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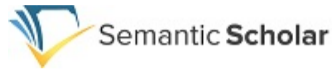
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# The Preservation of Traditional Cultural Expression in Aceh and Malaysia

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**Abstract:** TCE becomes an interesting issue which is debated in the meeting of the countries in the world. This is to show the existence of TCE is very important for people in the world. TCE is a cultural heritage and national identity. In Indonesia, preservation of TCE has not shown a significant direction, but only a form of protection in the Copyright Act. Where the concept on IPR in the Copyright Act is not in accordance with the TCE concept which is communal and passed down from generation to generation. This article will examine the preservation of TCE communities in Aceh and Malaysia. In the preservation of TCE the people in Aceh have the role of the Wali Nanggroe Institution and the Customary institution of the Majelis Adat Aceh as mandated by the Law on the Governing of Aceh. Noting the existence of community TCE in Aceh which is increasingly influenced by developments in the era of globalization, the government and customary institutions need to collaboration to immediately collect data on community TCE and also formulate Qanun (regional regulations). While in Malaysia, they have a National Heritage Certificate which both protects and preserves the cultural heritage of Malaysia.

**Keywords:** traditional cultural expression, Aceh, Malaysia, preservation

## 1. Introduction

Traditional Cultural Expression (TCE) is an important issue in international debates (Antons, Christoph, 2018). TCE is a creation in the field of art that contains elements of traditional heritage characteristics as the nation's culture which is a shared resource developed and maintained or preserved by certain traditional communities or communities or certain social organizations in a continuous period of time. TCE is as a form of traditional intellectual property. TCE has enormous cultural value as a form of cultural heritage that continues to develop even in modern societies in the world. While on the other hand, TCE also plays an important role as part of social identity and cultural expression of a society (Afifah kusumadara, 2011).

TCE a social group is a reflection that humans are collectively and descend to face nature. In an evolutionary perspective, expressions and ways of life are linked as art and culture showcasing aesthetic and techno-cultural beauty which is a form of environmental engineering to face the challenges of nature and the surrounding environment, such as ceremonies, dances and arts (Hokky Situngkir, 2012).

Aceh as one of the provinces in Indonesia has TCE wealth as cultural heritage and community identity. The TCE, among others: Rapaii Pasai, Rapaii Geurimpheng, Meurukon, Silat Song-song, Rapai Geleng, Didong, Guel dance, Teganing, Saman dance, Laweut dance, Seudati dance (Ferawati, 2013). TCE in Malaysia, like: carving, weaving, and silver handicrafts, Batik and songket, East Malaysia is famous for its wooden masks, Sumazau dance, Limbai dance (Yuzaidy Mohd. Yusof, et al, 2017). The existence of the TCE has begun to disappear eroded by the current of modernization among the younger generation (A. Safiril Mubah, 2011). Therefore, future generations of young people will never see TCE again in Aceh.

TCE guidelines have been discussed at the international level in the WIPO International Government Committee (IGC) Genetic Resources Traditional Knowledge Traditional Cultural Expression (GRTKF). Indonesia has also drafted a Draft Bill on Traditional Knowledge and Traditional Cultural Expressions to preserve TCE. The National Heritage Act 2005, Malaysia which outlines the principles and regulations concerning protecting, preserving and preserving heritage and culture that are appropriate to the current world situation (Yuzaidy Mohd. Yusof, et al, 2017). In the preservation of TCE in Aceh as one of the provinces in Indonesia, there is the Aceh Qanun Number 4 of 2003 which gave the task of the Aceh Traditional Council as a traditional institution to participate in protecting TCE. In this article we will analyze the preservation of TCE in Aceh and Malaysia.

## 2. WIPO

Traditional cultural expressions also called expressions of traditional cultural expression may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions. WIPO is concerned with a very specific understanding of the term: the use of IP tools and principles to prevent unauthorized or inappropriate uses of TK/TCEs by third parties. Put different, the form of protection being developed at WIPO is the application of IP law, values and principles to prevent misuse, misappropriation, copying, adaptation or other kind of illicit exploitation. Te objective, in short, is to make sure that the intellectual innovation and creativity embodied in TK or TCEs are not wrongly used (WIPO, 2015).

### 3. Indonesian Laws

In the Indonesian Laws, Intellectual Property Rights are regulated in Law Number 28 of 2014 concerning Copyright (Law of Indonesian Copyright). Article 38 has stated that Copyright over traditional cultural expressions is held by the State. The state is obliged to inventory, preserve and preserve the expression of traditional culture. And, the use of traditional cultural expressions must pay attention to the values that live in the developing community.

Traditional cultural expressions include one or a combination of forms expression as follows (Explanation of Article 38, Law of Indonesian Copyright):

- a) verbal textual, both oral and written, in the form of prose and poetry, in various themes and content of messages, which can be in the form of literary works or informative narratives;
- b) music, including but not limited to, vocal, instrumental, or a combination thereof;
- c) motion, including among other things, dance;
- d) theater, including among others, wayang performances and folk plays;
- e) fine arts, both in two-dimensional and three-dimensional forms made from various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, etc. or their combinations;
- f) traditional ceremonies.

Legal protection of Intellectual Property Rights can be applied to protect traditional knowledge and traditional cultural expressions, especially those that have been developed in such a way by individuals without losing their traditional characteristics. Traditional knowledge is a value system in the lives of indigenous peoples, among others, can be in the form of medicinal and medicinal plants, carving, weaving of plant breeding and culture of indigenous peoples (Abdul Atsar; 2017).

The state is the right holder of traditional cultural expressions and the results of traditional expressions that belong to the common (communal rights) of the customary community that it is developing. The matter of inventory and the obligation to carry out records by the government, may be one of the factors of weakness is quite serious (Hendra jaya, 2016). The Law of Indonesia Copyright is not yet perfect in accommodating proper protection and use for community TCE because copyright is a right owned by an individual to his creation and does not regulate traditional rights that are collectively owned by a community (Rahman Hasima, 2018).

Intellectual works in the form of culture, customs and cultural values contained in indigenous communities, will be difficult for traditional communities to use them to protect their works. This is caused by differences in character between Intellectual Property Rights and Folklore which makes the Intellectual Property Law system not yet able to protect TCE as a whole (Anak Agung, 2018).

In addition, in Law of Indonesia Copyright, works protected as TCE are narrower compared with WIPO Intergovernmental Committee on Intellectual Property and

Genetic Resources, Traditional Knowledge and Folklore (WIPO IC-GRTKF). Article 1.1 WIPO ICGRTKF: The Protection of Traditional Cultural Expressions/ Expressions of Folklore: Revised Objectives and Principles stated: "Traditional cultural expressions" and/or "expressions of folklore" [are] and any forms, [whether] tangible [and][and/or] or intangible or a combination thereof, in which traditional culture and knowledge are expressed, appear or are manifested, [and comprise:] and are passed on from generation to generation, including: / such as but not limited to the following forms of expressions or combinations thereof: 1) phonetic or verbal expressions, such as: stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols, etc.; 2) musical or sound expressions, such as songs, rhythms, [and] instrumental music and popular tales; 3) expressions by action, such as dances, plays, ceremonies, rituals, sports and traditional games and other performances, theater, including, among others, puppet performance and folk drama, whether or not reduced to a material form; and, 4) tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), wooden carvings, sculptures, mouldings, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, baskets, food and drink, needlework, textiles, glassware, carpets, costumes, works of jewelry, toys, gifts and; handicrafts; musical instruments; stonework, metalwork, spinning, and architectural and/or funeral forms.

The use of TCE must take into account the values of traditional communities, and the period of protection that is indefinite. In the copyright legal system it is difficult to apply in the protection of TCE because to fulfill the concept of protected creation TCE must be original and realized in a media, the element of authenticity and realization is difficult to fulfill, besides that the protection of economic rights to TCE is also difficult to fulfill, due to the nature of society traditionally open and ignoring the economic rights of the TCE (Danu Rahmanullah, 2018).

### 4. Draft Bill on Traditional Knowledge and Traditional Cultural Expressions (Indonesian of TKTCE Draft Bill)

In protecting the TCE of the community, it also has a Draft Bill on Traditional Knowledge and Traditional Cultural Expressions. The TKTCE Draft Bill confirms the TCE requirements in Article 2.1 the TKTCE Draft Bill confirms TK and TCE include cultural elements which: a. Arranged, developed, maintained, and handed down as a tradition; and b. Has special characteristics as the cultural identity of certain communities that preserve it.

Article 2.2 also emphasizes the kindergarten and TCE elements that are protected, namely protected traditional knowledge including ideas, concepts, skills, learning and other habitual practices, and innovations that shape the lifestyles of traditional communities, including medication knowledge including related medicines and healing procedures, knowledge of space and time, agricultural knowledge, knowledge the natural environment, knowledge of flora and fauna, knowledge of substances and raw

materials, knowledge of anatomy, knowledge of astronomy, and knowledge related to genetic resources.

This sui generis arrangement in the future is expected to provide better economic benefits for communal communities (in the TKTCE Draft Bill uses the term custodian (Yeni Eta; 2014). The party conducting the utilization is obliged to make use of the Custodian TK and TCE in accordance with the agreement set forth in the utilization agreement. The distribution of the results of utilization is determined based on agreement with due regard to propriety and fairness, it has stated under Article 15 TKTCE Draft Bill.

Then it was also confirmed by the party that made use of TCE in Article 16 of the TKTCE Draft Bill that the TCE Custodian was entitled to receive the distribution of utilization results from the holder of the access access permit in accordance with the agreement as outlined in the utilization agreement. The custodian is obliged to utilize the revenue sharing for the preservation and development of TK and TCE.

The TKTCE Draft Bill provides protection for TCE which includes one or a combination of forms of expression, among others; Literary work or informative narrative in the form of oral or written form of prose or poetry, in various themes and content of the message b. The art of music, including among others: vocal, instrumental or a combination thereof; c. The motion arts, including among others: dance, martial arts, and games; d. Theater arts, including among others: puppet shows and folk plays; e. Forging arts, including among others: making traditional weapons, traditional musical instruments, jewelry, production equipment, and household appliances; f. Fine art, both in two-dimensional and three-dimensional forms made from various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, etc. or their combination; and g. Traditional ceremonies, including among others: the procession, equipment, manufacturing equipment and supplies, as well as the presentation.

Protection of TCE in Copyright can be said to be contrary to the purpose of TCE itself which in some cases has different characteristics from Copyright as part of the modern IPR system in which there is a time limit for protection, fixation of creation etc. This means that it is very important that the Draft Law on the Protection and Utilization of Intellectual Property of Traditional Knowledge and the expression of Traditional Culture be immediately stipulated as Law (Tim Kerja Pengkajian Hukum, 2009).

In the concept of IPR, TCE is considered only as an object, downgraded only to an object of individual property, TCE's ownership through certain steps of invention, TCE as an object of commercialization and noble moral values that should be upheld into market values. Many factors show that the application of the western concept through the protection of rights Intellectual property against TCE in Law of Indonesian Copyright, is not always in line with the conception of ownership of communal rights that apply to indigenous peoples (bearers) of TCE (Hendra Djaya, 2016).

For this reason, it is necessary to establish a separate regulatory framework (sui generis) which regulates the protection of TK and TCE. In addition, it is also necessary to create an arrangement that provides a clear legal standing for those who will make demands to outsiders who are considered to have taken action against the rights to the cultural heritage (Diah Permata Budi Asri, 2018).

The community packages, teaches and lowers TCE from generation to generation below. They convey what has been passed down for generations such as saga, legend, art, ceremony. The elements delivered This gradually forms the social norms and the way of life of the people. thus it is very necessary to preserve TCE so as not to cause the loss of Indonesian social norms and traditions (Sylvana Murni D. Hutabarat, 2015).

## 5. Minister of Law and Human Rights Regulations

Technically, TCE has also been regulated in Minister of Law and Human Rights Regulation No. 13 of 2017 Concerning Communal Intellectual Property Data. Communal Intellectual Property is intellectual property in the form of traditional knowledge, traditional cultural expressions, genetic resources, and potential geographical indications. Furthermore, in the regulation, TCE member coverage is all forms of expression of copyrighted works, whether in the form of objects or invisible objects, or a combination of both that shows the existence of a traditional culture that is held communally and across generations (Article 1 (2) Minister of Law and Human Rights Regulations, 2017).

In this regulation gives the minister authority to collect data. This activity can be done through collaboration with ministries/ institutions and/ or regional governments. Inventory of Traditional Culture Expression data that at least contains: TCE name, Custodian, TCE form, classification, region/ location and description.

## 6. National Heritage Act 2005, Malaysian

National Heritage Act 2005 has been formulated through the Law of 2005 which gives significant importance to the efforts to kernel, protect and preserve Malaysian heritage. National Heritage Act 2005 defines inheritance as something of national heritage which includes the footprint of inheritance, objects of inheritance, cultural heritage underwater or everywhere living people are regarded as national heritage in Section 67, National Heritage Act 2005. Provision of definition of inheritance by the National Heritage Act 2005, is complete and clear because it covers all important aspects. Inheritance consists of inheritance sites, objects of inheritance, original inheritance, inheritance of the living and so on. So it cannot be denied that the National Heritage Act 2005 is a deed issued to protect and guard national heritage (ugiura, Naoka, 2015).

In the National Heritage Act 2005 it is emphasized that cultural heritage includes the form of tangible or intangible wealth, cultural structures or artifacts and may include cases, objects, granules, artifacts, formation structures, offerings,

dances, songs, music, heritage which are important to the Malaysian people's way of life, in terms of history or during, on or in the land or cultural heritage under water for the form of tangible but Excludes natural resource inheritance.

This Act will strengthen and assist in resolving cultural heritage. This is important in maintaining and protecting the cultural heritage of tangible and intangible when it is exported and imported by irresponsible parties who only take profit.

The National Heritage Act 2005 has great significance guaranteeing that this inheritance will not be destroyed or lost due to various forms of human activity. Nevertheless, there are still some weaknesses that can still be corrected to the regulation, especially relating to the explanation of the implementation aspects in Sabah and Sarawak. An understanding of the authority of the two countries, namely Sabah and Sarawak which should be explained in the National Heritage Act 2005 to avoid misinterpretation among employees.

Malaysia a country has various cultural heritage derived from various ethnic and ethnic groups. The cultural heritage that is owned must be maintained and guarded because it describes the identity and symbol of a country. To understand the intended cultural heritage, it is necessary to know the definition of cultural heritage. Cultural heritage in Malaysia consists of various kinds form, philosophy, symbol of culture. This is a form of uniqueness that is owned by Malaysia (Yuzaidy Mohd. Yusof, et al, 2005).

This uniqueness needs to be maintained and looked after by every nation or ethnicity inhabiting Malaysia. This requires their respective roles and responsibilities in protecting and preserving their culture. Every culture is a national and ethnic identity. In general, cultural inheritance may be interpreted as an inheritance of tangible, not of property, structure or cultural artifacts. may include matters, objects, details, artifacts, formation structures, offerings, dances, songs, museums of heritage which are important to the way of life of the Malaysian people, in terms of history or time, above or in the ground or underwater cultural heritage for form tangible but not including the original inheritance (Yazid saleh, 2010).

And the Malaysian Government has taken more proactive steps to address this issue in balance with the country's progress. Legislation relating to inheritance has been formulated in stages so as to obtain complete rules. Prior to this, weaknesses and shortcomings among existing laws had weakened the protection and preservation of cultural heritage. Therefore, the Malaysian government has changed the law more comprehensively to homogenize physical and spiritual development in developing the country (Yuzaidy Mohd. Yusof, 2017).

## 7. Preserving of Traditional Cultural Expression di Aceh

Aceh as a specially region in Indonesia which has local wisdom in preserving TCE. In Article 96 paragraph (1) of Law Number 11 of 2006 concerning the Government of

Aceh, the Wali Nanggroe Institution is customary leadership, unifying an independent, authoritative and authorized community, fostering, and supervising the administration of the life of customary institutions, customs, and awarding titles, degrees and other traditional ceremonies ". The Wali Nanggroe Institution in Aceh aims to bring unity to the people of Aceh, uphold the teachings of Islam, realize prosperity, justice and maintain peace; maintain the continuity, history and customs of Aceh; and creating a prosperous, dignified Acehese government.

Then, it is also supported by the customary institutions of the Aceh Traditional Council which are affirmed in Article 5 point (a) of the Provincial Qanun Number 3 of 2004 concerning the Establishment and Organization of the Majelis Adat Aceh which authorizes in enhancing the maintenance, fostering and disseminating of customs and customary law in the community as an inseparable part of customary in Indonesia. The Majelis Adat Aceh of Province is a special feature of Aceh that carries out the development of the Customs field and fosters and develops customs and customs that are not in conflict with Islamic law. The people of Aceh are known to be very religious, and have an indigenous culture that is synonymous with Islam. The traditional cultural life of Aceh and Islam cannot be separated. This harmonization between adat and Islam developed in various aspects of community life (Kamaruzzaman, Chairman of the Provincial MAA 2019-2024).

At the district level, the Majelis Adat Aceh has carried out information on the existence of traditional cultural expressions in society. In preserving our culture we are less concerned with identity and forget the ideology of religion. Religion must actually be ingrained, if custom has to be institutionalized in us, custom has been lost as a fence of religion, there is no substance that does not have custom characteristics. This is like one side of a coin, custom is behavior whereas religion is a concept. The Majelis Adat Aceh in the socialization activities involved the community.

Empowering the community can be done by integrating the efforts of mobilizing the actors, organizing resources, optimizing existing institutions and forming new institutions and elections strategic activities in supporting regional development. Indigenous people or indigenous people as heirs and owners of traditional cultural works should be empowered to be able to participate, not only as guardians or creators, but also to participate in efforts to protect traditional works. Participation in this protection can take the form of defense efforts (Endang Purwaningsih, 2012).

## 8. Conclusion

TCE preservation is a very important element in nation building. This is to show the existence of cultural heritage and national identity. In preservation is also an opportunity to promote TCE for the interests of the people of an area. The role of the community and the government needed for the preservation of the existing TCE.

In Indonesia, preservation of TCE has not shown a significant direction, but only the form of protection that is

applied in the Copyright Act. Where the concept in IPR in the Copyright Act is not in accordance with the TCE concept which is communal and passed down from generation to generation. So, in preserving as well as the protection of TCE requires a concept that is in accordance with the existence of the TCE of the community, namely through data collection in digital libraries and formulating regulations that are Sui Generis.

In preserving TCE, there are only a few people in Aceh who understand the importance of TCE. They still have not animated in having TCE so that only members pay attention. In the preservation of TCE, Aceh also has the Wali Nanggroe Institution and the Majelis Adat Aceh institutions have begun to be implemented in accordance with the mandate of the Law on the Governing of Aceh. Therefore, the government and customary institutions must intensify outreach and guidance to TCE activist communities. Noting the existence of community TCE in Aceh which is increasingly influenced by developments in the era of globalization, the government and customary institutions need to collaborate to immediately collect data on community TCE and also formulate Qanun (regional regulations).

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