



Application of Technology and Science of Intellectual Property Rights in the Papua Traditional Culture Perspective

Eddy Pelupessy

Faculty of Law, Cenderawasih University, Papua, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v9i8.3931>

Abstract

This study aims to analyze, explain, and discover the Indonesian people's traditional cultural expressions (folklore). It also identifies some efforts to protect people's rights to traditional cultural expressions (folklore) from misuse by other parties for commercial purposes without benefiting the community concerned. The type of research is normative legal research, which examines legal library materials or secondary data, including research on legal principles, legal systematics, levels of vertical and horizontal synchronization, legal comparisons and legal history. The results revealed that the categories of folklore are verbal and non-verbal expressions such as folk poetry, puzzles, proverbs, proverbs, traditional speeches, song expressions, collages, traditional costumes, related architects with folklore, having the characteristics of being sustainable, contemporary and whole-souled, both documented and undocumented at the Office of the Directorate General of Intellectual Property Rights. Therefore, the Government must position itself wisely in the community by maintaining its neutrality from various social conflicts or legal disputes related to intellectual property rights or the protection of folklore in its diversity. The Government needs to utilize contracts for benefit determination sharing through an institution appointed to represent the State in the protection of folklore.

Keywords: *Application of Science and Technology; Intellectual Property Rights; Traditional Papuan Culture*

Introduction

Artwork, a traditional Papuan culture, is regulated explicitly in Article 38 of Law Number 28 of 2014 concerning Copyright, in conjunction with Article 44 of Law Number 21 of 2001 concerning Special Autonomy for the Papua Province. However, the State has exclusive rights to this traditional knowledge and cultural expression, not certain traditional societies. Thus, in the national legal system, there is no specific regulation on the traditional culture of certain local communities, which is still a fierce debate among WIPO member countries regarding the proper arrangement for traditional knowledge of folklore. Therefore, it is necessary to have special deals for works of art which are traditional Papuan culture in the national legal system. If the propagation must go through the IPR regime, it is necessary to revise Article 38 of Law Number 28 of 2014 concerning Copyright. It means that it is not only applicable to creations whose "creator is unknown" but whose meaning is expanded. Protection will be adequate if it is known, understood and implemented by the community.

Most indigenous Papuans living on the coast and in the mountains have natural talents in art and culture. Still, not everyone can automatically become an artist and culturalist with artistic quality. Only God gives God "wisdom and knowledge of art" and high intellectual intelligence to produce creative works. The academic intelligence of the Papuan people, even though they are receiving a proper education, can express works of high art. The quality of Papuan art and culture, of course, has artistic and aesthetic values that are not born out anywhere, but there is a meaning in these creative works.

Copyright's economic value essentially protects the creator from enjoying materially his efforts from the copyrighted work produced. Creative works in carving, painting and traditional community sculpture are movable objects that can be traded, inherited and donated.¹ The creations of the Papuan people generally have aesthetic and artistic value because every indentation of a scratch has meaning. The resulting artwork is an expression of feelings of a heart that is poured out in the form of creative work and has cultural value.

Copyright issues arise related to the problem of economic liberalization on the one hand and the problem of the socio-cultural conditions of the Papuan people on the other. The socio-cultural constraints of the indigenous Papuan people are still transitioning from traditional cultural industries that do not yet understand the issue of Copyright.

In such socio-cultural conditions, the law regulates and reflects a transitional period that can be described as the face of the law that stands on two different legs; namely, one foot rests on a modern legal style, while the other leg is still a traditional law. Likewise, the law governing Copyright, although normatively, does not contain many problems to be enforced. Cultural issues will experience many problems in their implementation.²

Considering the management of artistic creations in Papua is more traditional management or family management in the form of studios because the creative designs produced are the wisdom of the ancestors of the Papuan people since the first when artistic creations were produced as an expression of feelings and each ethnic group in Papua.

The form of Papuan ornaments, as outlined in textile works (Papuan Batik), turns out to be the same as wooden crafts, etc. It does not have an economic impact on the community that owns it but has become a commercial item. Therefore, to be understood together, society, the bureaucracy, and the current political elite, as a whole, have been deceived by the word "Sofenir" so that all eyes have been blinded by the position of IPR that should be enforced on this land.

However, artists in this context can generally be divided into two categories. The first is an artist who creates work that doesn't sell. It focuses more on offering ideas or concepts such as installation, object art, art project or artist who chooses a medium that is naturally impossible or very difficult to sell because it is not in the form of an object or object so that it cannot be collected or an art object that is sacred according to belief.

Second, artists create collectable works such as paintings and sculptures besides being in the form of objects. This kind of work also has a high originality value and has a long history in art and its market. The market for this form of work is much more organized and dynamic. History has proven its efficacy by providing a living for the people involved.

¹ Weynand Sahetapy, *Dimonim 's Voice*, Papuan Artist's Mural, Jayapura, 2007, p. 32.

² Eddy Pelupessy, *Protection for Craftsmen in the Framework of Copyright, Industrial Designs and Geographical Indications*, Papers, Jayapura, 2008, p. 56.

These two circumstances significantly affect the resilience of the artist financially. If the artist wants to live from his work, then doing collectable pieces, in the form of objects, with maintained originality, such as paintings, sculptures, and a little graphic art, is a right choice. Outside the medium of painting and sculpture, it is difficult to hope for because of the absence of an established market. The absence of a system that can assist non-commercial works like many implemented in the West, for example, subsidies for the cost of producing works, loan fees (amount of money paid by the exhibition organizer "borrowing" the work of an artist), artist fee (amount of money paid by the exhibition organizer to an exhibiting artist). So, for non-commercial works, logic is applied, such as business in the service sector, while for commercial ones, "retail" logic is used.

Thus, the characteristics of traditional Papuan ornaments in general and, in particular, the artistic creativity of indigenous peoples have been well organized according to ethnic traits so that one clan cannot use another family for any purpose. It is general and can be used by anyone.

Based on the characteristics, functions and modes of sensing, Papuan folk arts can be divided into three groups/classifications:

1. Audio Arts: namely the art of singing, expressing spells, language and literature, and music from sound art in general (Woor, Elege, Bertutur).
2. Visual arts: the arts of carving, sculpture, painting, crafts and handicrafts, including weaving, spinning and fine arts in general.
3. The arts of motion include dance, folk theatre, and games.

A culture of togetherness and mutual respect for creativity among community members do in Keerom Regency. It is because all forms of ornaments produced indicate the characteristics of inland natural diversity and myths or a belief in the supernatural, which has been poured into the imagination to create highly creative works. Suppose it is commercialized that it has a reasonably expensive selling value. However, the commercial discount of the results of the Biak indigenous people is only enjoyed by others.

The problem of developing a traditional culture in Papua is faced with policy directions in the field of culture. In the current era of Special Autonomy for Papua, the development of the Papua Province is very rapid, and the economic potential in the field of domestic and foreign trade is so enormous, as a manifestation of its favourable geographical location, which borders the State of Papua New Guinea, the indigenous Papuans should receive multiple economic benefits. In addition to mining products contained in the earth's bowels, the cultural richness of Papua, which consists of 257 tribes and ethnicities, and is ranked first in Indonesia, will provide considerable added value to the Papuan people living in the interior and on the coast. However, the logical consequences of this economic potential have not fallen in the lap or enjoyed by the Papuan people. Amazingly, it isn't easy to understand why the richness of Papuan culture, which is the wisdom of their ancestors, cannot guarantee economic growth for the Papuan people compared to other regions in Indonesia.

The enactment of the 2001 Special Autonomy Law did not bring significant changes. Papuan culture has not yet received legal protection, so traditional objects and values have become commercial materials. But in reality, Papuan artists and cultural figures are often used as objects by the bureaucracy and the political elite. Because until now, there is no one provincial regulation (Perdasi) or a special regulation (Perdasus) which regulates the cultural protection of the ancestral heritage of the Papuan people. So, the Papuan artists and cultural actors who are cultural arts actors from year to year remain the object of the bureaucracy and political elite.

The values and objects of Papuan culture have also shaken the world market. It can be seen in the various handicrafts of the Papuan people, such as Asmat carvings, Dofonsoro carvings, Saireri carvings,

Domberai and Bomberai carvings and even Papuan Batik ornaments, which are the wisdom of the ancestors of the Papuans which were passed down to the next generation. Values inherited by the ancestors are a pearl of wisdom that must maintain. The development of science and technology is currently helping to elevate Papuan culture. However, the wealth of cultural values does not mean anything to the community that owns it, along with the increasingly rapid development. It is due to the lack of public awareness of even Papuan officials of these cultural values.

The term "craftsman" is not known by regulations. In the Copyright, Industrial Design Law and the Trademark Law, which contains regulations on Geographical indications, the term "craftsman" is unknown. Within the framework of the Copyright protection system, the main subject is the creator. In the field of Industrial Design, the issue is named designer. Meanwhile, no specific nomenclature was found for such a subject in the Geographical indications setting. Traditionally, the term artisan is used to designate people or groups of people whose activities produce handicrafts (hands). These activities rely solely on individual or group skills or expertise. Handicrafts, weaving, batik, ceramics, rattan and carving are some prominent examples of the work of artisans who rely a lot on the skill and power of individual aesthetic creativity.

Regarding the types of creation, it is stated, among other things, that all forms of art, including sculpture, sculpture and batik, are works protected by Copyright. The value of originality or originality of creation is measured from two lines of the creation process: whether the design comes from the creator's idea or inspiration or whether the invention is not the result of imitation of someone else's creation. The rest of the person's position or those who create the copyrighted work is called the creator. Legal entities can also have creator status. The scope of protection includes rights that have an economic dimension (right) and moral value (moral right). Economic rights are rights to enjoy the financial benefits inherent in the creation, both within the framework of using the right to reproduce (mechanical rights) and the right to announce (performing right).

This article aims to identify categories of community traditional cultural expressions (folklore) as intellectual property that must protect people's rights to folklore from misuse by other parties for commercial purposes without benefiting the community concerned.

Literature Review

The Conception of Intellectual Property Rights

Globalization, for some people, may be taken because it is considered a cliché with no apparent meaning. In contrast, others respond with concern because they may understand several consequences that may arise or for others to be resigned without taking any anticipation.³ The essence of globalization is the harmonization or alignment of values worldwide. The alignment of these values is carried out, among others, through a series of value campaigns using various media, followed up with meetings between countries that feel they have the same perception and interests. Then it is realized into a series of international regulations that bind the parties that ratify it. It creates a standard of equal treatment for these parties.

Some Indonesian observers call the world's Pancasila at least five critical issues in globalization: human rights, democratization, the environment, international standards in the industry and intellectual property rights (IPR). IPR, for western society, is not just a legal instrument used only to protect one's intellectual work. Like other global issues, it is not only a set of regulations but also has become a value system that has long roots in developed countries. Still, it is used as a business strategy because an

³Bambang Kesowo, the main points Notes About TRIPS approval, Papers Surabaya, 1996, p.1.

invention is commercialized. Therefore, adequate protection is needed to prevent trade disputes and not for protection itself so that the state award in the form of granting monopoly rights to the creator of intellectual property allows the creator or inventor to economically exploit his creation/invention.

The effects of a monopoly on intellectual property rights are common, for example, monopoly and exploitation of rights owners that cause unfair business competition conditions, so steps are needed to be taken so that all these harmful effects do not occur.⁴

Awareness of the world trade system remains open and based on the multilateral rules of the game and the general principles developed in The General Agreement on Tariffs and Trade (GATT), is essential considering the increasingly shifting success to export orientation. Because of this awareness, Indonesia and other developing countries negotiated through the Uruguay Rounds.⁵ On December 15, 1993, the text of the Final Act on the Uruguay Round was received after seven years of tortuous negotiations. The Final Act and Uruguay Round contain annexes or annexes. The failure to form an International Trade Organization temporarily led to GATT's formation.

Copyright

Law Number 28 of 2014 (Copyright Law) determines that "Copyright is an exclusive right for the creator or recipient of the right to publish or reproduce his work or give permission for it without reducing the restrictions according to the applicable laws and regulations. Starting from this formulation, the subject of copyright study is the creator, creation, copyright holder, special rights (exclusive rights), and legal restrictions.⁶

a. Creator

In the provisions of Copyright Law, it is emphasized that a creator is a person or several people who, together with their inspiration, give birth to a creation based on the ability of the mind, imagination, talent, skill, or expertise, which is poured into a unique and personal form. So, based on the provisions in this article, several parties are called creators:

- 1) Another person realizes a person who designs work, but under the leadership or supervision of the person who created the work;
- 2) A person who creates a copyrighted work in an employment relationship or on order; and
- 3) Legal entities and official agencies.

To know who the creator of a work is, Article 5 of Copyright Law stipulates that Unless proven otherwise, the creators are deemed to be:

1. The person whose name is registered in the General Register of Works at the Directorate General;
2. The person whose name is mentioned in the creation or announced as the creator of creation; or
3. In lectures that do not use the written material and there is no notification of who the author is, the person who gives the lecture is considered the creator of the lecture.

For works whose creator is not known, Article 11 of the Copyright Law stipulates that if a work is not known at all who the creator is, then the State holds the Copyright to the work unless otherwise.

⁴ Krtodjomena, GATT and WTO Systems, International Forums and Institutions in the field of trade, UI-Press, Jakarta, 1996, p.32.

⁵ Sudargo Gautama, Indonesian Intellectual Property Rights and Treaties International: TRIPs, GATT, Uruguay Round, PT. Citra Aditya Bhakti, Bandung, 1994, p. 2.

⁶ Abdulkadir Muhammad, Economic Law Study Right Riches Intellectual, Citra Aditya Bhakti, Bandung, 2001, p.211.

Then in another article, it is determined that if a legal entity or official agency announces a work without mentioning the author, then the legal entity is considered the creator.⁷

b. Creation

1) Protected Creations

The provision of protection to work cannot be given just like that but must meet the terms and conditions described in the copyright law. Abdulkadir Muhammad⁸ argued that creation is the result of the creator's work in a distinctive form and shows its authenticity in science, art, and literature, which have different structures from existing creations.

The intended originality in creation is not an imitation or plagiarism of others. Personal nature means that it comes from intellectual abilities that are integrated with the creator's self.⁹ From the opinion above, it can be seen that a critical condition for the protection of a work is the condition for authenticity. According to the provisions of Article 76 of the Copyright Law, what is protected by the Copyright Law are:

1. All creations of Indonesian citizens, residents and legal entities;
2. All creations are not Indonesian citizens, not residents of Indonesia and are not Indonesian legal entities that are published for the first time in Indonesia;
3. All designs are not Indonesian citizens, not Indonesian residents, not Indonesian legal entities with the following provisions:
 - a. The country has a bilateral agreement regarding copyright protection with the Republic of Indonesia;
 - b. The country and the Republic of Indonesia are parties or participants in the same multilateral agreement regarding copyright protection.
4. Protected Types of Creation

According to the provisions of Article 11 paragraph (1) of the Copyright Law, works protected by the Copyright Law are:

- a. Books, computer programs, pamphlets, representations (layout) published papers and all other written works;
- b. Lectures, lectures, speeches, and other similar creations;
- c. Props made for the benefit of education and science;
- d. Songs or music with or without subtitles;
- e. Drama or musical drama, tan, choreography, wayang, and mime;
- f. Fine arts in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, collage, and applied skills;
- g. Architecture;
- h. Map;
- i. Batik art;
- j. Photography;
- k. Cinematography;
- l. Translations, commentaries, adaptations, anthologies, databases, and other works and hashes transformation.

2) Duration of Protection

Copyright protection of:

⁷ See article 9 of Copyright Law.

⁸ Ibid, p. 112

⁹ Ade Mama Suherman, *Legal Aspects in Global Economy*, Ghalia Indonesia, Jakarta. 2002, p. 102

- a. Books, pamphlets and all other written hashes;
- b. Drama or musical drama, tan, choreography;
- c. All forms of art, such as painting, sculpture, and sculpture;
- d. Batik art;
- e. Songs or music with or without subtitles;
- f. Architecture;
- g. Lectures, lectures, speeches and other similar creations;
- h. Props;
- i. Map;
- j. Translation, interpretation, adaptation, and anthology

Valid for the creator's life and continues until 50 (fifty) years after the creator's death. For creations as intended above that is owned by 2 (two) or more people, the Copyright is valid for the life of the creator who passed away and lasts for 50 (fifty) years afterwards (Article 29 of the Copyright Law). However, if a legal entity owns the Copyright for the above creation, the protection period is 50 (fifty) years from the date it was first announced (Article 30 paragraph (3) of the Copyright Law)

Copyright protection of works:

- a. Computer program;
- b. Cinematography;
- c. Photography;
- d. Databases; and
- e. The work of transformation,
- f. Presentation of published writings.

Valid for 50 (fifty) years since it was first announced/published. (Article 30 paragraphs (1) and (2) of the Copyright Law).

3) Unprotected Creation

Several works are not protected by the Copyright Law because there is no copyright (Article 13 of the Copyright Law), namely:

- a. The results of the open meeting of the highest State and highest state institutions and other constitutional institutions;
- b. Legislation;
- c. Court decisions and judges' decisions;
- d. State speeches and speeches of government officials;
- e. Decisions of the arbitration body, including decisions of the shipping court, decisions of the Labor Dispute Settlement Committee, and decisions of the State Receivables Affairs Agency.

4) Copyright Holder

Abdulkadir Muhammad stated that every creator is the copyright owner unless agreed otherwise in the employment relationship. The copyright holders, according to Abdulkadir Muhammad:¹⁰

- a. Creator;
- b. Recipients of rights and creators, namely heir or recipients of grants, wills, or recipients of rights based on a license agreement or agreement;

¹⁰Abdulkadir Muhammad, Op. Cit, p.144

- c. Other people as further recipients of rights and copyright recipients. The State is not the creator, but the State is the copyright holder.

Based on the provisions of Article 10 of the Copyright Law, the State is the copyright holder of:

- a. Historical, prehistoric, and national cultural objects;
- b. The results of people's culture that are shared property are maintained and protected by the State. The State is only the holder of the Copyright to foreign countries;
- c. The work is unknown to the author and has not been published.

5) Characteristics and Functions of Folklore

In general, traditional cultural expressions are characterized by six things, namely:

- a. Something that is passed on (hand down) from one generation to another, both verbally and artificially (orally). or imitation);
- b. Reflect a cultural and social identity of the community (community's cultural and social identity);
- c. Consists of the characteristic elements of the community's heritage (Community's heritage);
- d. Made by unknown authors and/or by the community and/or individuals who are communally recognized as having the right, responsibility or permission to do so (right, responsibility. or permission to do so);
- e. Not made for commercial purposes (not made for commercial purposes);
- f. Constantly compiled, developed and rewritten in society.¹¹

Folklore

United Nations Development (UNDP), as quoted by Herlina Mandiliga,¹² stated the key characteristics (key characteristics) of an indigenous group, which include:

- (i) Indication and self-identification (self-indication and identification) with other groups as part of a distinct indigenous cultural group and demonstrate a desire to maintain that cultural identity;
- (ii) Its language is different from that of other dominant societies;
- (iii) The traditions of social, cultural, economic and political institutions, distinct from other dominant cultures;
- (iv) The financial system is more oriented towards traditional production systems than majority systems;
- (v) Suitable attachments and attractions to traditional habitats, ancestral territories and natural resources within those habitats and regions.

Folklore has a wide variety. Concerning culture, the type of folklore, among others, as stated by several experts on Intellectual Property Rights Law, folklore consists of material culture, political organization, and religion. Folklore consists of folk beliefs, science, and poetry, or folklore consists of beliefs, customs, superstitions, puzzles, myths, magic, occult sciences, etc.

From the elements mentioned above, many cultural researchers are interested in folklore studies and history. However, if all of these are understood as humanistic study areas, they will complement each other. So, folklore can be an object of specific cultural research because it is a traditional cultural document of very high value.

¹¹Eddy Pelupessy, Protection to Expression Culture (*Folklore*) Indigenous Peoples in Papua. Paper, IPR Center "KEMAPA" Cenderawasih University, Jayapura, 2009, p.10.

¹² Herlina Mandiliga, Property Rights Intellectual And Various Surrounding Problems, Papers _ Faculty of Law, Atmadjaya University, Yogyakarta, 2004, p.18.

To identify whether the research will be done or not, there are specific characteristics, namely:

- (a) The spread and inheritance are done orally, namely through word of mouth, and sometimes without realizing it;
- (b) Traditional means that it is distributed in a relatively long time and in standard form;
- (c) Folklore exists in various versions or variants;
- (d) Anonymous, the author, is known with certainty;
- (e) Usually have a formulaic or patterned shape;
- (f) Have used in collective life;
- (g) It is pra-logical, that is, it has its logic that is not under general sense;
- (h) Be common property; and
- (i) Usually plain and innocent;

The function of folklore is an essential mechanism for maintaining a group culture. Some IPR legal experts say that there are four functions of folklore namely, first, a function as entertainment, namely entertainment through fantasy as a result of restrictions and frustrations imposed on individuals by society or their environment. Second, the function as an endorsement, folklore, in this case, is used to justify religious ceremonies and community institutions. For example, a fairy tale can be used to justify a particular tradition or a proverb used to validate why a specific course of action is right or something appropriate. Third, as an educational function, folklore can instil values in society for the younger generation. Fairy tales often instruct moral principles and describe the consequences of obeying them. The role of the inside of education is noted as an important part in an illiterate society in which all education is carried out orally or through habitual examples. Fourth, the function is to recognize the community. Folklore can be used to reward or punish individuals for ensuring conformity to group standards.

Research Method

The study uses a normative juridical approach which, according to Soerjono Soekanto and Sri Mamudji, conducted research by examining legal library materials or mere secondary data, which included research on legal principles, legal systematics, levels of vertical and horizontal synchronization, legal comparisons and legal history.¹³ The sources of legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. After they have been collected through library research, they are systematically processed and identified. Then an analysis is carried out to get a clear picture of the problems that are the objectives of this research, which is carried out qualitatively and then presented as a report.

Discussion

Protected Categories of Traditional Cultural Expressions (Folklore)

Article 38 of Law Number 28 of 2014 confirms that Copyrights for traditional cultural expressions are held by the State. The State identifies and maintains traditional cultural expressions, and the use of cultural expressions must pay attention to the values of the bearer. Traditional cultural expressions include one or more of the combination of the following forms of expression:

- a. Textual verbal, both spoken and written in the form of prose or poetry, in various themes and content of the message, which can be in the form of literary works or informative conscience;

¹³ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Overview*, PT. Raja Grafindo Persada, Jakarta, 1995, p.14.

- b. Music includes, among others, vocal, instrumental, or a combination thereof;
- c. Movement includes, among others, dance;
- d. Theatre includes, among others, puppet shows and folk plays;
- e. Fine arts, both in two-dimensional and three-dimensional forms, are made of various materials such as tree bark, bamboo, metal, stone, ceramics, paper, textiles, and other combinations; and
- f. Traditional ceremonies.

The living values in the community mean customs, customary norms, social norms and other norms that are upheld by the community of origin, which maintains, develops and preserves traditional cultural expressions. The cultural wealth needs to be preserved, explored and preserved to avoid the influence of modernization and globalization. The importance of protecting the nation's culture is related to the 1945 Constitution. Article 12 of the 1945 Constitution emphasizes the development of national culture. It is a national development that is no less important than other physical developments that aim to instil noble values of the nation to maintain national identity and personality. One of the activities in this guidance and development is the preservation of material culture.

A museum is an institution tasked with collecting various objects of material cultural heritage following Government regulation No. 19 of 1995. In detail, the regulation states, "Museums are responsible for material cultural preservation activities that are tasked with collecting, caring for, and displaying their collections for study, education and recreation."

An Isolation between one community and another creates its cultural character and has characteristics that make a particular community different. Approximately 250 of the largest ethnic groups in five cultural areas. The northern coast of Jayapura and its surroundings, the Seiter culture in the Cenderawasih bay area, the Meibrat culture in the Bird's Head region, the Central Mountains culture in the Paniai region, and the south coast culture in the Asmat, Kamoro, Masrind, Amin, and Duliya regions.

The varied and heterogeneous order of life and civilization creates various cultural objects that also vary. Different views, ideas, and backgrounds on life and cultural objects make differences in using these cultural objects. One of the differences is reflected in the use and utilization of beads in their lives. For example, the Yapen people weave seed beads made of glass into a skirt called sireuw and place a higher value on starfruit beads than other glass beads. The Arfak community in Manokwari Regency values buffalo beads more than other glass beads.

Humans at various levels of civilization have the instinct to take advantage of the natural resources around them. They always try to meet their needs and create their culture, from the simplest to more sophisticated equipment. The history of human civilization explains that humans initially used rocks and various animal parts to answer their life challenges. The humans who lived in the caves used tools such as stone axes and knives made of bones. They try to fulfil their inner satisfaction when they begin to live sedentary lives and cultivate crops. One is inner satisfaction by processing natural materials into body jewellery equipment. The oldest art objects in the history of civilization made shells or grass seeds tied around the neck or other limbs.

In the next stage, the Papuan people get to know good quality beads processed by casting technology. These beads brought developments in the cultural treasures of Papua. In addition to having various uses, these beads have given rise to multiple myths in several tribes that have been passed down by word of mouth to this day, such as the myth of beads in the Genyem community in Sarmi Regency.

Papuan people have been familiar with beads for a long time. It is suspected that residents living on the northern coast of Papua were the first to recognize (imported) glass beads. In addition to a more favourable geographical location, it is also because the northern region has long been in contact with other areas in Indonesia that have previously used glass beads, namely Sumatra with the Sriwijaya kingdom, Java with the Majapahit kingdom, and the kingdoms in the Maluku region.

Today, in Papua, people who live in rural and urban areas still use beads in their lives. The use of these beads can be seen through traditional clothing equipment, dowry payments, traditional ceremonial equipment, and those related to belief. The so-called genuine beads are beads that have been used since time immemorial. With a specific skill, a particular person and group can distinguish the newly made beads from the ancient ones. Beads made in ancient times are an inherited treasure passed down from generation to generation. The increasing number of families makes the string of beads shorter because they are distributed to new families as ancestral gifts. Thus, genuine beads are increasingly challenging to find.

Beads are small objects with a hole in the middle to be strung as decoration. Papuans recognize two types of beads, namely beads made from organic materials and beads made from non-organic materials. Organic beads are beads made by themselves from materials found around the residence, while non-organic beads come from outside Papua. The beads made by the Papuan people are called local beads, while the beads from outside Papua are called imported beads.

According to the type, beads can be divided into the following. Beads made from seashells or shells have been known for a long time. It is possible that these beads and materials were first used as body decorations since humans still lived in caves. These beads can be found throughout the Papua region. Beads made from certain animal parts, such as pig fangs, cuscus teeth, dog teeth, and bird bones, are more commonly found in the mountainous areas of Papua. Beads made from mendong grass or certain trees' seeds are found in almost all areas of Papua. The most widely used mendong seeds are light brown, white, and dark brown. The red beads are usually made from tree seeds. These beads are made from dried orchid stems, which are cut into small pieces and then strung and used as body decorations. Beads of this type are widely available in the Jayawijaya area.

These beads come from China, produced in the 13th century and once flooded the Indonesian market. Imported beads found in Papua, in general, are beads made of glass which have air bubbles, are imperfectly shaped, have large holes, and are often pointed at the ends. By the people who support it, beads like this are considered genuine.

According to Anthropology, clothing is one aspect of human culture. In general, four factors encourage the existence of fashion creation, namely protecting the body and extreme climates, fulfilling the desire to look better, decorating the body, and showing social status. However, the limits of its use are often unclear because people often find people combining two or three functions of clothing in creating them. In fulfilling the desire to make people look better, beads are used as clothing accessories.

Beads play a crucial role as equipment for traditional ceremonies. In the wedding ceremony, typical beads are used as a dowry and other objects. At the inauguration of the tribal chief/ondoafi, glass beads are a tool of legitimacy. Beads are also used as a medium of exchange with other objects. In the Sentani community, Glass beads are used as a medium of exchange to get pottery / “*sempe*” with the calculation of a glass bead being exchanged for earthenware.

Culture can be seen as a patterned action in society. In other words, society is formed or grouped because of culture. With culture, one group of people can be distinguished, and another group is something that identifies a cultural identity that characterizes and a group that distinguishes it from other groups. The close relationship between folklore and society is one of the reasons for the importance of protecting folklore nationally at the state level. Works of national folklore (works of national folklore) must be protected at all costs (all mean), with no time limit.

Provisions of Article 20 and the Draft Declaration of the Organization of African Unity States on the Rights and Indigenous Peoples (OADS Draft Declaration on the Rights of Indigenous Peoples), stipulate that indigenous peoples have full recognition and ownership rights (full ownership), control and protection of their cultural, artistic, spiritual, technological and scientific heritage, and legal

protection for intellectual property through trademarks, patents, copyrights and such procedures as stipulated under domestic law, as well as special treatments (special measures) to ensure its legal status and institutional capacity to develop, use, share, market and bequeath the legacy to future generations.

Protection of traditional cultural expressions (folklore) is a strategy for cultural transformation in development in Indonesia that can be an option. The cultural transformation strategy includes efforts to understand every tradition and custom that exists in Indonesia, empowering indigenous peoples in the form of providing space so that indigenous peoples can develop cultural wealth and respect for the rights of indigenous peoples in developing joint capabilities as a group, the right to use customary heritage areas (such as ulayat rights), as well as the right to develop collective capacities as a group.

Based on WIPO, to be classified as an expression of traditional culture (folklore), a cultural product must meet 6 (six) characteristics. First, the product is passed down from generation to generation, either orally or through imitation. Second, the product reflects the social and cultural identity of a society. Third, the product has elements that characterize it as a cultural heritage and a society. Fourth, the product is made by a person whose identity is no longer known by the community or by individuals who are communally recognized as having the right, responsibility, or permission to do so. Fifth, these products are often not made for commercial purposes but cultural and religious expression. Sixth, the product is constantly evolving and reinventing within society.

Traditional cultural expressions (folklore) are different from Copyright. Copyright protects works whose creators are known and have a period of protection (for life plus 50 years after the creator dies). Meanwhile, the Copyright for traditional cultural expressions (folklore) is controlled by the State, considering that it is not known who the actual creator is. Control by the State is intended to avoid excessive use. It underlies the State's control over the Copyright of traditional cultural expressions (folklore) whose creators are not known to be contained in the Copyright Law.

In legal discourse or discussion, the problem of protecting traditional cultural expressions (folklore) is usually associated with a system of protecting intellectual property rights. In international forums, the discourse on the protection of traditional knowledge and cultural expressions is discussed at a meeting between governments of WIPO member countries (WIPO Intergovernmental Committee on Intellectual Property Rights and Genetic Resources, Traditional Knowledge and Folklore AGC-GRTKF). Until the tenth session of the meeting and the IGC-GRTKF, there has been no agreement on an appropriate protection system or regime for traditional cultural expressions (folklore). Some parties propose using the IPR regime, while others consider the IPR regime to be inappropriate.

Based on the search for library materials, it can be concluded that traditional knowledge has a unique and holistic character. Traditional knowledge has not only economic value but also magical and cultural value. It has made several countries such as Thailand, the Philippines and Costa Rica choose the Sul Generis system to organize their traditional knowledge to provide more comprehensive protection.

In the author's view, the problems related to the notion of traditional cultural expressions (folklore) are in terms of the timing of the start of protection and aspects of originality. A work gets Copyright protection after completion because the Copyright Law does not protect ideas or ideas. Suppose it is associated with the existence of folklore. In that case, creations that can be considered folklore should be decades-old because one of the identifying characteristics of folklore is that it has been disseminated in at least two generations. Folklore is produced, displayed, or recorded again at this time are reproduction works. The question is whether a work of reproduction can be protected by using a protection system for traditional cultural expressions (folklore).

In the writer's view, IPR originates from the West and is transplanted into Indonesian law, so it is still based on individual and economic interests. It is contrary to the richness of traditional culture, which is more community in nature. There are so many traditional cultural treasures that are already public

property (public domain), and there has never been a problem in using them in people's lives. Batik artisans continue to make truntum or kawung motifs without thinking about who owns the IPR. Once entering foreign economic relations, various opinions arise regarding IPR for this traditional cultural wealth. There is news that Malaysia claims batik and the song Rasa Sayange are just discussing and not acting because it is public property, so no individual feels disadvantaged.

The issue of IPR protection for traditional cultural expressions (folklore) is quite a complicated matter. From the side governments of developing countries, they consider traditional knowledge within their territory an economic asset/capital to answer the challenges of international trade competition. On the other hand, there is a fact that many ashes (indigenous people), as well as non-urban communities at the local level, are marginalized communities and the system of economic development. IPR protection for traditional knowledge is considered one way of "sharing" "benefits" between "users" of traditional knowledge in developed countries and owners of traditional knowledge in developing countries.

The subsequent interest is the interest of the traditional community as the owner and folklore itself. It is complicated to map. Two problems have not yet come to light among legal and social scientists. The first is what can be defined or categorized as the 'owner' community of folklore. Second, are the people classified as isolated tribes, indigenous peoples, or local communities in general (people living outside of urban areas who still use traditional practices /technology but no longer have customary law institutions that are firmly enforced). The problem then also makes it challenging to identify their economic interests.

According to the researcher, Copyright and folklore have fundamental differences. Copyright concerns the creations of individuals or legal entities for economic purposes whose registration is not mandatory or is automatically protected. While folklore is a cultural heritage between generations, legends and dances, for example, are only for socio-cultural purposes. Copyright is different from folklore, which has an unlimited period of protection. Folklore further is regulated minimally in the Copyright Law (Articles 10 and 31).

The Directorate General of Intellectual Property Rights cannot issue a registration letter for folklore because its nature differs from the Copyright known to the creator.

In Contrast, Copyright Protection Lasts the Creator's Lifetime Until 50 (Fifty) Years After the Creator's Death. So, if Folklore Is Forced to Be Registered as Copyright, It Will Become a Limitation.

Efforts to Protect Folklore

As described in the previous discussion, the IPR system has not effectively protected traditional knowledge, mainly traditional cultural expressions. Meanwhile, the local people do not care about the occurrence of misappropriation because of traditional factors or their views on the essence of traditional knowledge. This condition demands an active role from the Government as an authority that is obliged to protect the entire Indonesian nation and homeland of Indonesia from all kinds of threats, including threats to the collective rights of local community members to traditional knowledge and folklore as cultural heritage.

Based on the search for library materials, it is known that the protection of folklore shows that the government and local governments have not consistently protected traditional cultural expressions (folklore) against various uses for commercial purposes without providing benefits to the folklore community stemming from the inconsistency of the local Government bound in efforts for registration and efforts to create a local legal umbrella.

The problem with protecting folklore lies in implementing the legal system mechanism, especially the law enforcement system. Besides, it must be supported by synergy with the demands and needs of the community. The misappropriation of folklore shows that the law enforcement system has not been maximal in protecting folklore expressions against exploration carried out by parties who are not responsible for obtaining benefits, both preventive and repressive.

Indecisiveness in regulating and protecting traditional cultural expressions (folklore) can be seen from three sides, namely:

- (a) Specific regulations in the form of a regional law have not yet been implemented, explicitly regulating the registration of folklore and prohibiting the improper use of folklore expressions.
- (b) Institutionalization is not optimal, mainly because the problem of organizational structure and institutional issues regarding the expression of folklore have not been maximized.
- (c) The legal culture of traditional societies has not supported the protection of folklore expressions, especially since indigenous people are generally still apathetic and do not care about what is happening.

The continued occurrence of "misappropriation" in the form of embezzlement of the rights of indigenous peoples requires local governments to be consistent in repeating this with various alternative policies. Some alternative steps that the Government can take are as follows:

1. Substantially local regulation to protect traditional cultural expressions (folklore)

The substance of the laws and regulations governing the expression of traditional culture (folklore) in Indonesia, as previously described, is only found in Articles 10 and 11 of Law Number 19 of 2002 concerning Copyright. The regulation in the two articles of the Copyright Law is a form of protection for traditional cultural expressions (folklore) that the international community has attempted for the first time through the 1967 Stockholm conference, in which is one of its recommendations stipulates that protection is given to the embodiment of folklore through copyright law. However, in practice, the minimal regulation in the Copyright Law does not effectively protect the use of folklore expressions from foreigners, even by Indonesians themselves, for commercial purposes without providing benefits to the community where the folklore cultural expressions are located.

The regulation of folklore through copyright law only in the two articles of the Copyright Law above still invites weaknesses in protecting folklore. In the researcher's view, the rule of folklore expression and Copyright for personal works of art requires thought for completion. There are several reasons why the researcher relates to the Copyright Law and folklore expression as an arrangement that needs to be reviewed:

- a. Article 29 of the Copyright Law provides a period of limitation of mass protection for the life of the creator and lasts for 50 (fifty) years after the author's death, after which the right becomes a temporary Public Domain for folklore (Article 31 paragraph (1) a applies indefinitely time. It is not known in the Public Domain because the copyright holder is a country. Limiting the period of protection will cause the rights of the community where it is not protected folklore it is located.
- b. Article 10 paragraph (3) of the Copyright Law only regulates the protection of folklore from abuse by foreign parties. In reality, folklore can also be misused or used commercially by Indonesians without providing benefits to the community where it is located.
- c. The Copyright Law stipulates that the principle adopted in copyright protection is the declarative origin, where copyright protection is born automatically since the idea was created and published on a copyrighted work. At the same time, for folklore, assumptions cannot be expected because folklore is entirely unknown and who has it. Generally, the expression of folklore is passed down from generation to generation through oral tradition.

- d. The Copyright Law regulates that Copyright has a formal character, while traditional cultural expressions have an informal character.
- e. The current Copyright Law is unsuitable for protecting traditional cultural expressions (folklore) from misappropriation in economic, moral, and spiritual aspects.

From some of the points above, the author is of the view that the Government must pay attention to taking steps to regulate folklore. The folklore is not adequately restrained in The Copyright Law. The local regulation is crucial to protect against folklore because it involves direct control and supervision. The most accurate step to overcoming "misappropriation" is to make specific regulations at the regional level in the form of a *Perdasi* or in the form of a Regional Regulation. The *Perdasi* or *Perda* must regulate substantially the elements that must be protected, the rights of local communities and protection mechanisms.

Conclusion

It can be concluded that:

1. Categories of folklore that can be protected are verbal and non-verbal expressions in the form of folklore, folk poetry, puzzles, sayings, proverbs, traditional speeches, song expressions, collages, traditional costumes, architects related to folklore, possessing sustainable, contemporary and whole-souled characteristics, both those that have been documented and those that have not been documented at the Office of the Directorate General of Intellectual Property Rights.
2. Efforts to protect traditional cultural expressions (folklore) are carried out by means of; the establishment of regulation as *sui generis* or folklore separate from The Copyright Law, conduct inventory and documentation, appointing institutions representing the State in the context of protecting folklore and use contracts to determine benefits sharing for indigenous peoples on the use of folklore by other parties for commercial purposes.

References

- Abdulkadir Muhammad, *Economic Law Study Right Riches Intellectual*, Citra Aditya Bhakti, Bandung, 2001.
- Ade Mama Suherman, *Legal Aspects in Global Economy*, Ghalia Indonesia, Jakarta. 2002.
- Bambang Kesowo, *the main points Notes About TRIPS approval*, Papers Surabaya, 1996.
- Eddy Pelupessy, *Protection for Craftsmen in the Framework of Copyright, Industrial Designs and Geographical Indications*, Papers, Jayapura, 2008.
- , *Protection to Expression Culture (Folklore) Indigenous Peoples in Papua*. Paper, IPR Center "KEMAPA" Cenderawasih University, Jayapura, 2009.
- Herlina Mandilaga, *Property Rights Intellectual And Various Surrounding Problems*, Papers _ Faculty of Law, Atmajaya University, Yogyakarta, 2004.
- Krtodjomena, *GATT and WTO Systems, International Forums and Institutions in the field of trade*, UI-Press, Jakarta, 1996.

Soerjono Soekanto and Sri Mamudj, Normative Legal Research: A Brief Overview, PT. Raja Grafindo Persada, Jakarta, 1995.

Sudargo Gautama, Indonesian Intellectual Property Rights and Treaties International: TRIPs, GATT, Uruguay Round, PT. Citra Aditya Bhakti, Bandung, 1994.

Weynand Sahetapy, Dimonim 's Voice , Papuan Artist's Mural, Jayapura, 2007.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).