

INTERNATIONAL LEGAL PRINCIPLES IN THE IMPLEMENTATION OF ECONOMIC RIGHTS PROTECTION OF SEUDATI TRADITIONAL DANCE IN ACEH

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ABSTRACT

The province of Nanggroe Aceh Darussalam is one of the regions in Indonesia which has a unique culture and has an interesting and famous traditional dance. One of them is the Seudati Dance of Aceh which has received copyright law protection. However Seudati Dance has not been inscribed by UNESCO, nor has it had a legal framework in Aceh. The main question is how to protect Seudati Dance of Aceh based on the principle of international law and how the protection would be implemented in Indonesia. The result of this research shows that the protection of Seudati Dance in international law falls into the category of traditional cultural expression. However, the role of Aceh Government in this case is still unclear. It seems that the Government are unable to take full responsibility for legal protection regarding traditional cultural expressions, especially Seudati Dance. This condition can be seen from the absence of regional regulation, specifically regulating the protection and preservation of the Seudati Dance. The protection of the Seudati Dance itself still only refers to Law No. 5 of 2017 concerning the Development of Culture.

Key Words: Aceh; Seudati Dance of Aceh, Copyright, Traditional Cultural Expressions, Communal Intellectual Property

ABSTRAK

Provinsi Nanggroe Aceh Darussalam merupakan salah satu wilayah di Indonesia yang memiliki budaya yang unik dan mempunyai seni tari tradisional yang menarik dan terkenal. Salah satunya adalah Tari Seudati. Tari Seudati sudah mendapatkan perlindungan Hak Cipta di tingkat nasional, meskipun demikian, Tari Seudati belum terdaftar di UNESCO dan belum mempunyai kerangka hukum di Aceh. Rumusan masalah dalam tulisan ini adalah, bagaimana perlindungan hukum berdasarkan prinsip-prinsip hukum internasional terhadap Tradisional Seudati di Aceh dan implementasi perlindungan Tari Seudati tersebut di Indonesia. Hasil dari penelitian ini menyimpulkan bahwa perlindungan Tari Seudati dalam hukum internasional masuk dalam kategori ekspresi budaya tradisional. Sayangnya, Pemerintah Aceh dalam hal ini juga dirasa belum mampu bertanggung jawab penuh atas perlindungan hukum ekspresi budaya tradisional, khususnya Tari Seudati. Hal ini dapat dilihat dari belum adanya Peraturan Daerah yang khusus mengatur tentang perlindungan dan pelestarian Tari Seudati. Pelindungan Tari Seudati sendiri masih tetap mengacu hanya pada Undang-Undang No. 5 Tahun 2017 tentang Pemajuan Kebudayaan.

Kata Kunci: Tari Seudati di Aceh, Hak Cipta, Ekspresi Budaya Tradisional, Kekayaan Intelektual Komunal

INTRODUCTION

The diversity of ethnicities, languages, customs and beliefs that exist in Indonesia, makes Indonesia a country rich in traditional culture. Indonesia has 1,128 tribes spread throughout the territory of Indonesia with more than 300 regional dialects, more than 3000 (three thousand) Indonesian native dances, and there are various other arts such as traditional songs, traditional musical instruments, traditional arts, and so on (Senewe, 2015).

Seudati dance is one of the traditional cultural expressions in the form of a dance originating from the Province of Nanggroe Aceh Darussalam (Sufi &

Wibowo, 2007). As an expression of traditional culture, legal protection of the copyright of traditional dances is essential in its meaning and role for the Indonesian nation because the culture is the identity of a nation. If the identity of the nation is lost, the existence of that nation will also be lost. Keeping in mind of the importance of this issue, the State should protect traditional dances as an expression of traditional culture through protecting Intellectual Property Rights as regulated in Law No. 28 of 2014 concerning Copyright (Yusuf & Hasima, 2018).

Legal issues regarding the protection of traditional Seudati dances are still general, namely the

Copyright Law (Damian, 2012). There are no detailed regulations regarding the protection of Seudati dance as Communal Intellectual Property Rights, either in law or in regional regulations, especially in Aceh. This condition raises the unclear regulation of the Economic Rights of Seudati Dance, and at the same time increases the problem of who has an obligation to preserve Seudati Dance.

Under the mandate of Article 38 paragraph (4) of Law no. 28/2014 concerning Copyright, further provisions regarding Copyright held by the State for traditional cultural expressions are regulated by a Government Regulation. However, until now there has been no Government Regulation that further regulates the copyright of traditional cultural expressions held by the State. It shows the ineffective legal protection of traditional cultural expressions where there is no clear mechanism and empirical responsibility by the State in the field to protect the property rights of traditional cultural expressions. Other than that, Seudati dance, for now has not been established by *United Nations of Educational, Scientific, and Cultural Organization* (hereinafter referred to as UNESCO) due to the lack of the Government's role in the preservation of Seudati dance as a world cultural heritage. So that Seudati dance can only be used as a culture to preserve.

For now, there are several art studios in Aceh that are fighting for the Seudati Dance to be established by UNESCO and become a world cultural heritage that has economic value and economic assets for the future of Aceh. Contrast, the Saman Dance has been established by UNESCO and has become a legacy, world culture which has a very high economic value and makes the saman dance a financial asset. Therefore, the studios in Aceh are very concerned about Seudati dance so that it can be determined by UNESCO which in the future can have economic value so that it becomes a financial asset and becomes a world cultural heritage.¹

In its development, UNESCO and WIPO continue to strive to protect traditional knowledge and folklore. In this international forum, in 2000 the IGC-GRTKF (Intergovernmental Committee on Genetic Resources, Traditional Knowledge, and Folklore) was formed by WIPO to discuss the possibilities of holding a binding agreement, as a legal measure to protect internationally. But until the 13th meeting, there was no agreement established (Jened, 2010).

One of the exciting and currently developing issues in the scope of the study of Intellectual Property Rights (IPR) is the legal protection of intellectual property produced by indigenous or traditional communities. The intellectual property generated by these traditional indigenous people includes many things ranging from traditional knowledge systems, works of art to what is known as indigenous science and technology. What is interesting about the intellectual property generated by these traditional indigenous peoples is that this regime has not been

accommodated by regulations regarding intellectual property rights, especially in the international sphere.

With the description above, in this paper the author describes the writing with two problem formulations, namely: (i) how are the principles of international law in protecting traditional Seudati dances in Aceh? and how is the implementation of protection of Seudati dance in Indonesia?

METHODS

This research was conducted using a sociological juridical legal research approach (socio-legal), namely the study of law using the approach of legal science and social sciences (Bedner, 2012). In this case law is seen as both norm and fact. Sulistyowati Irianto mentioned that the socio-legal research method identified in

two ways, namely (Sidharta & Irianto, 2009): First, socio-legal studies conduct textual studies of laws and regulations and a policy critically to explain philosophical, sociological, and juridical problems of a written law, so that it is known what the meaning and how its implications are for legal subjects. Second, socio-legal studies marry various new methods between legal research methods and social science, so that legal phenomena can be explained more broadly. Sociological juridical legal research uses secondary data as initial data which is then followed by primary data or field data (Amiruddin & Asikin, 2010). Therefore, data collection tools of this type of approach usually consist of document study, observation and interview (Amiruddin & Asikin, 2010).

RESULTS AND DISCUSSION

1. International Law Principles in Protecting Traditional Seudati Dances in Aceh

a. Principles of Human Rights

Cultural rights are one of the fundamental rights stipulated in the Universal Declaration of Human Rights. The protection of cultural rights is seen as a reflection of global concern to ensure the fulfilment of fundamental rights and are treated according to internationally agreed minimum standards. As stated in Article 22 of the Universal Declaration of Human Rights that, "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".

Then, Article 27 of the Universal Declaration of Human Rights also affirms that:

- 1) Everyone has the right to freedom to participate in the cultural life of society to enjoy the arts and share in the advancement of science and the benefits thereof.
- 2) Everyone has the right to be protected from the moral and material interests of scientific, literary or artistic production of which he is the owner.

¹ Interview with Taufik, Chair of the Aceh Cultural Rumoh Association, Jakarta, July 20, 2019, at 15.00 WIB.

These two verses from Article 27 of The Declaration of Human Rights are essential references in paying attention to traditional cultural expressions, especially Seudati dance, to be applied into laws that protect copyright. This General Declaration of Human Rights is often seen as a human rights agreement and becomes the starting point for discussions on Intellectual Property Rights.

In the International Covenant on Economic, Social and Cultural Rights (ICESCR) also affirms the recognition of everyone to enjoy and be involved in their culture, as Article 15 of the ICESCR States that, "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."²

b. Principles of Legal Certainty

Legal certainty has been guaranteed by the Trade-related Aspects of Intellectual Property Rights (TRIPs) to give exclusive rights to the owner of creativity. It's just that TRIPs see the owner of creativity here in the form of individuals and organizations with legal entities. The TRIPs agreement does not mention and does not recognize the communal ownership system (Ayu, Alexander, & Puspitasari, 2014). In fact, concerning intellectual property rights, indigenous Indonesians have never considered it as wealth in the sense of property that can be owned individually. It is recognized that many innovations and creations occur at the community or communal level based on their traditional or local knowledge. This knowledge has been recognized worldwide and provides valuable contributions to sustainable development and the fulfilment of human needs.

Intellectual property rights arrangements in the international scope as contained in TRIPs, for example, have not yet accommodated the intellectual property of indigenous/traditional communities. With this phenomenon, it can be said that the legal protection of intellectual property produced by traditional indigenous people is still weak.

Protection of intellectual property has been mandated by the United Nations Declaration on Indigenous People Rights to provide protection for Traditional Knowledge through three categories of rights, namely, the right to preserve, the right to protect, and the right to protect. Develop (right to developing) their intellectual property on cultural heritage,

traditional knowledge, and traditional cultural expressions.³

According to the author's view, at a glance, the article fragments mention three alternatives to protect traditional cultural expressions, namely cultural heritage (cultural heritage), traditional knowledge (traditional knowledge), and traditional cultural expressions (traditional cultural expressions).

Protection carried out within the framework of UNESCO is an act aimed at ensuring the preservation of intangible cultural heritage as stated in The Convention for the Safeguarding Intangible Cultural Heritage that, "safeguarding means measures aimed at ensuring the viability of intangible cultural heritage".⁴

In addition to the principles of human rights and the principle of legal certainty above, the principles of protecting Seudati dance in Aceh can also be found in the WIPO Performances and Phonograms Treaty (WPPT), namely:

- 1) *Moral Rights of Performers* (Article 5) is a form of protection of the rights of the performers as an inseparable part of the performance, including the right to protect the show that he shows from all forms of changes and distortions that could injure his reputation as a performer.
- 2) *Economic Rights of Performers in Their Unfixed Performances* (Article 6) is the exclusive right for the viewer to authorize all forms of broadcasting (broadcasting) or publication (communication to the public) of the show he is showing. Includes the right to authorize any recording of the show.
- 3) *The Right of Reproduction* (Article 7) is the right to authorize all forms of reproduction, either directly or indirectly, of the recording (phonogram) of the performance.
- 4) *The Right of Distribution* (Article 8) is the right to authorize all forms of publication of recorded performances, whether original or reproduced, to the public through sales or other forms of transfer of ownership.
- 5) *The Right of Rental* (Article 9) is the right to authorize the commercial leasing of performance recordings, whether original or reproduced, to the public by observing the provisions of applicable national law.

² Article 15 International Covenant on Economic, Social and Cultural Rights (ICESCR).

³ See Article 31 United Nations Declaration on Indigenous People Rights.

⁴ See Article 2 The Convention for the Saveguarding Intangible Cultural Heritage.

- 6) *The Right of Making Available* (Article 10) is the right to authorize all forms of procurement of performance recordings (making available to the public), so that the general public can listen to (access) the recordings according to their wishes.

Although WPPT can be considered as one of the efforts to provide protection for traditional cultural expressions, the main focus of WPPT is the protection of the rights of the performer. Protection of traditional cultural expressions in WPPT is given on the assumption that performance art work is an integral part of the performer. Protection of viewer rights also has a predetermined period of protection. The aspect of protection that is only given to performers makes Seudati dance in Aceh can be claimed individually for the benefit of the group. Therefore, in protecting the Seudati dance, it is necessary to consider communal aspects which until now have not been recognized or have not been regulated in international law relating to IPR.

On the other hand, the protection given to traditional cultural expressions is still very limited in the scope of the "phonogram" recording. Thus that the protection provided by WPPT requires a form of "fixation," while traditional cultural expressions often do not have a form of "fixation". The consequences of this situation is economic benefits of Seudati dance only enjoyed by parties outside the community where the person performing, recorded or broadcast first times then the copyright holder and the exclusive right are the publishers, recording company actor or broadcasting institution. In the end, economic benefits are only enjoyed by parties outside the traditional or local communities who have maintained and maintained traditional cultural expressions.

2. Implementation of Seudati Dance Protection in Indonesia

The Indonesian Government has recognized the importance of intellectual property in Indonesian folklore since it was first promulgated in the 1982 Copyright Law (Article 10 of Law No. 6/1982). In various Copyright Laws, it is stated that the State holds the copyright to Indonesia's cultural heritage which includes works of prehistoric heritage, history, cultural objects, folklore and folk cultural products to protect them from being used by foreigners. The Indonesian Government enacted the protection of traditional cultural expressions in Article 38 of the Copyright Law 2014. Protected traditional cultural expressions include one or a combination of the following forms of expression:

1. Textual verbal, both oral and written, in the form of prose or poetry, in various themes and contents of the message, which can be in the form of literary works or informative narrative;

2. Music, including among others: vocals, instrumental or a combination thereof;
3. Movement, including among others: dance, martial arts, and games;
4. Theater, including among others: wayang performances and folk plays;
5. Fine arts, whether in two-dimensional or three-dimensional forms made of various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, etc. or a combination thereof; and
6. Traditional ceremonies, which also include the manufacture of tools and materials and their presentation.

The protection referred to is all forms of efforts to protect traditional cultural expressions against uses that are carried out without rights and violating propriety. The protection of traditional cultural expressions as part of traditional knowledge is very important, at least for 3 reasons, namely (1) the potential economic benefits resulting from the use of traditional knowledge, (2) justice in the world trade system, and (3) the need to protect the rights of local communities (Sardjono, 2006).

In Article 1 paragraph 1 of the Copyright Law, it is stated that Copyright is the exclusive right of a creator that arises automatically based on the declarative principle after work is manifested in a tangible form without reducing restrictions in accordance with statutory provisions. Works that are protected by Copyright as an exclusive right, are solely reserved for the creator, copyright holder or other parties who exploit these rights with the author's permission. Exclusive rights consist of moral rights and economic rights. The only Indonesian IPR Law that implicitly discusses economic and moral rights is the 2014 Copyright Law. Article 2 Paragraph (2) of the 2014 Copyright Law States that the exclusive rights referred to in Paragraph (2)) consists of economic rights and moral rights.

- a. Reproduction of works;
- b. Translation of Works;
- c. Adaptations, arrangements or other transformations of Works;
- d. Distribution to the public of Works;
- e. Rental of original works or copies in the form of cinematography, works incorporated into phonograms or computer software;
- f. Performance of Creation;
- g. Broadcasting of Works; or
- h. Public communication of the work.

The implicit recognition of economic and moral rights to works in this latest Copyright Law is a significant advance. In view of the previous law, there was no detailed mention of what privileges for right holders. Although in one of the articles it is stated that the nature of copyright ownership is individual, absolute and absolute. Creators have special rights to exploit their creations in addition to having moral

rights to monitor the exploitation of their creations by other parties who receive rights from the Creator.

Based on this, to strengthen the protection of traditional Seudati dance which has been widely published in the community, both local and foreign, the local government needs to register the traditional cultural expressions of the Seudati traditional dance community into the copyright system. Indeed, copyright registration is not mandatory because copyright is declarative (Margono, 2012). However, this is important as proof of ownership in the event of cultural claims by foreign or private parties who want to take economic benefits from the use and utilization of these traditional cultural expressions, either directly or derivatives.

The protection of the performers' economic rights is valid for 50 (fifty) years since the show is fixed in a phonogram or audiovisual (Article 63 paragraph (1) of the Copyright Law 2014). This article provides on how to get economic rights for dance performers by registering the related rights. The 2014 Copyright Law in Article 64 paragraph (1) States that the Minister shall record and delete works and related rights products. In this case, the Minister in charge is the Minister of Law and Human Rights. The recording of works and related rights products is not a requirement for obtaining copyright and related rights (Article 64 paragraph (2) of the 2014 Copyright Law).

Recording of works or related rights products is not mandatory for creators, copyright holders or related rights owners. Protection of work begins when the creation exists or is manifested and not because of recording. This means that a work, both registered and unregistered, is still protected (Explanation of Article 64 paragraph (2) of the Copyright Law). The recording of a work cannot be done for painting in the form of a logo or distinguishing mark that is used as a brand in trade in goods/services or is used as a symbol of an organization, business entity or legal entity (Article 65 of the Copyright Law).

The use of the IPR system has remaining problems when applying the protection of traditional cultural expressions. This system adopts a positive protection system, which relies on a system of registration and granting of rights by the State (Purwaningsih, 2014). In this system, the rights and protections by the State are given after registration. Whoever registers, he is considered the bearer of his rights. The registrants are then given the exclusive right to use themselves or prohibit other parties from using the technology or design in question. Of course, this will create new potential conflicts among registration rights holders.

Referring to Article 38 of the 2014 Copyright Law, for example, local governments can be the bearers of the rights of local traditional cultural heritage. An example is a registration of batik designs by the Surakarta government to the Copyright Office (Kusumaningtyas, 2011). If the local government carries out the registration, then the local government will be the right holder. He then has the right to prohibit or give permission (license) to other parties from using the traditional knowledge and folklore

concerned. Therefore, Local Government A might prohibit residents from area B from using the traditional knowledge concerned. This is where the potential for conflict will then develop. In turn, there will be mutual claims between parties who claim to have registered the traditional knowledge and folklore concerned. Or vice versa, the local government as the right holder in its sole discretion grants licenses to foreign parties. If the people themselves are not pleased, this also creates another potential conflict between the local government and its citizens. Although this analysis is very hypothetical, it is not impossible that it will happen. The question then, how to prevent and overcome it.

The issue of access and benefit equitable sharing is crucial if it is used as a discourse in legal discourse, especially regarding the idea of regulating it in Indonesia. This is in accordance with the character of Indonesian society which is open and respects a harmonious life in togetherness by prioritizing ethics of sharing among fellow citizens (Jaszi, 2009). Regarding the use of traditional knowledge and folklore by foreign parties, actually society is open and not possessive. Therefore, an appropriate protection system is one that is not possessive in nature, but also prioritizes a fair benefit sharing system. Thus, the laws that must be created are laws that provide proper facilities on how to open access to outsiders to traditional knowledge and biological resources as well as folklore in Indonesia, and how to share benefits fairly with rights-bearing communities when outsiders are interested in using the knowledge, traditional and Indonesian biological resources. Other than that (Mayana, 2004).

One of the essential legal instruments is an accurate database of traditional knowledge, folklore, and Indonesian biological resources, which will be indispensable in order to make claims against outsiders who are deemed to violate the rights of local communities in Indonesia. Of course, to compile such a database is not an easy and cheap job. Therefore, it is necessary to think about a database development system that is relatively easy and cheap. For that, a participatory system must be developed and tested (Lopes, 2013).

The Law No. 5 of 2017 has provided protection for traditional cultural expressions by creating a separate wealth data base. Later it will be broadcast on the internet so that everyone knows (traditional art) originates from Indonesia, who is the master, who is the expert, who is the teacher who can be visited if you want to learn, that is the way of protecting it. Cultural advancement is an effort to increase the cultural resilience and contribution of Indonesian culture in the midst of world civilization through the protection, development, utilization and fostering of culture. There are four aspects in promoting culture (Atsar, 2017):

1. Protection, namely efforts to maintain the sustainability of Culture carried out by means of inventory, security, maintenance, rescue, and publication;

2. Development is an effort to revive the Cultural ecosystem and improve, enrich and disseminate Culture;
3. Utilization is an effort to make use of the Object for the Advancement of Culture to strengthen ideology, politics, economy, social, culture, defense and security in realizing national goals; and
4. Guidance is an effort to empower Cultural Human Resources, Cultural institutions, and Cultural institutions in increasing and expanding the active role and initiatives of the community.

The Law No. 5 of 2017 also provides protection for traditional knowledge and traditional cultural expressions such as arts, customs, folk games and traditional sports (Article 5). Its protection is carried out by means of an inventory of objects of cultural advancement through an integrated cultural data collection system, security (Article 22), maintenance (Article 24), rescue (Article 26), the publication (Article 28) and development (Article 30). In Article 16 paragraph (4) Law No. 5 of 2017 concerning the Advancement of Culture, the Inventory of Objects for the Advancement of Culture consists of the following stages: 1) recording and documenting; 2) determination; 3) updating of data. Safeguarding the Objects for the Advancement of Culture shall be carried out by: 1) updating data in the Data Collection System; 2) integrated culture continuously; 3) pass the Object of Cultural Advancement to the next generation; 4) fighting for the object of cultural advancement as a world cultural heritage (Article 22 paragraph 4).

Seudati Aceh dance protection in Law no. 5 of 2017 by means of an inventory based on Article 16 of the Law on Cultural Advancement which consists of the stages of recording and documenting, determining, and updating data. Recording and documenting traditional culture is a new thing initiated by this law. This inventory effort is carried out through the Integrated Cultural Data Collection System, so that later the content in the Integrated Cultural Data Collection System will come from inventory efforts.

The Government can make several alternatives regarding the idea of protection given to traditional dances Seudati Aceh in Indonesia. These various alternatives can be carried out simultaneously, starting from adjustments to existing legal products, including the IPR regime, to forming new laws on Indonesian traditional knowledge and the issue of sharing benefits to local residents for access and use of these resources. Action that also needs to be taken by the Government of Indonesia is to stimulate the growth and development of community participation in the context of participating in efforts to increase the use of biological resources and traditional knowledge for the welfare of the community in a broad sense.

The concept of ownership of traditional arts by the community differs substantially from the concept of ownership in the IPR system. Ownership of traditional arts from the community is not in the sense of

ownership, but custodianship. Thus, what needs to be considered is how to apply the concept of ownership of the IPR system into the system adopted by local communities. The concept of ownership is different from the concept of custodianship, especially with regard to the substance of ownership and the transfer of traditional arts from generation to generation. This is important to be re-examined so that the implementation of the ownership system will not conflict with the customary law system that is already in force in the local community.

Apart from that, the conception carried out by forming the *sui generis* Law (Gijseels, Hoecke, & Sidharta, 2000), Indonesia can consider the *sui generis* system given the very different characteristics of Indonesian society from Western society. The characteristics of Indonesian society are still strongly characterized by collective or communal and religious systems, so that the behaviour of the people is still imbued with and guided by this value system. Thus, creating laws based on different value systems will only cause problems in their implementation. The most important substance of the *sui generis* law in question is the clear recognition that local people are the "owners" of the traditional knowledge concerned. It is hoped that customary law or customary law can be an alternative source or material for formulating the rights of local communities in the *sui generis* law. The principles in customary law that are accommodated in the *sui generis* law include: First, the provisions in the Law are easily understood and understood by the wider community, and their implementation does not require complicated procedures as is the case with IPR legislation. . This characteristic is in line with the society's simple mindset. This simple mindset is reflected, among other things, in the customary law system which is clear and cash. Customary law does not recognize abstract legal institutions like "intellectual property" legal institutions. and its implementation does not require complicated procedures as is the case with IPR legislation. This characteristic is in line with the simple mindset of society. This simple mindset is reflected, among other things, in the customary law system which is clear and cash. Customary law does not recognize abstract legal institutions like "intellectual property" legal institutions. and its implementation does not require complicated procedures as is the case with IPR legislation. This characteristic is in line with the simple mindset of society. This simple mindset is reflected, among other things, in the customary law system which is clear and cash. Customary law does not recognize abstract legal institutions like "intellectual property" legal institutions.

Second, The *sui generis* law should not neglect elements based on religious norms. This is in line with the customary law system, which is religiously magical. This element is the main factor that causes society not to be too materialistic. The size of the award is not only material in the form of economic rewards, such as rewards in the IPR regime. The appreciation also includes respect for the belief system or the belief that knowledge (including traditional

knowledge in the field of folklore) is a gift from God that must be grateful and practised for the welfare of humanity. Third, the *sui generis* law should still be based on a social system that values togetherness highly. This is in line with the customary law system, which is not individualistic. In other words, the *sui generis* law should not be based on the principles or notions of individualism as in the IPR regime. Adopting an individualistic system will only mean repeating the mistakes of the IPR regime, which have proven less successful in its implementation.

Fourth, The *sui generis* law must guarantee or at least provide a high possibility that the use of traditional knowledge (including traditional arts) and the practices related to it can provide welfare for the community in general. In this case the law concerned must be able to provide certainty that the people who are the owners of the knowledge concerned will truly benefit from traditional knowledge.

Seudati dance is a communal right for the Acehese people, not as an individual right, meaning that individuals cannot claim this dance. Therefore Seudati dance belongs to the Acehese community for copyright itself as joint ownership (Palar, Sukarsa, & Ramli, 2018).

In general, ownership of intellectual property rights can be grouped into 2 (two) parts, namely: personal/individual intellectual property ownership and communal/group intellectual property ownership. Personal intellectual rights are intellectual rights that are fully owned by individuals or groups of individuals with or without submitting a request to the State to obtain monopoly rights over economic exploitation. In contrast, communal intellectual rights are intellectual rights that are fully owned by a group of people living in a place permanently. Personal rights and communal rights have principles which are the difference between the two. The principles contained in communal rights and personal rights are as follows (Nugroho, 2015):

1. Principles of Personal
 - a. Continued from scientific research/business practice/artist work.
 - b. Paying attention to the development of science, art, technology, or literature of certain individuals/legal entities.
 - c. Part of the development of science and technology/arts/business trade.
 - d. Recognizable inventor/creator/business actor.
 - e. For commercial purposes and its ownership is monopolistic.
2. Principles of Communal Rights
 - a. Passed on from generation to generation
 - b. Shows the identity and culture of certain people
 - c. Part of cultural heritage.
 - d. Not recognized by the maker/creator.
 - e. Generally not for commercial purposes but rather as a means of culture and religion
 - f. Developing and appearing in the community.

- g. Ownership and preservation are communal (joint).
- h. Protection and preservation is desired indefinitely
- i. Legal protection must be based on the recognition of each party and be declarative (automatic/without registration) and the State has tangible and intangible/material and moral rights.

Based on the description above, it can be studied that the principles put forward, basically personal intellectual property rights emphasize the business aspect and have the potential to be developed. In contrast communal intellectual rights emphasize religious and cultural facilities and are very difficult to develop because it can conflict with values.

Indonesia itself in protecting traditional works and culture has initiated a special *sui generis* draft law for traditional cultural expressions, namely the Draft Law on the Protection and Utilization of Traditional Knowledge and Traditional Cultural Expressions of Intellectual Property (RUU PTEBT). Regulating its traditional knowledge outside the IPR system, this *sui generis* arrangement in the future is expected to provide better economic benefits for the communal community.

Dance Seudati as a cultural expression of Aceh lacks protection and attention due to several reasons:⁵

1. The Seudati dance does not yet have a legal basis in the form of local government regulation, this makes protection less effective because Law No. 5 of 2017 only regulates general provisions regarding cultural expression.
2. The development of Seudati dance tends to decline, this is because Seudati dance is unable to compete and enthusiasts with creative dances.
3. Seudati dance began to appear again in 2019, but the lack of dancers will significantly affect the development of Seudati dance.

Based on the above constraints, it can be said that Seudati dance has two main problems, namely regulatory issues and cultural development. The problem of regulation in the absence of a special local regulation cause the protection of Seudati dances ineffective. Remembering the characteristics of Aceh as a special area, the local government regulation for the protection of Seudati dances is substantially needed because this regulation can provide more specific on the development, preservation to protection aspects. For the problem of cultural development, it can be seen that Acehese dancers are more interested in learning creative dances, this may be related to aspects of higher interest in modern dance. Therefore, the Aceh government needs to revive the Seudati dance by holding activities such as the Seudati dance competition.

⁵ Results of Interview with Disparbud Aceh Province, Mr. Suburhan, SH, on September 20, 2020.

CONCLUSION

Seudati dance protection in international law falls into the category of cultural expression that has been regulated in several international provisions. Those instruments are Trade-related Aspects of Intellectual Property Rights (TRIPs), Conventions, recommendations, declarations, and charters, Convention on Biological Diversity, United Nations Declaration on Indigenous People Rights, Agreement on Trade-Related Aspects of Intellectual Property Rights. Specifically, WIPO Performances and Phonograms Treaty (WPPT) regulates several principles in cultural expression, including Moral Rights of Performers, Economic Rights Performers in Their Unfixed Performances, The Right of Reproduction, The Right of Distribution, The Right of Rental, The Right of Making Available.

The form of legal protection for traditional cultural expressions has been regulated in a statutory regulation, namely Law Number 28 of 2014 concerning Copyright which is complemented by Law Number 5 of 2017 concerning Cultural Advancement. However, the two laws do not provide specific details regarding the protection process of traditional cultural expressions. The role of the government, in this case, is also considered unable to take full responsibility for legal protection regarding traditional cultural expressions, so that the community even does not understand traditional cultural expressions. However, the two laws do not provide specific details regarding the protection process of traditional cultural expressions. The role of the government, in this case, is also felt unable to take full responsibility for legal protection regarding traditional cultural expressions, so that the community also does not understand traditional cultural expressions. However, the two laws do not provide specific details regarding the protection process of traditional cultural expressions. The role of the government, in this case, is also considered unable to take full responsibility for legal protection regarding traditional cultural expressions, so that the community also does not understand traditional cultural expressions.

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