal Hukum Ius Quia Iustum* 14, No. 3 (2007); Santyani, Ayas, Ayu Citra. "Strategi Perlindungan Ekspresi Budaya Tradisional di Indonesia." *Jurnal Heritage* 8, No. 2 (2020): 107-113.

aims to gather accurate and authentic data by directly interacting with informants. This direct engagement with individuals involved in traditional cultural expressions ensures firsthand knowledge and insights, allowing for a comprehensive understanding of the lived experiences and perspectives of indigenous communities in the Semarang Residency area.

This sociological juridical approach recognizes the complexity of the relationship between law and society, acknowledging that legal provisions alone may not fully capture the multifaceted aspects of traditional cultural expressions and their role in indigenous identity. By combining legal analysis with on-the-ground observations and interviews, the research seeks to provide a more nuanced understanding of the dynamics, challenges, and opportunities surrounding the protection and promotion of traditional cultural expressions in the Semarang Residency area. The utilization of this approach not only enhances the credibility and reliability of the research findings but also contributes to bridging the gap between legal theory and the practical realities faced by indigenous communities. The study aims to generate insights that can inform policy development, legal reforms, and community engagement strategies, thereby fostering a more inclusive and effective framework for the preservation and appreciation of traditional cultural expressions in the Semarang Residency area.

The focus of research is basically a problem originating from research experience being able to obtain it through knowledge from scientific literature or other literature. The focus of qualitative research is actually itself. In accordance with the subject matter, what is the center of attention in this research is how Traditional Cultural Expressions can be used as the embodiment of indigenous peoples and the identity of a region in the Residency of Semarang.

To gather relevant information on <sup>21</sup> traditional cultural expressions as the embodiment of indigenous peoples and the identity of the Semarang Residency, the authors of this study selected key research sites. These included <sup>33</sup> the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia, which is the government agency responsible for accepting registrations of intellectual property. Additionally, the Central Java Regional Office of the Ministry of Law and Human Rights was chosen as it acts as an extension of the Directorate General of Intellectual Property, <sup>14</sup> assisting in <sup>55</sup> the registration of intellectual property within the Central Java region.

Furthermore, the regional government of the Semarang Residency was considered an essential research site. Specifically, the Tourism Office was selected due to its direct involvement in cultural and artistic activities within the region. The Tourism Office <sup>18</sup> plays a crucial role in the development of Tourism Villages and promoting performing arts attractions that showcase the distinctive arts of the region. These arts have the potential to be recognized as Traditional Cultural Expressions, which form the primary focus of this research. By engaging with these government agencies and the Tourism Office, the study aims to access valuable insights, information, and data regarding the recognition and protection <sup>13</sup> of traditional cultural expressions in the Semarang Residency. These institutions possess specialized knowledge and experience in intellectual property rights, regional development, and cultural heritage preservation. Their perspectives and expertise will contribute to a comprehensive understanding of the legal, administrative, and cultural aspects associated with traditional cultural expressions in the Semarang Residency.

The research conducted at these selected sites ensures that the study incorporates diverse perspectives, including those of

government authorities responsible for intellectual property rights and regional development. This comprehensive approach strengthens the reliability and accuracy of the research findings and provides a holistic understanding of the status, challenges, and opportunities <sup>17</sup> related to the protection and promotion of traditional cultural expressions in the Semarang Residency.

## PRESERVING TRADITIONAL CULTURAL EXPRESSIONS

### Unveiling Indigenous Peoples' Identity & Regional Heritage in The Semarang Residency within the Framework <sup>44</sup> of Law Number 28 of 2014 on Copyrights

The definition <sup>22</sup> or definition of Traditional Cultural Expressions has been expressed by many experts and international organizations, one of them is <sup>85</sup> the definition of Traditional Cultural Expressions formulated in the document <sup>31</sup> The Protection of Traditional Cultural Expressions: Draft Articles compiled in the Intergovernmental Committee on Intellectual Property and Genetic Resources forum, Traditional Knowledge, and Folklore (IGC GRTKF) formed by the <sup>32</sup> World Intellectual Property Organization (WIPO), in which it is written as follows:

“... As any forms in which traditional culture and knowledge are expressed [appear or are manifested] [the result of intellectual activity, experiences, or insights] by indigenous [people], local communities and/or [other



beneficiaries] in or from a traditional context, and may be dynamic and evolving and comprise verbal forms, musical forms, expressions by movement, tangible or intangible forms of expression, or combinations thereof.”

<sup>26</sup> Based on the quote, the Directorate General of Intellectual Property of the Republic of Indonesia compiled two alternative definitions regarding Traditional Cultural Expressions, namely as follows:

1. All forms of culture and traditional knowledge that are expressed by indigenous people, local residents, and/or other rights holders <sup>6</sup> in the context of tradition, which are dynamic and can experience development, including expressions in the form of words, music, movements, expressions in tangible or intangible form, or a combination of these forms; or
2. Results <sup>6</sup> of intellectual activity, experience, or understanding, which are expressed <sup>6</sup> by indigenous people, local residents, and/or other rights holders in the context of tradition, which are dynamic in nature and can experience development, including expressions in the form of words, music, movement, expression in tangible or intangible form, or a combination <sup>8</sup> of these forms.

Another meaning is contained in <sup>8</sup> the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 concerning Communal Intellectual Property Data, Traditional Cultural Expressions are all forms of expression of copyrighted works, whether in the form of objects or intangibles, or a <sup>29</sup> combination of both which shows the existence of a traditional culture that held communally and across generations. Based on <sup>8</sup> the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 concerning Communal Intellectual Property Data, Traditional Cultural Expressions are all forms of expression of



copyrighted works, both in the form of objects and intangibles, or a combination of both which shows the existence of a traditional culture that is held communally and across generations. As a form of Communal Intellectual Property, traditional cultural expressions are related to a collective entity, namely a group of people, a community, a small group, or indigenous people. Traditional cultural expressions do not have individual characteristics since they express a shared cultural identity. A society considers its traditional cultural expressions as an important part of its cultural heritage.<sup>14</sup>

Protection and preservation of a Traditional Cultural Expression is an activity that is very important to do to prevent it from becoming extinct, because if a Traditional Cultural Expression is no longer practiced by the community, then the potential for Intellectual Property Rights will be lost, and as a consequence, Traditional Cultural Expressions it will be in the public domain.<sup>15</sup> Protection of traditional cultural expressions in Indonesia can be divided into three forms when viewed from the content material, namely protection of Traditional Cultural Expressions through Copyright Law provisions, provisions for international protection of traditional cultural expressions with limited nature or Neighboring Rights, and Protection of Traditional Cultural Expressions through Industrial Property Law or Protection Based on Industrial Property.<sup>16</sup>

<sup>14</sup> Martinet, Lily. "The interactions between intangible cultural heritage and intellectual property law." In *Intangible Cultural Heritage Under National and International Law*. London: Edward Elgar Publishing, 2020), pp. 97-121.

<sup>15</sup> Kusumadara, Afifah. "Pemeliharaan dan Pelestarian Pengetahuan Tradisional dan Ekspresi Budaya Tradisional Indonesia: Perlindungan Hak Kekayaan Intelektual dan Non-Hak Kekayaan Intelektual." *Jurnal Hukum Ius Quia Iustum* 18, No. 1 (2011): 20-41.

<sup>16</sup> Kusuma, Purnama Hadi, and Kholis Roisah. "Perlindungan Ekspresi Budaya Tradisional dan Indikasi Geografis: Suatu Kekayaan Intelektual dengan Kepemilikan Komunal." *Jurnal Pembangunan Hukum Indonesia* 4, No. 1 (2022): 107-120; Roisah, Kholis. "Legal Politics of Protection of Indonesian Traditional Cultural Expressions/Folklore." *Diponegoro Law Review* 2, No. 1 (2017): 185-202.

When referring to Law Number 28 of 2014 concerning Copyright, Traditional Cultural Expressions are Works that are protected and regulated in the Copyright legal system based on Article 40 paragraph (1) letter q which reads that Works protected by law include Works in the fields of science, art and literature, consist of a compilation of traditional cultural expressions as long as the compilation is an original work. Thus, regulations regarding the criteria for Traditional Cultural Expressions must meet the requirements for protected works. In addition, Article 1 point 3 of the Copyright Law also states that a work is any copyrighted work in the fields of science, art and literature that is produced on the inspiration, ability, mind, imagination, dexterity, skill or expertise that expressed in real form.

Based on the two articles mentioned above, it is known that the elements of the criteria for protected Traditional Cultural Expressions must fulfill the following:

- a. It is a work in the fields of science, art and literature.
- b. Is the result of the ability to think, imagination, dexterity, skill and expertise.
- c. Real form, which is a requirement of embodiment.
- d. Is an original work, which is a requirement of originality.<sup>17</sup>

To receive protection under The Law of the Republic of Indonesia No. 28 of 2014 about Copyright, a Traditional Cultural Expression must also meet the criteria for forms of expression

<sup>17</sup> Yuswar, Cheryl, Runtung Sitepu, and Dedi Harianto. "Kajian Filosofis terkait Perlindungan Ekspresi Budaya Tradisional oleh Rezim Hak Cipta." *University of Bengkulu Law Journal* 7, No. 2 (2022): 98-107; Tobing, Clara Ignatia, and Jantarda Mauli Hutagalung. "Kepentingan Indonesia Terhadap Ekspresi Budaya Tradisional dalam Sumber Hukum Internasional Menilai Hak Kekayaan Intelektual." *Krtha Bhayangkara* 17, No. 1 (2023): 127-140; Sudika Mangku, Dewa Gede, Ni Putu Rai Yuliantini, and Ni Ketut Sari Adnyani. "Indigenous peoples' Participation in the Management of Balinese Cultural Tourism". *Legality : Jurnal Ilmiah Hukum* 29, No. 2 (2021): 309-319. <https://doi.org/10.22219/ljih.v29i2.15928>.

consisting of <sup>5</sup> one or a combination of forms of expression regulated in the elucidation of Article 38 <sup>73</sup> paragraph (1) of the law, which covers:

- a) <sup>3</sup> Verbal textual, both spoken and written, in the form of prose or poetry, in various themes and contents of messages, which can be in the form of literary works or informative narratives.<sup>18</sup>
- b) Music, including among other things, vocal, instrumental, or a combination thereof.
- c) Movement, including dance.
- d) Theatre, including, among other things, wayang performances and folk plays.<sup>5</sup>
- e) Fine arts, both in two-dimensional and three-dimensional forms made of various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, and others or a combination thereof; and
- f) Traditional ceremonies.

In addition, there are no specific criteria for a copyrighted work to be protected <sup>32</sup> as a Traditional Cultural Expression, this is in accordance with what was conveyed by employees of the Director

<sup>18</sup> Verbal textual traditional cultural expressions in Indonesia encompass a vast array of linguistic forms that have been integral to the country's cultural heritage for centuries. These expressions include oral storytelling, proverbs, myths, legends, and traditional poetic compositions. They serve as a means of transmitting indigenous knowledge, preserving historical narratives, and upholding cultural values. Oral storytelling traditions play a vital role in passing down the collective wisdom, customs, and beliefs of indigenous communities. Through these narratives, legends come to life, ancestral heritage is preserved, and moral lessons are imparted to future generations. Proverbs, concise and metaphorical in nature, encapsulate cultural values, offering guidance, and reflecting societal norms. See also Theofany, Gabriel. "Normative Protection of Traditional Knowledge and Traditional Cultural Expressions in Indonesia." *Mulawarman Law Review* 3, No. 2 (2018): 97-110. <https://doi.org/10.30872/mulrev.v3i2.53>; Annalisa, Y. "An Inventory of Traditional Cultural Expression as Copyright: A Requirement for the ASEAN Economic Community." *Intellectual Property Rights Review* 1, No. 2 (2018): 25-34; <sup>35</sup> Paramisuari, Anak Agung Sinta, and Sagung Putri ME Purwani. "Perlindungan Hukum Ekspresi Budaya Tradisional dalam Bingkai Rezim Hak Cipta." *Kertha Semaya: Journal Ilmu Hukum* 7, No. 1 (2019): 1-16.

<sup>44</sup> General of Intellectual Property in the Sub-Coordinator of Communal Intellectual Property Inventory and Libraries.

According to the Directorate General of Intellectual Property, the Sub-Coordinator of Communal Intellectual Property Inventory and Libraries revealed that the current provisions lack specific criteria for granting protection to copyrighted works of Traditional Cultural Expressions, such as the Pendet Dance from Bali. Although this dance is considered a Traditional Cultural Expression, the identity of its creator is known, and its protection period has expired for 70 years. UNESCO recognizes it as a cultural heritage and classifies it as Communal Intellectual Property. However, it is essential to note that Communal Intellectual Property, including Traditional Cultural Expressions, does not typically attribute authorship to a specific individual. In the case of the Pendet dance, it cannot be registered as Communal Intellectual Property if someone creates a similar dance in another region and claims it as a typical dance of that area. The absence of clear guidelines in this area creates ambiguity and raises questions about the appropriate categorization and protection of such expressions within the intellectual property framework. Further exploration and clarification are necessary to address these complexities and ensure the adequate protection and preservation of Traditional Cultural Expressions in line with their cultural and communal significance.<sup>19</sup>

<sup>15</sup> See Nariasih, Ni Putu Epy, Ni Luh Mahendrawati, and Ida Ayu Putu Widiati. "Perlindungan Hukum Hak Cipta Tari Pendet Menurut Undang-Undang Nomor 28 Tahun 2014." *Jurnal Analogi Hukum* 3, No. 1 (2021): 111-115; Maksum, Ali, and Reevany Bustami. "Ketegangan Hubungan Indonesia-Malaysia dalam Isu Tarian Pendet." *Kajian Malaysia: Journal of Malaysian Studies* 32, No. 2 (2014); Dewi, Apla Eka. "Legal Protection of Traditional Dance According to International Law." *Lampung Journal of International Law* 1, No. 1 (2019): 35-42; Hariri, Amri. "Digitalization of Intangible Cultural Heritage (ICH) Archives As Legal Protection of Intellectual Property Rights." *Khazanah al-Hikmah: Jurnal Ilmu Perpustakaan, Informasi, dan Kearsipan* 9, No. 2 (2021): 145-156.

In the further context, Indonesia as an archipelagic country, possesses a diverse range of potentials, particularly in the realm of Intellectual Property. The Intellectual Property sector holds significant potential to contribute to the nation branding of Indonesia. The concept of nation branding encompasses multiple dimensions that should be addressed holistically, including the economy, tourism, culture, and government. Nation branding, at its core, has the power to enhance a country's competitiveness. For Indonesia, this presents a valuable opportunity to showcase its Communal Intellectual Property, which comprises <sup>10</sup> **Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources, and Potential Geographical Indications**. These forms of Intellectual Property are owned collectively and hold economic value for commercial utilization, while respecting the moral, social, and cultural aspects of the nation's heritage.

By effectively harnessing and promoting its Communal Intellectual Property, Indonesia can showcase its competitive advantages and distinctive cultural assets. This not only strengthens the nation's identity but also positions Indonesia as an attractive destination for economic investment, tourism, and cultural exchange. The strategic utilization of Intellectual Property in nation branding efforts can contribute to Indonesia's overall development, international recognition, and economic growth.

However, currently in Indonesia, the protection of Communal Intellectual Property lacks a comprehensive system or specific regulations that provide exclusive rights of ownership to owners of Communal Intellectual Property. While there are provisions within the existing Intellectual Property laws that indirectly address the protection of Communal <sup>5</sup> **Intellectual Property, such as Law Number 28 of 2014**, these provisions only allude to the possibility of safeguarding <sup>59</sup> **Communal Intellectual Property rights**.



For instance, Law Number 28 of 2014 briefly mentions Traditional Cultural Expressions without specifying a time limit for the protection of such expressions held by the State. In cases where the custodian of a Traditional Cultural Expression is unknown, the State is acknowledged as the holder of the copyright. However, a dedicated sui generis system or comprehensive legal framework specifically addressing the protection of Communal Intellectual Property is yet to be established.

To ensure effective protection of Communal Intellectual Property in Indonesia, it is crucial to develop specific regulations that cater to the unique characteristics and needs of such intellectual property. By establishing a robust sui generis system or comprehensive legal framework, Indonesia can provide adequate protection and recognition to the owners and custodians of Communal Intellectual Property, preserving cultural heritage, and promoting the sustainable development and utilization of these valuable assets, including the protection of indigenous people cultural heritage as the national assets.<sup>20</sup>

In the context of Indigenous Peoples in Indonesia, the Government acknowledges and upholds their rights and existence. This commitment is evident in the Minister of Home Affairs Regulation Number 52 of 2014, which provides guidelines for the Recognition and Protection of Indigenous Peoples. The regulation empowers Regional Governments to establish Indigenous Peoples Committees in their respective regions and undertake the recognition and safeguarding of Indigenous Peoples.

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<sup>20</sup> See Brush, Stephen B., and Doreen Stabinsky. *Valuing Local Knowledge: Indigenous People and Intellectual Property Rights*. (Washington, DC: Island Press, 1996); Drahos, Peter. *Intellectual Property, Indigenous People and Their Knowledge*. (Cambridge: Cambridge University Press, 2014). See also Kurnilasari, Dwi Tiara, Annalisa Yahanan, and Rohani Abdul Rahim. "Indonesia's Traditional Knowledge Documentation in Intellectual Property Rights' Perspective." *Sriwijaya Law Review* 2, No. 1 (2018): 110-130.



These guidelines are applicable to Indigenous Peoples across all regions of Indonesia, highlighting the inclusive and comprehensive nature of the recognition and protection efforts. By delegating authority to the Regional Governments, the regulation ensures that the specific needs and aspirations of Indigenous Peoples are addressed at the local level.

As one type of Intellectual Property owned by a group of people in a certain area, Communal Intellectual Property has the right to be given a protection. To achieve this, the Government is making an effort to implement a defensive protection system for Communal Intellectual Property, better known as the Communal Intellectual Property inventory activity. In general, an inventory can be interpreted as a recording of goods and the like to indicate the ownership of these items. Within the scope of Intellectual Property Law, especially Communal Intellectual Property, inventory is known as one of the efforts to provide protection for Communal Intellectual Property. Just like an inventory in general, an inventory on the concept of Communal Intellectual Property is also interpreted as a process of recording goods in this case the Communal Intellectual Property as belonging to the Indonesian people.

These activities can be related to positive protection, which can occur if the inventory of Communal Intellectual Property is related to legal rules regarding access and benefit sharing of a Communal Intellectual Property. In connection with this, there are several things that are very important to understand related to the inventory activity of a Communal Intellectual Property, namely as follows:

- 1) The main purpose of an inventory of Communal Intellectual Property is to protect the rights of indigenous peoples so that there is no use of Communal Intellectual Property without permission and/or unfair profit sharing for them. Therefore, the first thing that must be understood is the desire of indigenous peoples with

an inventory of Communal Intellectual Property. Indigenous peoples may wish to carry out an inventory because previously there has been the use of Communal Intellectual Property without permission from and/or adequate profit sharing with indigenous peoples. They may also wish that Communal Intellectual Property can be recorded so that its sustainability is more guaranteed and can be utilized for educational purposes, raising awareness, and so on. It is also possible that these indigenous peoples have the desire to show that there is a connection between Communal Intellectual Property and rights to the land where they live, and so on. The most important thing in this first point is that it is necessary to seek the involvement of relevant stakeholders in relation to the activities of inventorying the Communal Intellectual Property.

- 2) If possible, obtain information regarding the needs of interested parties to utilize a Communal Intellectual Property, both commercially and non-commercially. With an understanding of this matter, it will be easier for indigenous peoples to know how important their Communal Intellectual Property is so that it needs to be recorded for its protection. However, if the Communal Intellectual Property that is sought is sacred and confidential in nature, then this cannot be forced to be disclosed to third parties, even if it provides enormous financial benefits for indigenous peoples.
- 3) It is necessary to ensure that data regarding Communal Intellectual Property that has been inventoried cannot be accessed indiscriminately, especially those that have been in digital form. In addition to preventing use by third parties without fair distribution of benefits, this guarantee is also to maintain indigenous peoples' belief that communal intellectual property which is sacred and secret, if agreed by indigenous peoples to be

inventoried, will not be disclosed to other parties without their permission. This differs from efforts to inventory an element of cultural heritage with the aim of preserving culture, where in general information regarding cultural heritage is not kept secret at all from the public.

- 4) It needs to be communicated clearly to indigenous peoples that if a Communal Intellectual Property is documented for inventory needs, Conventional/Modern Intellectual Property will appear. Conventional/Modern Intellectual Property may be owned by individuals or parties who do the documentation. For example, a compilation of Traditional Cultural Expressions, as long as the compilation is an original work, can be given a Copyright (Article 40 paragraph (1)(q) of the Copyright Law). Or, an oral tradition that is written into a book can be given a copyright to the book (Article 40 paragraph (1)(a) of the Copyright Law). Therefore, in order to avoid misunderstanding by indigenous peoples regarding the activities of the Communal Intellectual Property Inventory, this matter needs to be disclosed openly. In addition, if possible, competency building activities can be carried out for indigenous peoples to carry out these activities independently, so that they also have the opportunity to obtain Conventional/Modern Intellectual Property.
- 5) Determination of indigenous peoples who own or have economic and moral rights over a Communal Intellectual Property cannot be separated from the scope of the geographic area of distribution of the Communal Intellectual Property itself. This is of course very closely related to the issue of distributing royalties (financial gains) and/or other non-financial compensation to those who have rights. However, in reality, a situation may occur where indigenous peoples who own Communal Intellectual Property migrate to other areas while continuing to practice the intended

Communal Intellectual Property in their new place of residence. If this condition occurs, the policy that needs to be taken is to collect data regarding the area of distribution of a Communal Intellectual Property as long as it is within the territory of the Unitary State of the Republic of Indonesia. The flexibility to allow that a Communal Intellectual Property is owned by "the entire Indonesian people" is based on the consideration that we must maintain a balance between economic interests and efforts to maintain national unity. This means that it must be possible to avoid disputes/conflicts between members of indigenous peoples caused by mutual claims of ownership of a Communal Intellectual Property.<sup>21</sup>

Inventory or registration of a Communal Intellectual Property is an important thing to do in order to protect the Communal Intellectual Property, and prevent conflicts over claims made by irresponsible parties. Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Data on Communal Intellectual Property is an implementing regulation of Article 38 paragraph (2) of Law Number 28 of 2014 concerning Copyright which entrust the involvement of the state in inventorying, protecting and maintaining Traditional Cultural Expressions. Registration of potential Communal Intellectual Property at the National Communal Intellectual Property Data Center only requires 3 main requirements, namely as follow:

<sup>21</sup> Antariksa, Basuki. "Landasan Filosofis dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan di Indonesia." *Jurnal Ekonomi Kreatif* 1, No. 1 (2012): 1-21; Waspiyah, Waspiyah, Rodiyah Rodiyah, Dian Latifiani, and Ridwan Arifin. "How Economic Rights for SMEs Protected? Analysis of National and International Property Rights Law". *Indonesian Journal of Advocacy and Legal Services* 2, No. 1 (2020): 71-88. <https://doi.org/10.15294/ijals.v2i1.35285>; Nugroho, Bimo Satria Fajrin, and Muhamad Adji Rahardian Utama. "Legal Protection of Copyright in the Globalization Era: Comparison of Indonesia and China". *Journal of Law and Legal Reform* 1, No. 4 (2020): 671-680. <https://doi.org/10.15294/jllr.v1i4.39424>.

1. Fill out the Communal Intellectual Property Inventory Form;
2. Statement of Originality of the Communal Intellectual Property;
3. Complete description/description regarding the Communal Intellectual Property (may be equipped with documentation).

The Semarang Residency is one of the regions in Indonesia that has quite a lot of culture, especially Traditional Cultural Expressions. The many cultures spread across the Semarang Residency area cannot be separated from the participation of the Regional Government in conducting an inventory and identification of these cultures.

According to the Head of the Intellectual Property Service Sub-Division of the Ministry of Law and Human Rights, the Regional Office of Central Java revealed that:

“The role of The Regional Office of the Central Java Ministry of Law and Human Rights related to the protection of Traditional Cultural Expressions is to work with the local Regional Government to carry out an inventory and identification of Traditional Cultural Expressions. However, there were a few obstacles in this effort so that The Regional Office of the Central Java Ministry of Law and Human Rights collaborated with universities to find a custodian (a person who preserves traditional cultural expressions) and then held a meeting with the local government to prepare a description as a condition for submitting an application for protection of traditional cultural expressions. Those who have the task of receiving registration of Communal Intellectual Property in our field, namely the field of Intellectual Property Services.”<sup>22</sup>

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<sup>22</sup> Personal Interview, June 21, 2022.



In the same context, Head of <sup>25</sup> the Intellectual Property Service Sub-Division of the Ministry of Law and Human Rights, the Regional Office of Central Java revealed that:

“Our authority is to strive for every potential Communal Intellectual Property in an area (especially Central Java) to be registered, so we continue to work with the local government to provide understanding, socialization and assistance so that our target for registration of Communal Intellectual Property in Central Java continues to increase.”<sup>23</sup>

Head of the Sub-coordinator for the Development of Tourism Attraction at the Youth, Sports and Tourism Service, stated that:

“The authority from our department has not yet come to register Copyright for Traditional Cultural Expressions. In our Service there are other fields that specifically have duties in the Intellectual Property section, but only provide services in registering related to the field of Marks in collaboration with Creative Economy Agency.”<sup>24</sup>

The interviews above showed that there are many obstacles faced by the government in conducting an inventory and identification <sup>22</sup> of Traditional Cultural Expressions due to a lack of understanding of the Regional Government, very minimal human resources, no adequate budget to carry out an inventory, and no special fields. in related services in <sup>45</sup> the legal protection of Traditional Cultural Expressions.

One form of introducing and preserving culture carried out by the Government of Central Java is by issuing a regulation containing

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<sup>23</sup> Personal Interview, June 21, 2022.

<sup>24</sup> Personal Interview, July 20, 2022



an appeal to play or display Central Javanese musical instruments every day in tourism businesses (hotels, restaurants, restaurants, tourist attractions, tourist villages, etc.) which are managed by <sup>49</sup> the Government or the private sector in accordance with the character of the respective regional arts as well as an appeal to perform live siteran/keroncong/cokekan music during weekend holidays and/or the holiday season. This is also in accordance with what was conveyed by employees of the Department of Youth, Sports and Tourism, the Sub-coordinator for the Development of Tourist Attractions.

According to the Head of the Sub-coordinator for the Development of Tourism Attraction at the Youth, Sports and Tourism Service, revealed that:

“We are straightforward, so far, we have not made any registration related to Traditional Cultural Expressions in an area due to several obstacles, namely budgetary issues for registering, no assistance in making descriptions. However, in our efforts to preserve it, we have seen and listened to it together in every hotel in Central Java, almost 60% have played Javanese music (this is based on a circular letter).”<sup>25</sup>

Furthermore, it is important to note that while a specific inventory of arts and culture in the Central Java region has not been conducted, there is an emphasis on encouraging every region to showcase and perform their arts and culture at various events. This serves as an attraction for tourists, ultimately contributing to the economic growth of cultural development. The statement highlights the recognition of <sup>16</sup> the significant role that arts and culture play in

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<sup>25</sup> Personal Interview, July 20, 2022

<sup>77</sup> tourism and economic development. By promoting and showcasing local arts and cultural expressions, regions can leverage their unique heritage to attract visitors and stimulate economic activity. Encouraging the display and performance of arts and culture at events creates opportunities for cultural exchange, appreciation, and understanding. It not only enriches the experiences of tourists but also provides a platform for local artists and performers to showcase their talents, preserve traditional practices, and promote their cultural identity.

The economic benefits derived from cultural tourism can contribute to the overall development of the region. It can generate revenue, create employment opportunities, support local businesses, and enhance infrastructure and facilities that cater to the needs of tourists. While an official inventory may not have been conducted, the focus on promoting arts and culture at events demonstrates a practical approach to leverage the cultural richness of each region. By actively showcasing their unique traditions and artistic expressions, regions in Central Java can foster cultural pride, attract visitors, and contribute to the sustainable growth of their local economies.

The interviews showed that arts and culture in each region sometimes do not receive special attention in terms of inventory as well as identification and registration of arts and culture that have the potential to become Traditional Cultural Expressions due to the ignorance of the Regional Government and its people that an arts and culture that has been inherited decline in a community in the area can get legal protection under the Copyright Act Number 28 of 2014 as a Traditional Cultural Expression. Another thing is due to the lack of synergy between one agency and another or with the Director General of Intellectual Property to carry out an inventory and identification of Traditional Cultural Expressions.

In the elaboration of the formulation of the first problem, often or especially what is meant by indigenous peoples are people who have lived in an area for generations with very strong beliefs regarding the traditions and rules of their ancestors. However, from the definition of Traditional Cultural Expressions according to the Directorate General of Intellectual Property of the Republic of Indonesia which states that Traditional Cultural Expressions are the result of intellectual activity, experience, or understanding, which are expressed by indigenous people, local residents, and/or other rights holders in the context of tradition, which are dynamic and subject to development.

Therefore, it is emphasized that Traditional Cultural Expressions themselves are created from the results of human intellect but here it is not known who the Creator is so that it is hereditary and usually for local people to preserve this tradition by carrying out activities during certain months such as ceremonies customs as well as performing arts for certain events such as dance performances, wayang performances, and so on. Sometimes these people can modify art that is characteristic of an area, this is allowed in the Copyright Law because the principle of Copyright itself is that when there is a modification of a Copyrighted work including Traditional Cultural Expressions it will give birth to a new Copyrighted work.

In the further, the absence of registration of Traditional Cultural Expressions from the Residency of Semarang indicates that there is still no understanding to provide legal protection. In terms of the artistic and cultural potential in the Semarang Residency, some have potential as Traditional Cultural Expressions, and this can show the identity of a region because it has artistic and cultural characteristics compared to other regions and can form the embodiment of indigenous peoples as owners of expressions. Traditional Culture

because it has traditional art and culture that is unique to its region which is not owned by other regions.

Based on the Draft Government Regulation on Communal Intellectual Property, what is meant by Traditional Cultural Expressions are all forms of expression of copyrighted works, whether in the form of objects or intangibles, or a <sup>29</sup> combination of both which shows the existence of a traditional culture which is held communally and across generations. It is certain that the potential for traditional arts and culture in one area will indicate the existence or place of origin of traditional arts which are owned by all local people across generations (hereditary). The Draft Government Regulation also explains the characteristics of Traditional Cultural Expressions, namely:

- a. contain traditional values, perspectives, and forms, and are compiled, maintained, and developed both within and outside of traditional contexts;
- b. managed and carried out communally and collectively by customary law communities and/or local communities as their Community of Origin;
- c. continuously developed by the Community of Origin in response to the environment, nature, and history;
- d. maintained, used, and transmitted across generations; and
- e. provide awareness of identity, sustainability, and promote respect for cultural diversity and creativity.

From point b it can be seen that Traditional Cultural Expressions as an embodiment of indigenous peoples can be achieved because according to this Draft Government Regulation, what is meant by Communities of Origin are customary law communities and/or local communities, which produce, protect, maintain, and/or develop Communal Intellectual Property communally and across generations, including the supporting community. So that it can be

interpreted that indigenous peoples are part of the Community of Origin, which can also be interpreted that indigenous people and local residents who occupy an area and that area has traditional arts and culture, it can be referred to as indigenous peoples, namely indigenous peoples/local residents. who have traditional art and culture <sup>89</sup> in the context of tradition.

### The Effect of Developing Traditional Cultural Expressions on Increasing the Regional Economy in the Semarang Residency

Culture, especially Traditional Cultural Expressions referring to Law <sup>34</sup> Number 5 of 2017 about The Advancement of Culture, there are similarities between culture and industry in terms of processes and activities, so that the synergy between culture and industry is something that should be mentioned in efforts to recover the Indonesian economy. More than that, culture has been mandated in Article 32 of the 1945 Constitution to be maintained and developed so that it contributes to world civilization. For this reason, the constitutional mandate needs to be implemented so that culture can present other options in order to restore the economy through its great potential.

Culture can be a bridge to infiltrate new habits whose purpose is to build the characteristics of local people who are more economical and not resistant to the dynamics of the times. Based on the characteristics of the regions whose Human Development Index is relatively low, most of their economic activities are still managed in the traditional way, so they need support to increase their economic added value.



The first way, can be through improving the quality of education and public health. Culture in education provides opportunities to open new horizons and deeper knowledge. The aim is to generate creativity so that production choices become more diverse and able to provide added value to the local potential of the region. Therefore, they need to be educated, for example by carrying out the industrialization of agricultural products (agroindustry). The aim is to increase added value (shifting production) and controlling the supply-demand market balance. In addition, it also does not change the structure and social turmoil in an extreme way because agriculture is still part of the economic culture of the local community. Healthy culture is no less important to maintain people's productivity. The more public health is maintained, the greater the opportunity to produce and generate income.

The second way is the approach through social institutions both formal and informal. For people whose lives are still in a community, social institutions are considered as springs capable of influencing the style of people's views/responses to an issue of life.

Culture and the economy essentially have an equal position and mutually support one another. In the Cultural Development Index (GPA), culture and economy are one of the dimensions, namely the Cultural Economic Dimension with the indicator Population having a source of income as Performers/Supporters of Performing Arts. So that with the development of a culture in an area, it is also expected that the area can be more developed in the economic field, and that culture can become an identity for the region.

According to the Kendal Regency Tourism Office employee revealed that:

"In Kendal Regency there are already 16 Tourism Villages. The program that has been run by the Tourism Office is now focusing on coaching and developing tourist villages.

One form of activity carried out for the sake of developing a tourist village in Kendal is the carrying out of cultural arts performance attractions."<sup>26</sup>

In the similar context, Demak Regency Tourism Office employee also revealed that:

"In Demak Regency itself there are 12 active tourism villages. The program that has been run by the Demak Regency Tourism Office is currently focusing on the creative economy sector in management and training for Tourism Villages. For example, the management element focuses on developing human resources, while the training element focuses on mobilizing tourism villages which usually contain product branding activities. In addition, Demak Regency also held batik training whose activities included training in coloring, designing, and marketing."<sup>27</sup>

Data from the Central Java Provincial Tourism Office that there are 818 tourist villages with details of 390 pilot villages, 32 villages that can be said to be advanced, 106 villages that are said to be developing, and 290 villages that have not reported throughout Central Java Province, including 16 villages. Active tourism in Kendal Regency and 12 Active Tourism Villages in Demak Regency. With so many tourist villages, it can also increase regional income, especially Central Java Province, from the large number of tourists, both local and foreign, who come to the area.

Kendal Regency is also recognized as home to a variety of traditional arts, including the renowned Kuda Lumping. While Kuda Lumping can be found in other areas, the version performed in

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<sup>26</sup> Personal Interview, July 20, 2022

<sup>27</sup> Personal Interview, July 20, 2022

Kendal Regency possesses distinct characteristics that set it apart from those in other regions. This uniqueness showcases the artistic and cultural identity of Kendal Regency.

Another notable traditional art form in Kendal Regency is Barongan, often performed during circumcision ceremonies. This practice serves as a means of preserving and showcasing the rich cultural heritage of the region. Furthermore, Kendal Regency is also known for the Opak Abang Dance and the Rampek Dance, both of which contribute to the vibrant cultural landscape of the area.<sup>28</sup> These dances encapsulate the traditional values and artistic expressions that have been passed down through generations.

Furthermore, similarly with Kendal Regency, Demak Regency boasts a range of distinctive traditional arts that reflect the local culture. Among them is Barongan Demak, which shares similarities with the one in Blora, albeit with its own unique touch. While Blora's Barongan has been registered previously, Demak's version has its own association dedicated to preserving and promoting this traditional art form. Another prominent traditional art in Demak is Rebana, a percussive musical ensemble that holds cultural significance in the region. Additionally, Demak is known for its traditional knowledge in the form of Jamu Caro, a distinctive local drink with medicinal properties.<sup>29</sup>

To showcase the artistic creativity of the community, Demak Regency features an attraction called Tembiring Creative Fun. This platform serves as a stage to exhibit various forms of art and creativity

<sup>28</sup> Pradewi, Sellyana, and Wahyu Lestari. "Eksistensi Tari Opak Abang Sebagai Tari Daerah Kabupten Kendal." *Jurnal Seni Tari* 1, No. 1 (2012); Rahmawati, Anik. "Visualisasi Bentuk Dan Warna Seni Topeng Barongan Di Sanggar Kejeling Desa Sidomulyo Kabupaten Kendal." *Jurnal Teknik Informatika dan Desain Komunikasi Visual* 1, No. 2 (2022): 44-50.

<sup>29</sup> Sundari, Riris Setyo. "Ekstotisme Ragam Gerak Tari dalam Kesenian Barongan Mojojoyo Demak Sebagai Kesenian Pesisir." *Jurnal Seni Tari* 10, No. 2 (2021): 112-119; Zulfa, Assita Zulafin. "Upaya Pelestarian dan Pengembangan Kesenian Barongan di Kabupaten Demak Tahun 1995-2014". *Thesis* (Semarang: Universitas Diponegoro, 2018).

throughout the region. With a focus on religious tourism, this attraction aims to extend the duration of tourists' visits, thereby contributing to the local economy.

Preservation efforts for other traditional arts in Demak Regency involve their display at community events. For example, the Barongan art is showcased with a team of 100 performers, providing an immersive experience for the audience. These performances typically require a modest fee, ranging from around 8 to 10 million rupiah.

Based on this, traditional dance and ballet art can also be used as a form of increasing the economy of a region by holding performances and performances. In addition to preserving culture, traditional dance and ballet performances are also able to increase the economy of a region. This is because the show certainly requires many roles from the dancers and also the role of the community to carry out the show and the performance, so that it will provide jobs for people who have the appropriate abilities for the show. Traditional dance and ballet are considered to be able to improve the economy as a creative economy in the field of culture. The feasibility of a tourist attraction in the form of the Rara Jonggrang ballet, for example, is believed to be able to provide a potential economic contribution. If it is estimated that the total revenue from ticket sales can reach IDR 37,300,000 for one performance.<sup>30</sup>

In the context of the cultural economy, it encompasses the economic sector that revolves around cultural goods and services. It arises from the human need for meaning, aesthetics, and enjoyment. When a country's cultural economy ecosystem is well-developed, it has the potential to enhance the overall happiness of its people. In

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<sup>30</sup> Hersapandi, Hersapandi, R. Atmojo, and Jiyu Wijayanti. "Kehidupan Seni Pertunjukan Wisata dalam Prespektif Ekonomi Kreatif Berbasis Pada Sendratari Rara Jonggrang di Taman Wisata Candi Prambanan." *Thesis*. (Yogyakarta: Institut Seni Indonesia, 2013).

Indonesia, the cultural economy often intersects with the creative economy, although they serve different purposes and vary in scale. The creative economy focuses on utilizing creativity to generate added value. It assumes that through innovation and creative thinking, products and services can surpass those offered by other parties. While the creative economy emphasizes intangible benefits, the cultural economy encompasses both socio-cultural and financial benefits. As a result, it requires the involvement of the government to foster its development.

Assessing the cultural economy's impact extends beyond economic indicators like its contribution to the national GDP (Gross Domestic Product). Its benefits are measured in terms of socio-cultural significance, which surpasses monetary value. The government plays a crucial role in recognizing and nurturing the cultural economy due to its broader impact on society.

According to an employee from the Kendal Regency Tourism Office:

"We advise the local government to collaborate with other stakeholders to conduct a comprehensive inventory for the protection of arts and culture in Kendal Regency. Although efforts have been made by the Kendal Regency Tourism Office, there is still more work to be done. As evidence of our commitment, we organize general Carnival activities that feature various dances, performances, and showcase the art and culture of Kendal Regency."

While, the Demak Regency Tourism Office also emphasized and highlighted that:



"We strongly emphasize the need for the protection of arts and culture in Demak Regency, along with providing legal education to people in tourist villages who may lack understanding in this area."

Based on this, it is known that there is a great need for close cooperation between indigenous peoples and local governments, but also with the central government in order to protect the arts and culture found in these indigenous peoples' areas. To support the Indonesian Government's policies in creating protection for indigenous peoples and the cultural traditions of these indigenous peoples in an effort to realize legal objectives in Indonesia, this can be done by:

1. Providing the same facilities and services

Indigenous Peoples have the right to receive the same facilities and services as other Indonesian Communities from the Government of Indonesia, both material and non-material in nature with the aim of maintaining and protecting the existence of Indigenous Peoples and the cultural traditions of these Indigenous Peoples so that Indigenous Peoples can have the same rights as Indonesian Communities.

2. Encouraging and improving socio-economic life

The Government of Indonesia seeks to encourage and improve the socio-economic life of Indigenous Peoples so as to create equitable prosperity within Indonesian Society by building infrastructure and infrastructure facilities in Indigenous Peoples areas whose access is difficult to reach so that they can be reached and accessed easily.

3. Improving Education

Education is very much needed for all people in Indonesia, including indigenous peoples, so that these indigenous peoples can

carry out social life by giving birth to ideas or ideas that can advance these indigenous peoples in living and dealing with the current conditions of advances in information technology.

#### 4. Maintaining and Conserving Cultural Traditions

The Indonesian government adopts a policy of maintaining and preserving cultural traditions, especially among Indigenous Peoples by reviving cultural traditions and renewing these cultural traditions and preserving local wisdom that exists within Indigenous Peoples so that they can survive and run well.

#### 5. Have a Shared Commitment

In order to create successful development in Indonesia, especially in building cultural traditions that are in accordance with the identity of the Indonesian Nation, it requires commitment and support from all parties, both the Indonesian Government and local Regional Governments as well as all Indonesian people, including these Indigenous Peoples.<sup>31</sup>

Throsby explained that the benefits of culture and human development can be measured through two values, namely in terms of economy and culture. From an economic perspective, the culture industry produces goods and services for the market and public interest, and has an impact on other industrial innovations. Meanwhile, from a cultural perspective, the culture industry contributes by demonstrating the value of artistic goods and services, increasing the value of the individual's role in creative activities, realizing the social value of cross-cultural dialogue, and supporting the role of the arts in education.<sup>32</sup> With good utilization, culture and

<sup>31</sup> Yetno, Alfred. "Perlindungan Masyarakat Adat dan Tradisi Budaya dalam Upaya Mewujudkan Tujuan Hukum di Indonesia." *Prosiding Webinar Nasional IAHN-TP Palangka Raya No. 7* (2021). <https://doi.org/10.33363/sn.v0i7.188>.

<sup>32</sup> Sista, "Ekonomi Berbasis Kebudayaan, Faktor Penting Dalam Pembangunan Manusia Indonesia." *Online*, September 5 (2019). Retrieved from

traditional cultural expressions spread across various areas of the Semarang Residency can also be useful as an alternative form of increasing the region's economy.

## CONCLUSION

The Existence of Traditional Cultural Expressions in Semarang Residents has been seen to exist which can form the embodiment of indigenous peoples because they have traditional arts and culture which are currently still being preserved from generation to generation where this is an identity of a region to distinguish one region from another. The development of a traditional art and culture in an area, it is also hoped that the area can be more developed in the economic field, and that culture can become an identity for the region, especially the Semarang Residency area, which is in the initial identification stage, there are traditional arts and culture that have the potential to get Copyright legal protection for the Existence of Traditional Culture. If these traditional arts and culture are registered for legal protection then all forms of violations of Traditional Cultural Expressions can be avoided including claims from other regions and the influence of the development of Traditional Cultural Expressions on increasing the regional economy in the Semarang Residency is very influential and will be able to increase because there will be many tourists who visiting the area to watch traditional arts and cultural performances which are the hallmark of the Semarang Residency. Therefore, it is necessary for the government to play a more active role in disseminating information about Communal

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<sup>76</sup> <<https://kebudayaan.kemdikbud.go.id/ekonomi-berbasis-kebudayaan-faktor-penting-dalam-pembangunan-manusia-indonesia/>>

Intellectual Property, especially Traditional Cultural Expressions and being able to work together between related agencies/agencies in assisting the registration of Traditional Cultural Expressions so that more Indonesian culture will be registered and protected and prevent theft of that culture. Not only the role of the government that needs to play a more significant role, but also the need for the role of the local community in preserving traditional culture that has existed for generations by helping to identify arts and culture so that they have the potential as Traditional Cultural Expressions.

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