



Legal Protection of Traditional Cultural Expressions “Penginyongan” in Banyumas Regency Based on Law No.28 of 2014 concerning Copyright

Eva Mir’atun Niswah

Faculty of Syariah, UIN Profesor Kiai Haji Saifuddin Zuhri Purwokerto

Corresponding Author: eva.niswah@uinsaizu.ac.id

Article History:

Submitted:
2023-10-19

Accepted:
2024-01-03

Published:
2024-01-18

Abstract

Traditional Cultural Expressions (TCE) in Penginyongan are diverse and unique. The uniqueness of Penginyongan culture has distinguished between the Javanese Palace culture (Keraton) and Ngapak culture. This condition makes cultural expressions more tangible to the community as folk art. The protection of TCE in Article 38 of Law No. 28 of 2014 on Copyright mandates the state to inventory existing TCE. However, only a tiny part of Penginyongan TCE in Banyumas Regency has been recorded, namely *cowongan* and *begalan*. This research uses a qualitative approach with normative juridical. Institutionalisation in protecting Intellectual Property Rights in Banyumas Regency can be seen in terms of legal substance, structure, and culture. In terms of legal substance, the protection of TEE is shown by the laws and regulations that protect it, although there is no specific law for the protection of TEE. Regarding legal structure, TCE protection in Banyumas Regency is carried out by Dinporabudpar (Department of Youth, Sport, Culture, and Tourism). Still, it has limitations, including in efforts to register Communal Intellectual

Property Rights. In terms of legal culture, the protection of TCE in Banyumas Regency has obstacles related to the existing 'speech' culture.

Keywords: Legal Protection, Traditional Cultural Expression, Banyumas Regency

1. Introduction

Indonesia is one of the countries in the world that has very diverse ethnic groups. Ethnic groups Indonesia reached 1340 ethnic groups, of which 50% are found on Java island while the rest are found outside Java such as the Makassar Bugis (3.68%), Batak (2.04%), Balinese (1.8%), Acehnese (1.4%) and other tribes spread across the archipelago.¹

The many ethnic groups in Indonesia make Indonesia a rich culture country. According to Koentjaraningrat, culture itself consists of three dimensions. First, it consists of complex ideas, norms, values, rules, human thoughts, and so on, which is known as the cultural system. Second, the complex patterned activities (actions) of humans in their communities are known as social systems. Third, the objects resulting from human creation.²

Within the legal framework, this cultural expression is generally known as Traditional Cultural Expression. This term refers to the term used by WIPO (World Intellectual Property Organization) internationally. Traditional Cultural Expression in WIPO is explained as: Traditional cultural expression, often the product of inter-generational and fluid social and communal creative processes, reflects and identifies a community's history, cultural, and social identity, and values.³

Traditional cultural expression according to Janet Blake as quoted by Andika Putra Herzani, is the common heritage of mankind which was first used by UNESCO (United Nation Educational, Scientific and Cultural Organization) in the 1972 WHC (World Heritage Convention) convention. In the efforts to

¹ Wida Kurniasih, "Daftar Suku Bangsa Di Indonesia Serta Pranata Sosial Masyarakatnya - Gramedia Literasi," accessed October 9, 2021, <https://www.gramedia.com/literasi/suku-di-indonesia/>.

² Koentjaraningrat, *Pengantar ilmu Antropologi* (Jakarta: Rineka Cipta, 2009), 16.

³ World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Policy, Law and Use* (Geneva: WIPO, 2008), 56.

prepare the WHC, the idea was hidden to include TCE as part of the WHC. The reason is, at that time the relics related to TCE did not have high value. Thus, WHC includes TCE so that later it obliges the state to protect the international community to ensure this protection.⁴

In Indonesia, the protection of traditional cultural expressions is included in Law No. 28 of 2014 concerning Copyright. In this Law, specifically in Article 38, it is stated that the Copyright for Traditional Cultural Expressions is held by the State, and the State is obliged to inventory, safeguard, and maintain it.⁵

Traditional cultural expressions which are included in the provisions of the Copyright Act as part of other provisions in the realm of Intellectual Property Rights (IPR) result in this protection leading to the commercialization of TCE. Because the IPR protection that currently applies is protection for industrial products. Thus, even though Copyright is not included in the category of Industrial Property Rights, in terms of ownership it requires originality (novelty) of the existence of individuals and not groups of creators, as well as material forms. As a result, the IPR regime in general sees traditional cultural products such as TCE, as works that have no novelty and generally no longer know who the creators or inventors are. This results in TCE becoming a public domain that is difficult to protect.

As previously mentioned, the Copyright for Traditional Cultural Expressions is held by the State, and the State is obliged to inventory and maintain it. In terms of tangible culture, there are special regulations, for example in Law No. 11 of 2010 concerning Cultural Conservation which regulates material or intangible cultural resources, then for Intangible Cultural Heritage only refers to this Copyright Law.

This inventory obligation must be realized by providing complete data that can be freely accessed by the public. However, so far, the record of intangible cultural heritage on the website managed by the Ministry of Education and Culture (Ministry of Education and Culture) is very incomplete. This data only presents data up to 2017 with only 150 Intangible Cultural Heritage.⁶

⁴ Andhika Putra Herzani, "Peran Pemerintah dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia," *Jurnal Hukum & Pembangunan* 50, no. 4 (July 7, 2021): 956–78, <https://doi.org/10.21143/jhp.vol50.no4.2865>.

⁵ UU No. 28 Tahun 2014 Tentang Hak Cipta

⁶ Warisan Budaya Tak Benda Indonesia. <http://kwriu.kemdikbud.go.id/info-budaya-indonesia/warisan-budaya-tak-benda-indonesia/>

If the government is not serious about inventorying and maintaining TCE, later on, the TCE will eventually disappear because it is not properly recorded or documented. Other problems may also arise, such as commercial exploitation by certain parties without involving local indigenous peoples, not to mention claims from other countries against Indonesia's TCE. In terms of claims by other countries, Indonesia often faces this problem, not only with Malaysia as a neighbouring country with the same cultural family, but other countries such as China have also claimed Indonesian Batik.⁷

These concerns arise both nationally and locally. At the local level, for example, for the Central Java region and more specifically in Banyumas Regency there are no rules in the form of local regulation that specifically provide special rules for TCE protection. This is very unfortunate, because Central Java is a province with many TCEs, each of which has its own uniqueness.

One area that has a unique culture is in the western part of Central Java, which is directly adjacent to the province of West Java. This region can be said to be located at the meeting point between Sundanese culture and Javanese culture. So far there is no definite term to refer to this area, but people often refer to it as the Penginyongan area. The term Penginyongan comes from the word "Inyong" which means "I". The Penginyongan area covers nine (9) regencies in Central Java which stretch from the south coast to the north coast, which includes Kebumen Regency, Cilacap Regency, Banyumas Regency, Purbalingga Regency, Banjarnegara Regency, Brebes Regency, Tegal Regency and Pekalongan Regency.

The uniqueness of the Penginyongan culture is caused by the character of the community which can be said to be populist, open and communal which is known as the character "cablaka-blakasuta" which means honest and "thok melong" which is defined as firm, brave and open, being proof of the difference with mainstream Javanese culture. Furthermore, the use of the word "inyong" is an entry point as well as evidence that this region has a distinctive civilization derived from medieval Old Java, which is very different from "Jawa Anyaran" (new Java), which positions the Keraton/kingdom (in this case the Sultanate of Yogyakarta and Surakarta) as the epicenter of its culture.⁸

⁷ "Selain Batik, 5 Warisan Budaya Indonesia Ini Juga Pernah Diakui Negara Asing," merdeka.com, July 14, 2020, <https://www.merdeka.com/jatim/selain-batik-5-warisan-budaya-indonesia-ini-juga-pernah-diakui-negara-asing.html>.

⁸ Ahmad Mutaqin, dkk, Sejarah Islamisasi di Banyumas; Laporan Penelitian IAIN Purwokerto kerjasama dengan Puslitbang Lektur dan Khazanah Keagamaan Badan Litbang dan Diklat

Another quite striking difference between Penginyongan culture and mainstream Javanese culture is in the use of language. The characteristics of its culture make people in this area not consider the level of language in the standard of Javanese culture in general.⁹

The unique characteristics of the people in this region gave birth to cultural expressions that were born naturally as distinctive folk art, without being influenced by certain standards (in this case the influence of the palace). Some forms of expression of traditional Penginyongan culture include *Sedekah Laut* (Alms of the Sea), *sedekah Bumi* (Alms of the Earth), *Lengger* (traditional dance performed by female dancers while singing and interacting with the audience), *Ebeg* (the group dances as if riding a horse and at the end some dancers are in a trance), *Cowongan* (traditional rain summoning ritual using dolls made from coconut shells), *Sintren* (a dance followed by a magical ritual), *Begalan* (a traditional speech art used as a means of wedding ceremonies which depicts the robbery of the belongings of the groom by a begal/(robber), *Kenthongan* (the art of musical performance with instruments made of bamboo), and so on.

These cultural expressions are now starting to be eroded by the times. This is proven by the decreasing number of artists, the increasingly rare performances, and even the younger generation of Penginyongan themselves who are not familiar with some of the TCEs in their area. It is possible that in the future this TCE will disappear if the government, as mandated by the Law, neglects to carry out inventories and records. Therefore, this paper tries to see how the Peginyongan TCE is protected in Banyumas regency.

2. Traditional Cultural Expression (TCE)

In general, Intellectual Property Rights (IPR) are classified into 2 types, namely Copyright itself and Industrial Property Rights. Copyright consists of Copyright itself and Related Rights, while Industrial Property Rights consist of Patents, Trademarks and Geographical Indications, Industrial Designs,

Kementerian Agama Tahun 2017, p. 2-5.

⁹ Javanese has its own script which is known as Javanese script and has basa (Javanese language etiquette). This makes the Javanese language have three levels of language, namely ngoko (rough), madya (ordinary), and Krama (fine). Look: Kompasiana.com, "Penggunaan Bahasa Jawa untuk Melestarikan Warisan Budaya Indonesia dalam Lingkup Pemuda Jawa," KOMPASIANA, May 13, 2014, <https://www.kompasiana.com/isyakta/54f7563ca3331184358b45e6/penggunaan-bahasa-jawa-untuk-melestarikan-warisan-budaya-indonesia-dalam-lingkup-pemuda-jawa>.

Integrated Circuit Layout Designs and Trade Secrets

Copyright consists of three fields, namely science, art, and literature. In this section of art, one of the things is what is meant by traditional cultural expression (TCE) which is contained in Article 38 of Law No. 28 of 2014 concerning Copyright. Unlike artworks in general, TCE is held by the state, with the ministry responsible being the Ministry of Law and Human Rights at the Directorate General of Intellectual Property.

TCE is often associated with the term folklore. The term “folklore” was coined in 1846 by William Toms, an archaeologist from the UK. This term includes manners, customs, observations, superstitions, ballads, and sayings.”¹ In 1989 the Recommendations on the Safeguarding of Traditional Culture and Folklore (Recommendation) adopted by UNESCO defined folklore as

“Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture, and other arts.”¹⁰

However, the term folklore has received a lot of criticism, because it is considered derogatory in certain cultures, regions, and countries. In addition, in the context of intercultural education, the notion of folklore is criticized because it implicitly contradicts authentic culture or in other words conflicts with an intercultural approach which is equivalent to native culture.¹¹

Next is the term Expression of Folklore (EoF) which was originally used by countries in the Latin American Region. This term has a more limited meaning than folklore. EoF can only apply to traditional culture that meets copyright qualifications, that is, it must be a work. Most of these expressions qualify as part of derivative works or as part of the public domain. Furthermore,

Only “artistic” heritage is covered by the Model Provisions. This means that, among other things, traditional beliefs, scientific views (e.g. traditional

¹⁰ “Recommendation on the Safeguarding of Traditional Culture and Folklore - UN Documents: Gathering a Body of Global Agreements,” accessed July 12, 2022, <http://www.un-documents.net/folklore.htm>. diakses pada 12 Juli 2022.

¹¹ Diah Imaningrum Susanti, *Ekspresi Budaya Tradisional Dan Hak Kekayaan Intelektual* (Malang: Dioma Malang, 2019). P: 3.

cosmogony), or merely practical traditions as such, separated from possible traditional artistic forms of their expression, do not fall within the scope of the proposed definition of “expressions of folklore.” On the other hand, “artistic” heritage is understood in the widest sense of the term and covers any traditional heritage appealing to our aesthetic sense. Verbal expressions, musical expressions, expressions by action, and tangible expressions may all consist of characteristic elements of the traditional artistic heritage and qualify as protected expressions of folklore.

The model provision only categorizes “artistic” heritage. That is, traditional beliefs about scientific views such as about the origin of the universe which is called traditional cosmology, or traditions that are only practical, are not included in the category in EoF. Artistic heritage is defined very broadly as any traditional heritage that can appeal to human aesthetic senses. So that what is included in the EoF category must be verbal expression, musical expression, action expression, and tangible expression which includes all elements of traditional artistic heritage and is included as a protected expression of folklore.¹²

“Expressions of folklore” are understood as productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community in the country or by individuals reflecting the traditional artistic expectations of such a community.

Furthermore, in this provisional model, EoF is translated as results consisting of distinctive parts of the traditional art heritage that are developed and maintained by communities in a country or by individuals who reflect the ideals of traditional art in that community.

In the WIPO Handbook, the term that appears is “Traditional Cultural Expression”. WIPO begins its explanation with the words Traditional Expression, which is a traditional culture that is cross-generational, collectively owned by one or more groups or communities and most likely originated anonymously. This Traditional culture, in the form of expression, was not initially protected by the Copyright Law, because it fell into the public domain category.

Furthermore, WIPO explains that TCE is a product that contains elements and characteristics of traditional artistic heritage developed and maintained by

¹² Weltorganisation für Geistiges Eigentum, *Intellectual Property Needs and Expectations of Traditional Knowledge Holders*. P: 22.

communities and individuals that reflect the artistic ideals of that community, in the areas: a) verbal expressions, such as folklore, poetry folk and riddles, signs, symbols, and indications, b) musical expressions, such as folk songs and instrumental music, c) expressions by action, such as folk dances, drama, and ritual forms, both have been reduced in a material form or not, d) Tangible expressions, such as: (i) folk art products such as drawings, paintings, carvings, statues, pottery, terracotta, mosaics, wood, metal goods, jewellery, woven baskets, sewing arts, textiles, costume carpets, (ii) crafts, (iii) musical instruments and (iv) architectural forms.¹³

According to WIPO records, there are three models of TCE protection used by a country. Firstly, TCE is given protection in different *sui generis* laws, for example in Panama and the Philippines. Secondly, TCE is included in the provisions of the Copyright Act specifically designed for the expression of folklore, for example, Burkina Faso, Ghana, Kenya, Mexico, Mozambique, Namibia, Nigeria, Senegal, Sri Lanka, Togo, Tanzania, and Vietnam. Third, TCE is included as part of the Copyright Law. This form is used by Indonesia, the same as the governments of Barbados, Ivory Coast, and Iran.¹⁴

In Indonesia, the term TCE has changed several times. In Copyright Law no. 19 of 2002, article 19 paragraph (2) says that: folklore is a concept to describe a collection of traditional creations, both made by groups and individuals in society, which show their social and cultural identity based on standards and values that are spoken or followed publicly. hereditary

Regarding changes to Copyright law, namely Law No. 28 of 2014, TCE explained in the elucidation of article 38 states “traditional cultural expressions” include one or a combination of the following forms of expression:

- a. Verbal textual, both spoken and written, in the form of prose or poetry, in various themes and message content, which can be in the form of literary works or informative narratives;
- b. Music, including, among other things, vocal, instrumental, or a combination,
- c. Movement, including, among other things, dance;
- d. Theatre, including, among other things, puppet shows and folk plays;

¹³ World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Policy, Law and Use* (Geneva: WIPO, 2008). P. 97.

¹⁴ World Intellectual Property Organization, 115.

- e. Fine art, both in two-dimensional and three-dimensional form made from various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, etc. or a combination thereof; And
- f. Traditional ceremonies

TCE can be said to be a form of human intellectual creativity whose manifestation is truly alive and important to human civilization. Various ethnic communities have different cultures, in this case showing the wealth of their communities. TCE is formed slowly and gradually from the existing culture and develops continuously. Through this cultural image, the community can develop relations with its culture.

3. The Protection of Penginyongan Traditional Cultural Expressions in Banyumas Regency

The IPR regime is a legal product originating from Western society which is full of individuality. IPR is a part of absolute human ownership, because IPR is obtained through the individual's hard efforts in using his "intellectuality". So that, it is appropriate to receive the highest legal protection.

IPR is intended purely commercially. As if every work should be commercialized. Whereas in copyright, there are copyrighted works that do not only talk about commercialization. Even when it is commercialized it will harm certain circles. One of them is in the form of Traditional Cultural Expressions (TCE). TCE is a different part of IPR from the IPR regime in general. If IPR generally focuses on protection which refers to the individuality and exclusivity of a work, then TCE focuses on the communal property of a particular community.

One of the theories related to the provision of legal protection is Roscoe Pound's theory which states that law is "a tool of social engineering". This theory states that human interests are demands that must be protected and fulfilled in the field of law.¹⁵

In relation to TCE protection, this protection is included in the category of public interest and also the social interest. Public interest itself includes the interests of the state as a legal entity in maintaining its personality and substance as well as the interests of the state as guardian of the public interest. So that the

¹⁵ Salim HS, Erlies Septiani Nurbani, *Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis*, 2nd ed. (Jakarta: Rajawali Press, 2014), 256.

state should protect this TCE, because TCE is part of the nation's personality. Indonesia's diverse and rich TCE has become the identity of the Indonesian nation that differentiates it from other nations. Without firm efforts and firm support from the government, it is feared that this TCE will become extinct or what often happens is claims by other countries.

Furthermore, TCE is a social interest, which in this case falls into the category of community interest in maintaining social resources and community interest in general progress. This is because TCE is a product that contains elements and characteristics of traditional artistic heritage developed and maintained by communities and individuals that reflect the artistic ideals of that community.

TCE protection is sometimes carried out to support community economic development by using their tradition-based creations and innovations commercially as a contribution to their economic development. This protection is also needed to prevent inappropriate use of TCE. With this protection, the community can exercise their rights to prevent the use or commercialization of their TCE by others, including offending or demeaning culture, or preventing the wrong use of TCE which can cause insult, defame, slander, or mislead as well as the use of TCE that is sacred or secrets in certain communities.

From the data obtained by the author, it turns out that not all TCE in Banyumas regency is recorded in the Communal Intellectual Property data in the Traditional Cultural Expressions section of the Directorate General of Intellectual Property Rights (DGIP) of the Ministry of Law and Human Rights of the Republic of Indonesia.

New TCEs that recently received Collective Intellectual Property from the Indonesian Ministry of Law and Human Rights DGIP are *Cowongan* (traditional rain summoning ritual using dolls made from coconut shells) and *Begalan* (a traditional speech art used as a means of wedding ceremonies which depicts the robbery of the belongings of the groom by a begal/(robber). According to the maestro, Titut Edy Purwanto, these two arts were almost extinct. Begalan, for example, in the era of the 90s was very difficult to find. The impression that is attached to thieves (robbers) is the traditional art of lower-class society where the perpetrators are people who are uneducated and speak without knowing manners and tend to be obscene. Many begalan artist at that time were ashamed of their jobs. Then Mr. Titut Edi Purwanto, began to be moved to develop this almost extinct TCE by learning to be a begalan artist. He is willing to develop

this art even without being paid. Until now, this art has returned to life and has been accepted by the community and has even become a source of pride for the people of Banyumas. According to him, the philosophical meaning in this art is increasingly understood by the public, so that it has developed currently.¹⁶

The same goes for Cowongan's art. According to him, this art could even be said to have been completely lost before. In contrast to Begalan which is a performance art, cowongan is more of a ritual. The development of religion inevitably shifted this art. One of his effective ways is trying to turn this ritual into performance art. His debut in this art was when he performed cowongan art with a new choreography entitled "Nini Cowong" (the grandmother of cowong) which was displayed in the old Soetedja Building Purwokerto around 2008. Since then, cowongan returned to be known and continues to be developed to this day.

Although, only these two TCE have received certificates, there are already several TCE in Banyumas district which are listed on the DGIP website. The following is the TCE data that is contained in the communal intellectual property of the TCE section of the Indonesian Ministry of Law and Human Rights' DGIP:

No.	Traditional Cultural Expression	Explanation
1.	Buncisan (The dance to invite guests from abroad or the kingdom is accompanied by gamelan or angklung and singing of Banyumas regional songs.)	
2.	Sintren (traditional dance with mystical nuances)	https://kik.dgip.go.id/page/detail/15558
3.	Rinding (the art of music whose equipment is made of bamboo)	https://kik.dgip.go.id/page/detail/14291
4.	Unggah-Unggahan Banokeling (welcoming ritual during the month of Ramadan by the bonokeling community)	https://kikomunal-indonesia.dgip.go.id/jenis/1/ekspresi-budaya-tradisional/29445/banokeling

¹⁶ Interview with Titut Edy Purwanto, on August 1 2022

5.	Gandalia (the art of music using bamboo which was previously used to ward off pests in rice fields)	https://kikomunal-indonesia.dgip.go.id/jenis/1/ekspresi-budaya-tradisional/29447/gondolio
6.	Lengger Banyumasan (traditional dance performed by female dancers while singing and interacting with the audience)	https://kikomunal-indonesia.dgip.go.id/jenis/1/ekspresi-budaya-tradisional/412/tari-lengger
7.	Lengger Lanang (traditional dance performed by male dancers while singing and interacting with the audience)	https://kikomunal-indonesia.dgip.go.id/jenis/1/ekspresi-budaya-tradisional/29442/lengger-lanang
8.	Calung (traditional music with a gamelan-like device made of black bamboo)	https://kik.dgip.go.id/page/detail/13854
9.	Begalan (a traditional speech art used as a means of wedding ceremonies which depicts the robbery of the belongings of the groom by a begal/robber)	https://kikomunal-indonesia.dgip.go.id/jenis/1/ekspresi-budaya-tradisional/29443/be https://kik.dgip.go.id/page/detail/14492
10.	Cowongan (traditional rain summoning ritual using dolls made from coconut shells)	https://kikomunal-indonesia.dgip.go.id/jenis/1/ekspresi-budaya-tradisional/29444/nini-cowongan

From the data, in the Banyumas regency only 10 TCE that have been recorded at the DGIP. The rest has not yet been inventoried nationally at DGIP, it is still limited to local records.

This is very unfortunate, especially since one of them is TCE which is popular in the Banyumas community. For example, in Kenthongan, the art of musical performance with instruments made of bamboo. This art is very attached to Banyumasan, of any social level. Apart from that, this art is often contested at certain events, both for the anniversary of Banyumas regency and the celebration of Indonesian Independence. Not only at government

ceremony but also at people ceremony, kenthongan usually happen to entertain community. This art also become an extracurricular activity in educational institutions. For example, at UIN Prof. KH Saifuddin Zuhri Purwokerto, there is an art extracurricular under Scout. And this Kenthongan Group is the hallmark of UIN Saizu when welcoming guests at important events, as well as routine events such as graduations.

The next TCE is Ebeg. This performing art is no less popular than kenthongan. Ebeg has become embedded in the Banyumas community. This performance is interesting and very entertaining for the public because the dance and accompanying music are fast and dynamic, with various costumes and other equipment. Also, the “most interesting” part which is in the form of a trans scene of the players, or what is known by the people of Banyumas with the condition “mendem”.

If these are no registration of both performing arts as Communal Intellectual Property, it is feared that in the future they will be claimed by other parties outside the Banyumas community. Indonesia has often experienced its TCE claims by foreign parties. For the example are batik, reog, Pendet dance, even “rasa sayange” song. It is possible that later kenthongan and ebeg will experience the same thing. So what about TCE which is not popular in Banyumas regency? It should be noted that some TCE are not recorded and are not very popular in the Banyumas regency community, including: *Karawitan Gagrak Banyumas* (gamelan music in banyumas style), *Macapat Gagrak Banyumas* (traditional speech art in the form of Javanese songs sung without using musical instruments), *Pak Keong* (ritual of asking for rain using the properties of kitchen utensils), *Bongkel* (Bamboo musical instruments to ward off pests in rice fields), *Genthoakan* (the art of speaking accompanied by music and dance), *Gumbeng* (a folk game consisting of pieces of bamboo that are tuned to certain tunes, placed on the feet of those who play them by extending them forward in a sitting position), *Slawatan Jawa* (traditional Islamic music with a Javanese tambourine), *Calengsai* (performing arts which is a combination of native Banyumas arts, namely calung and lengger, with Chinese arts, namely lion dance), *Ujungan* (the ritual of asking for rain takes the form of a human fighting with rattan property), *Aksi Muda* (dances using pencak silat moves accompanied by tambourines and songs with Islamic nuances), *Dalang Jemblung* (traditional spoken word art performed by four to five performers without any artistic properties with musical arrangements

built through the mouth, and usually the performances often feature stories or chronicles, legends and stories of the prophets), *Munthiet* (the art of speaking in which the actor eats the dish without stopping), and *Rengkong* (a traditional musical instrument made using bamboo as part of a series of rice harvests which is a ritual form of carrying rice together from the rice field to the house or village barn).

If these TCEs are not registered as Communal Intellectual Property at DGIP, it is feared that apart from being able to be claimed by other parties, and they will disappear if fewer people pursue them. Considering that some of these TCE's maestros are not young anymore. If there is no regeneration, it will become extinct without the next generation knowing.

Therefore, the regional government, in this case the Banyumas Regency the Dinporabudpar (Department of youth, sport, culture, and tourism) Dinporabudpar, can carry out legal protection for TCE. The form of legal protection itself according to Philipus Hudjon consists of two forms, namely protection that is preventive and repressive.¹⁷ Preventive protection in this case, this can be done by taking an inventory of the TCE in Banyumas regency, as well as helping TCE artists to be assisted in registering their TCE at DGIP. So that in the future there will be no claims from parties outside Banyumas Regency, nor will it be registered as an exclusive work such as a Copyright or Trademark. Repressive protection can be carried out by the government, in this case if there are claims by other countries, commercialization for personal interests, or there are attempts to reduce existing TCE. The government can take firm action against these actors and is ready to fight not only at the national level but also at the international level.

4. Institutions in the Protection of Penginyongan Traditional Cultural Expressions

Friedman in his explanation stated that the legal system consists of three components, namely legal substance, legal structure, and legal culture.¹⁸ Achmad Ali then explained the three components. First, the legal structure, is the entire

¹⁷ Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia*, 1st ed. (Surabaya: PT Bina Ilmu, 1987), 2.

¹⁸ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 6.

existing legal institutions and their apparatus. Second, legal substance, namely the substantial system, which is what determines whether or not a law operates. The substance is made by people in the legal system to support each other in carrying out the legal system. Legal substance includes legal rules, norms, principles, both written and non-written, including court decisions. Third, legal culture, namely a person's behaviour or attitude towards a law, values, beliefs and hopes. This legal force is a social force that can determine how the law will be implemented, avoided, or misused.¹⁹

1. *Legal Substance*

In terms of legal substance, TCE protection is contained in various legal regulations. Previously, it was discussed that Intellectual Property is divided into two major classifications, namely Copyright and Industrial Property Rights. Copyright is divided into Copyright itself and Related Rights. Meanwhile, Industrial Property is divided into Patents, Trade Secrets, Brands, Integrated Circuit Layout Designs, and Industrial Designs.

Furthermore, intellectual property can also be seen in terms of ownership, some are personal ownership, some are communal ownership. Personal ownership includes copyright and related rights as well as industrial property rights which include Patents, Trade Secrets, Trademarks, Layout Designs of Integrated Circuits, Industrial Designs and Plant Varieties. Meanwhile communal ownership includes: Traditional Cultural Expressions, Traditional Knowledge, Geographical Indications/Indications of Origin, and Genetic Resources. Here's the chart;

There are rules regarding TCE protection both nationally and internationally. In international regulations, TCE is contained in: Universal Declaration of Human Rights 1948, International Covenant on Economic Social and Cultural Rights 1966, United Nation Declaration on Indigenous People's Rights, The Convention for the Saveguarding Intangible Cultural Heritage, General Agreement on Trade and Tariffs (GATT) World Trade Organization (WTO), and Universal Copyrights Convention (UCC) 1955.

Culture-based IPR is one of the important rights in the UDHR. Articles 22 and 27 state:

¹⁹ Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence) (Volume 1)* (Jakarta: Kencana, 2010), 20.

Article 22

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and International cooperation and in accordance with the organization and resources of each state, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality”.²⁰

Article 27

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.²¹

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.²²

Furthermore, International Covenant on Economic Social and Cultural Rights 1966, “The State Parties to the present Covenant recognized the right of everyone: (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; (c) to benefits from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”.

Under this Covenant, all States which ratify must recognize the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to take benefit from the protection of the moral and material interests resulting from the scientific, literary, or artistic production of which he is the author.

In the United Nation Declaration on Indigenous People’s Rights, it broadly provides protection for Traditional Knowledge in which there is the right to preserve (right to preserve), the right to protect (right to protect), and the right to develop (right to develop). Article 32 (2) states: “... also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge,

²⁰ United Nations, “Universal Declaration of Human Rights,” United Nations (United Nations), accessed August 12, 2022, [https://www.un.org/en/about-us/universal-declaration-of-human-rights.article 22](https://www.un.org/en/about-us/universal-declaration-of-human-rights.article%20)

²¹ Nations. Article 27 (1)

²² Nations. Article 27 (2)

and tradition cultural expression”. This article states that culture can be protected in three forms, namely; cultural heritage, traditional knowledge, and traditional cultural expression.

The Convention for Safeguarding Intangible Cultural Heritage is protection within the framework of UNESCO which has the aim of ensuring the preservation of intangible culture. The main objective of this convention is contained in article 1 chapter 1 general provisions, namely:

“The purposes of this convention are:

- 1) to safeguard the intangible cultural heritage;*
- 2) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;*
- 3) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;*
- 4) to provide for international cooperation and assistance.”²³*

The General Agreement on Trade and Tariff (GATT) and the World Trade Organization (WTO) is the rules of the game in the field of international trade. TCE is included as part of IPR with the TRIPs (Trade Related Aspects of Intellectual Property Rights) which are part of the GATT/WTO.

Furthermore, WIPO divides into three models to protect TCE used by a country. Firstly, TCE is given protection in different sui generis laws, for example in Panama and the Philippines. Secondly, TCE is included in the provisions of the Copyright Act specifically designed for the expression of folklore, for example Burkina Faso, Ghana, Kenya, Mexico, Mozambique, Namibia, Nigeria, Senegal, Sri Lanka, Togo, Tanzania and Vietnam. Third, TCE is included as part of the Copyright Law. This form is used by Indonesia, just like the governments of Barbados, Ivory Coast, and Iran.

So, in Indonesia TCE is included as part of Copyright, even though they have different grounds. Copyright, together with patents, trademarks, trade secrets, industrial designs, integrated circuit layout designs are included in personal ownership. Meanwhile, TCE together with Traditional Knowledge,

²³ “UNESCO - Text of the Convention for the Safeguarding of the Intangible Cultural Heritage,” accessed August 12, 2022, <https://ich.unesco.org/en/convention>. article 1 (1)

Geographical Indications/Indications of Origin, and Genetic Resources are included in the collective ownership category.

TCE has several changes every time an amendment to the Copyright Law occurs. First, during the Dutch colonial period, Indonesia, which was named the Dutch East Indies, used Auteurswet 1912. Auteurswet 1912 refers to the provisions of The Berne Convention for the Protection of Literary and Artistic Works 1886. In this provision, TCE is not mentioned at all. This makes TCE not protected at all.

After independence, 70 years after adopting Auteurswet 1912, Law No. 6 of 1982 concerning Copyright was born. TCE in this provision is referred to as National Cultural Property. National Cultural Objects are categorized as: first, works of historical heritage, pre-history, paleo-anthropology, and other national cultural objects.²⁴ Second, the results of folk culture that belong together, such as stories, saga, fairy tales, legends, chronicles, songs, handicrafts, choreography, dances, calligraphy and other works of art.²⁵

Five years later, the government enacted Law no. 7 of 1987 concerning Copyright. In the provisions of this Law, TCE is included in the category of works whose creator is unknown and makes the state as the copyright holder. This article states that the state holds the copyright on works of prehistoric heritage, history and national cultural objects.²⁶ Then, there is an insertion in this article, namely, "the state as the copyright holder for national cultural objects" gives the state an obligation to: 1) maintain; 2) protect the national cultural objects against foreign countries; 3) make state property a cultural object deemed to be in the national interest by presidential decree based on the consideration of the House of Representatives.²⁷

The next law is Law no. 19 of 2002 concerning Copyright. This law states that the State holds the Copyright for works of prehistoric heritage, history and other national objects. Then it is explained in the paragraph that: the state holds the copyright on folklore and the results of folk culture that are shared property, such as stories, saga, fairy tales, legends, chronicles, songs, handicrafts, choreography, dance, calligraphy and other works of art.

²⁴ "UU No. 6 Tahun 1982 Tentang Hak Cipta," n.d. Article 10 paragraph (1)

²⁵ "UU No. 6 Tahun 1982 Tentang Hak Cipta." Article 10 paragraph (2a)

²⁶ "UU No. 7 Tahun 1987 Tentang Hak Cipta," n.d. Article 10 paragraph (1)

²⁷ "UU No. 7 Tahun 1987 Tentang Hak Cipta." verse 10 A

Folklore in the elucidation of this article is defined as a concept to describe a set of traditional creations, whether made by groups or individuals in society, which show their social and cultural identity based on standards and values spoken or followed from generation to generation.

Then finally, in Law No. 28 of 2014, TCE in articles 38 and 38 to be held by the state. TCE in the explanation of this article includes one or a combination of the following forms of expression: a) Verbal textual, both spoken and written, in the form of prose or poetry, in various themes and message content, which can be in the form of literary works or informative narratives; b) Music, including among other things, vocal, instrumental, or a combination thereof; c) Movement, including, among other things, dance; d) Theatre, including, among other things, puppet shows and folk plays; e) Fine art, both in two-dimensional and three-dimensional form made from various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, etc. or a combination thereof; and, e) Traditional ceremonies.²⁸

From the passage of laws and regulations, since Law of No. 6 of 1982 to 2014, Indonesia still includes TCE as part of Copyright. However, they clearly fall into different categories. One as personal ownership while the other is collective ownership. Thus, the form of protection will not be optimal. It would be nice if Indonesia, as a country that has a number of diverse tribes and ethnicities of TCE has separate law to protect and preserve the existing their TCEs.

2. *Legal Structure*

In the previous explanation, the legal structure is the whole of existing legal institutions and their apparatus. If it is related to TCE protection, the government institution that plays the most role is the Department of Youth and Sports, Culture and Tourism under the respective regional governments. More specifically in the Management and Preservation of Traditional Values sub.

This institution has an obligation as a representative of the State to make an inventory of TCE in its territory, in accordance with the provisions of article 38. Article 38 paragraph (1). This article expressly explains that

²⁸ "UU No. 28 Tahun 2014 Tentang Hak Cipta," n.d. explanation of article 38.

“Copyright on traditional cultural expressions is held by the State”. So that the state through the institutions under it must carry out what is stated in paragraph (2) of this article, namely: “The state is obliged to inventory, guard and maintain traditional cultural expressions as referred to in paragraph (1)”.

Based on the provisions of this article, the author explored data from the Department of youth, sport, culture, and tourism in Banyumas Regency, and Tourism Office by interviewing Mr. Mispan, S.Pd., M.Si., as Sub-Coordinator for Management and Preservation of Traditional Values. The Department of youth, sport, culture, and tourism in Banyumas Regency has so far taken an inventory of the TCE in Banyumas Regency and printed it in several books and booklets. Maintaining, is done by frequently carrying out cultural events. During the Covid-19 pandemic, the Department of youth, sport, culture, and tourism carried out many performances, as well as online cultural seminars. Post-pandemic the Department of youth, sport, culture, and tourism has often held cultural performances offline and documented and uploaded on social media, either via the website, Instagram, or YouTube.

The human resources at Department of youth, sport, culture, and tourism, especially in the field of management and preservation of traditional values, are very good. This is evidenced from the results of interviews conducted by the author. Mr. Mispan S.Pd., M.Sc., is very familiar with the details of TCE in the Banyumas district. Apart from that, he explained the various types of TCE that exist in Banyumas Regency along with the history and philosophical values contained in each existing TCE. For example, when explaining the Begalan tradition, he explained the history of why this TCE existed as well as the philosophical meaning of the items carried by the robbers such as bamboo fans, jugs, mortars and so on. He also told a number of TCE which were feared to become extinct. As well as appreciating when many artists and young people began to care TCE in Banyumas Regency.

In terms of protecting TCE, apart from carrying out inventories and cultural festival, the Department of youth, sport, culture, and tourism should also be active in carrying out registration for data collection on communal intellectual property at DGIP. According to Mr. Mispan, the

delay in registering TCE is feared that the TCE in Banyumas Regency will be claimed by other regions, for example a special cake in Banyumas Regency known as “Nopia”(Traditional cake made from brown sugar, coated with flour and baked). It turned out that the cake had been registered by the Purbalingga regency so that in communal intellectual property records, Banyumas was not the origin of the cake.

The problems faced by Department of youth, sport, culture, and tourism in the field of TCE conservation are still classic, namely funding problems. Insufficient funding from the state makes it difficult for Department of youth, sport, culture, and tourism to inventory, maintain and preserve TCE in Banyumas Regency.

3. *Legal Culture*

Basically, legal culture is a social force that can determine how the law will be implemented, avoided, or misused. So, no matter how good the law is made (legal substance), in the end it is determined by the legal culture of the society concerned. These parts of legal culture really determine the success or failure of the policy that has been stated in the form of law.

Copyright has been known in Indonesia since the Dutch colonial era with its Auteurswet. Then, starting from Law No. 19 of 2002 and Law No. 28 of 2014 on Copyrights, the law is a consequence of Indonesia ratifying the GATT-WTO which contains TRIPs.

The values promoted by the TRIPs Agreement are very liberal, individualistic, and commercialization of IPR works which ignore the interests of humanity and developing/underdeveloped countries to catch up with science and technology. Besides, the concept of IPR protection in the TRIPs Agreement is contrary to the communalistic cultural values held by Indonesian society. In Indonesian society (especially in customary law), the main thing is not the individual but the community.

Indonesian culture is dominated by a “spoken” culture, not a “written” culture, so that the inventory process experienced many obstacles in finding written evidence. Indonesian people who are used to this speech culture are very unfamiliar with the “recording” method mandated in Copyrights Law. Although in fact Copyright is different from other Intellectual Rights which use a first to file system. Copyright uses an automatic protection

system that does not require registration. In addition, an inventory of TCE is also an obligation of the State. However, the active role of the community is needed.

This is proven by the recording of Communal Intellectual Property on “Cowongan” and “Begalan” art which is carried out by elements of society. In this case by the IPR Centre of Wijayakusuma University, Purwokerto. is not directly involved in efforts to record these two arts as Communal Intellectual Property even though The Department of youth, sport, culture, and tourism has carried out an inventory of TCE in Banyumas Regency.

Then, in the arts community itself, recording is not an important thing to do. The results of the interview with Mr. Titut Edi Purwanto stated that he did not think at all that he had to register to DGIP to obtain communal intellectual property. As a performer of the Cowongan and Begalan arts, he only focuses on efforts to preserve this art so that it continues to be sustainable. He himself was still surprised when he received the Communal Intellectual Property certificate which included his name as the maestro. He didn’t think at all that he would be considered a Maestro for the two TCEs.

It would be a shame if these TCEs would be claimed by other parties outside the Banyumas Regency community later and could even be lost because they would no longer be implemented by future generations. This could happen considering that the people of Banyumas in general only know the “speech” culture about TCE.

5. Conclusion

The form of TCE protection in Banyumas Regency is carried out by inventorying, maintaining, and guarding it which is carried out by Department of youth, sport, culture, and tourism in Banyumas Regency. Besides, the strongest form of protection is obtaining a Communal Intellectual Rights certificate from DGIP for Banyumas Regency TCE, namely for Cowongan and Begalan art. Although it is still very unfortunate because only two of them have Communal Intellectual Property certificates, the other TCEs such as *buncisan*, *sintren*, *rinding*, *Banokeling*, *Unggah-Uanggahan*, *Gandalia*, *Banyumas lengger*, *Lengger lanang*, *Calung* have been recorded on the DGIP of the Indonesian Ministry of Law and Human

Rights. The remainder is still not recorded in DGIP as Communal Intellectual Property.

Institutions of protection the TCE in Banyumas Regency can be seen from the perspective of legal substance, legal structure, and legal culture. In terms of legal substance, TCE protection is demonstrated by legislation that protects it, although it is still unfortunate that currently there is no specific law for TCE protection. In terms of the legal structure, the protection of TCE in Banyumas Regency is carried out by the Department of youth, sport, culture, and tourism. However, even though the Department of youth, sport, culture, and tourism has carried out inventory and preservation, it still has limitations, including efforts to register Communal Intellectual Property with DGIP. In terms of legal culture, the protection of TCE in Banyumas district has obstacles related to the existing "speech" culture. TCE actors and the public are not familiar with efforts to record their TCE, so they are very vulnerable if there are claims against TCE from outside Banyumas Regency.

Reference:

- Ali, Achmad. "Menguak teori hukum (legal theory) dan teori peradilan (judicialprudence) termasuk interpretasi undang-undang (legisprudence)." *Jakarta: kencana* 1 (2009).
- Friedman, Lawrence M. *The legal system: A social science perspective*. Russell Sage Foundation, 1975.
- Kemdikbud. "Warisan Budaya Tak Benda Indonesia". <http://kwriu.kemdikbud.go.id/info-budaya-indonesia/warisan-budaya-tak-benda-indonesia/>
- Kompasiana.com, "Penggunaan Bahasa Jawa untuk Melestarikan Warisan Budaya Indonesia dalam Lingkup Pemuda Jawa," KOMPASIANA, May 13, 2014, <https://www.kompasiana.com/isyakta/54f7563ca3331184358b45e6/penggunaan-bahasa-jawa-untuk-melestarikan-warisan-budaya-indonesia-dalam-lingkup-pemuda-jawa>
- Kurniasih, Wida, "Daftar Suku Bangsa Di Indonesia Serta Pranata Sosial Masyarakatnya - Gramedia Literasi," accessed October 9, 2021, <https://www.gramedia.com/literasi/suku-di-indonesia/>
- Law No. 19 of 2002 Concerning Copyright
- Law No. 28 of 2014 Concerning Copyright

Law No. 6 of 1982 Concerning Copyright

Law No. 7 of 1987 Concerning Copyright

Merdeka.com. "Selain Batik, 5 Warisan Budaya Indonesia Ini Juga Pernah Diakui Negara Asing," merdeka.com, July 14, 2020, <https://www.merdeka.com/jatim/selain-batik-5-warisan-budaya-indonesia-ini-juga-pernah-diakui-negara-asing.html>

Mutaqin, Ahmad dkk, *Sejarah Islamisasi di Banyumas*. Puslitbang Lektur dan Khazanah Keagamaan Badan Litbang dan Diklat Kementerian Agama Tahun 2017.

PHerzani, Andhika Putra. "Peran Pemerintah Dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia." *Jurnal Hukum & Pembangunan* 50.4 (2021): 956-978.

Philipus, M. Hadjon. "Perlindungan Hukum Bagi Rakyat Indonesia." *Bina Ilmu, Surabaya* 25 (1987).

Saidin, O. K. "Aspek hukum hak kekayaan intelektual: (Intellectual property rights)." (2010).

Salim, H. S. "Penerapan teori hukum pada penelitian tesis dan disertasi." (2013).

Susanti, Diah Imaningrum, Raymundus I. Sudhiarsa, and Rini Susrijani. *Ekspresi budaya tradisional dan hak kekayaan intelektual*. Percetakan Dioma Malang, 2019.

Tim Penyusun Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM Republik Indonesia, *Modul Kekayaan Intelektual Bidang Kekayaan Intelektual Komunal* (Jakarta: Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM Republik Indonesia, 2019).

UNESCO - Text of the Convention for the Safeguarding of the Intangible Cultural Heritage," accessed August 12, 2022, [https://ich.unesco.org/en/convention.article1\(1\)](https://ich.unesco.org/en/convention.article1(1))

Unesco. "Recommendation on the Safeguarding of Traditional Culture and Folklore - UN Documents: Gathering a Body of Global Agreements," accessed July 12, 2022, <http://www.un-documents.net/folklore.htm>. accessed on 12 July 2022.

United Nations, "Universal Declaration of Human Rights," United Nations (United Nations), accessed August 12, 2022, <https://www.un.org/en/about-us/universal-declaration-of-human-rights.article22>

World Intellectual Property Organization. *Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999)*. Vol. 768. WIPO, 2001.

World Intellectual Property Organization. *WIPO intellectual property handbook: policy, law and use*. Vol. 489. WIPO, 2004.

