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International Legal Resolution of the Recognition Dispute over the Intellectual Property Rights of the 'Reog Cultural Dance' by Malaysia

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Abstract
This research aims to describe theoretical and practical views regarding legal protection of intellectual property rights, especially in terms of traditional Indonesian culture. This research uses a qualitative writing method using a normative juridical approach. This research also touches on the juridical aspects of the case. This research was made in descriptive form with data collection techniques obtained through methods library research or what is known as library study techniques and techniques for analyzing legal materials using descriptive, evaluative, argumentative, and prescriptive techniques. The rise in cases of cultural claims made by other countries certainly provides a certain interpretation of the weak aspects of legal protection for intellectual property rights, especially in cultural matters. This can be seen, for example, in the case of Malaysia's claim to the Reog Ponorogo cultural dance, which should be viewed from a historical-sociological aspect as an original cultural heritage from the Ponorogo area, East Java. Such cases are not uncommon and often give rise to prolonged disputes which of course have implications for the diplomatic relations that exist between the two countries. Reviewing the provisions of Article 38 of Law Number 28 of 2014 concerning Copyright, it is explained that traditional cultural expressions whose creators are not known for certain have intellectual property rights protected by the state. On this basis, a special systematic system is needed to resolve the dispute. In this regard, efforts related to the process of resolving intellectual property rights disputes in the international domain cannot be separated from the legal politics that occur both in the realm of national political life and in the realm of international politics.

1. Introduction

Along with the increasing development of science and technology, of course it also gives implications to various aspects of the development of human life. There is no exception in the case of legal arrangements which indirectly must also be dynamic in facing the existing developments. In relation to that, one of the legal fields born from the development of human life in the modern era is the arrangement related to Intellectual Property Rights. Intellectual property rights (hereinafter abbreviated to IPR) are important to discuss considering the increasing need to regulate the intellectual property of a person or legal entity as a form of confirmation of the intellectual property that a person owns. As it develops, protection of intellectual property rights does not necessarily only cover IPR-related issues alone. Currently, IPR problems continue to develop into increasingly complex problems, because it is not uncommon to find IPR problems which are also riddled with political content and also economic issues in them.[1]

[1] Muhammad Djumhana, *Hak Milik Intelektual Sejarah : Teori, Dan Praktiknya Di Indonesia*, Ed. 4 (Bandung: PT. Citra Aditya Bakti, 2014), Hlm. 21.

IPR legal protection is an effort to protect wealth arising from human intellectual abilities which can take the form of various works in the fields of technology, science, art, and literature. As a member of the WTO (World Trade Organization), the legal consequences that must be borne by Indonesia are ratifying the GATT (General Agreement on Tariffs and Trade)[2] in Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization. This includes an agreement on IPR related to trade, namely the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP's Agreement).[3]

The potential political and economic content in IPR issues also not only involves groups in the same regional context but also often carries over to the international context. There are many IPR issues which then become international issues which must be resolved as quickly as possible. One of them is related to mutual cultural claims between countries. Cultural claims are indeed a classic issue that is often heard about IPR violations, but this problem also continues to be a contemporary issue today that seems to never be discussed. In line with that, Indonesia, with its multicultural society, has great potential for ownership of intellectual property in the form of cultural heritage. In data released by the Ministry of Education and Culture in 2021, Indonesia has 1,239 intangible cultural heritage spread across the country.[4] Of course, this amount is not a small amount for one country. The large number of cultural heritage holdings also creates greater opportunities for IPR deviations to occur which give rise to claims disputes by other countries. This could possibly happen if it does not immediately receive special attention from the country concerned and internationally.

Talking about mutual cultural claims between countries, from several decades ago, such disputes have contributed to the long list of cases of IPR disputes in the international world. In this regard, of course such disputes cannot be separated from the pattern of relations that exists between Indonesia and its sister country, Malaysia. In the last ten years alone, there have been approximately 13 Indonesian cultural heritages, both tangible and intangible, that were claimed unilaterally by Malaysia.[5] The case of a country's cultural claims cannot only be considered an issue that only involves two countries. However, it can be interpreted as a threat to a country's sovereignty, which if not resolved immediately will have an impact on diplomatic relations between the two countries. This condition occurs due to several factors, one of which is the strong genetic relationship between the people of Indonesia and Malaysia.

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[2] Imam Wicaksono, "Politik Hukum Pelindungan Hak Kekayaan Intelektual Di Indonesia Pasca Di Ratifikasinya TRIPs Agreement," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* Vol. 18, No. 1 (2019): 37–47, Hlm. 43. https://jurnal.unikal.ac.id/index.php/hk/article/view/1088/788.

[3] Roni Sahindra, "Pelaksanaan Hak Kekayaan Intelektual Dalam Kerangka Pembangunan Budaya Hukum (Diskursus Filosofis Keberadaan Hak Kekayaan Intelektual di Indonesia)," *Journal Equitable* Vol. 7, No. 2 (2022): 272–291, Hlm, 278. https://ejurnal.umri.ac.id/index.php/JEQ/article/view/4320/2017.

[4] Vika Azkiya Dihni, "Indonesia Miliki 1.239 Warisan Budaya Takbenda," databoks.katadata.co.id, 2021, accessed June 13, 2022, https://databoks.katadata.co.id/datapublish/2021/09/21/indonesia-miliki-1239-warisan-budaya-takbenda.

[5] Agus Setiawan, "Perlindungan Hukum Dalam Lingkup Pengetahuan Tradisional Dan Ekspresi Budaya Tradisional Atas Soto Sebagai Indikasi Geografis Dan Makanan Khas Nusantara," *DHARMASISYA: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* Vol. 2, No. 1 (2022): 227–240, Hlm. 229. https://scholarhub.ui.ac.id/dharmasisya/vol2/iss1/18/.

Remembering that in previous years there was a lot of migration of Indonesian people to Malaysia, which of course also had an impact on the cultural elements they brought with them.

On such a basis, it is certainly an important aspect why IPR arrangements need to be enforced. Such problems also attract attention to be discussed and studied further. There are some previous writings that make the problem of cultural claims by other countries as an object in their writing, such as the writing written by Rusdi Omar and his colleagues. In the writing, the focus is on analyzing the sources of conflict and conflict resolution efforts that come from cultural demands owned by both sides of the country.[6] Apart from that, the issue of cultural claims was also used in the writing carried out by Emy Handayani and her team in 2019, which focused their research on the cultural claims of pendet dance through a holistic approach to legal anthropology.[7] In this writing, it was concluded that the Pendet dance was identified as a dance that required religious elements which were highly respected by the Balinese people. This is in accordance with religious theory which from the start explained the process of forming the pendet dance as a form of offering to the beliefs held.

In line with the two articles above, this article was written to discuss issues that are also related to the issue of cultural claims made by other countries, in this case the neighboring country and allied country, Malaysia. The culture discussed in this article is also limited to one non-tangible cultural object that Indonesia has, namely the 'REOG' cultural dance originating from Ponorogo, East Java. The thing that differentiates this writing from previous writings is that in this writing the author tries to put more emphasis on the role of legal politics in efforts to resolve intellectual property rights disputes in the realm of international studies. The role of legal politics in efforts to resolve international disputes, including resolving IPR disputes, is an important point in order to determine what kind of solution steps can later be applied to the problem. So that later it can become the foundation for good policy direction through effective IPR regulation without causing significant implications for the pattern of diplomatic relations between the two countries concerned.

2. Methods

In the writing with the title "Legal Politics of International Dispute Resolution on Recognition of Intellectual Property Rights 'Reog Cultural Dance' by Malaysia" this time, a qualitative writing method was used, which is a type of writing method that emphasizes understanding the exploration of meaning in an issue being raised.[8] Using a normative juridical approach, this writing also touches on the juridical aspects of the case.[9] This writing is written in descriptive form, through presentation and explanation of the role of legal politics

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[6] Rusdi Omar, Abubakar Eby Hara, and Muhammad Afifi Abdul Razak, "Tuntutan Budaya Antara Malaysia Dengan Indonesia: Sumber Konflik Dan Jalan Penyelesaiannya (Malaysia and Indonesia's Claims Over Cultural Heritages: Sources of Conflicts and Solutions)," *Proceeding International Conference And Call For Paper 2013*, 2013, 29–38, http://repository.upnyk.ac.id/5925/3/prosiding_upn2.pdf.

[7] M.Hum. Emy Handayani, S.H., "Tari Pendet Sebagai Tarian Tradisional Bali Dalam Pendekatan Holistik Antropologi Hukum," Fakultas Hukum Universitas Diponegoro, 2019, accessed June 13, 2022, https://ilmuhukum.fh.undip.ac.id/penelitian-tahun-2019/.

[8] Farida Nugrahani, *Metode Penelitian Kualitatif Dalam Penelitian Pendidikan Bahasa* (Solo: Cakra Books, 2014), Hlm. 25. http://repository.stikim.ac.id/file/21-07-1730.pdf.

[9] Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris*, Cet. Ke-3 (Yogyakarta: Pustaka Belajar, 2013), Hlm. 33. https://mh.umy.ac.id/wp-content/uploads/2016/02/Dualisme-Penelitian-Hukum.pdf.

in efforts to resolve intellectual property rights disputes in the form of 'REOG' cultural claims by Malaysia.

In relation to authorial material, this authorial material is obtained from legal sources and materials in the form of secondary data. In the form of literature books which are of course related to the object of this writing. Then it is also obtained from expert opinions, as well as journals or articles obtained from digital media. The data collection technique was obtained through the library research method or what is known as the library study technique. While the techniques applied in analyzing the legal materials that have been obtained, the author uses descriptive techniques, evaluative techniques, argumentative techniques and prescriptive techniques.[10]

3. Results and Discussion

3.1. Intellectual Property Rights of "REOG" Cultural Dance

Reog is widely known as a cultural form in the form of traditional dance originating from the East Java area, or more precisely the Ponorogo area. In its development, reog is known as a cultural dance that has magical nuances in it. Historically the reog dance was performed as a type of entertainment dance with the addition of popular values which usually took the form of satire and the mandate of life in the context of traditional society.[11]

From a historical perspective, the Reog Ponorogo dance is thought to have existed since the time of the Majapahit Kingdom. To be precise, at the end of the XIV century AD. If calculated in years, this traditional dance art has been around for approximately 500 years. And during that time, the Ponorogo area itself was under the leadership of Bathara Katong. From here we have actually come to a slight conclusion that the art of reog dance is indeed a cultural heritage of the past whose existence still continues to exist today. This is reinforced by the reog writing in the Dinoyo Inscription. In the inscription is written the number 682 Ishaka or around 760 AD.

Based on the Babad Kelana Sewandana or the Story of Sewandana's Journey which is the original standard of the art of reog dance. It was explained that the existence of reog art began with the love story of King Sewandana. King Sewandana himself was one of the kings from the Bantara Angin Kingdom. In this chronicle, it is said that the king was trying to attract the heart of a goddess from the Kingdom of Kediri, named Dewi Sangga Langit. The goddess then demanded from the king that he bring the entire contents of the forest to the palace as a form of seriousness. In this effort, the king must try to defeat the ruler of the forest who in the chronicles is called 'Singo Barong'. And at the end of the story, by using a heirloom called Pusaka Cemeti Samandiman, the king succeeded in defeating Singo Barong. And brought the

[10] M.S. Prof. Dr. I Made Pasek Diantha, S.H., *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, Cet. Ke-3 (Jakarta Timur: Prenadamedia group, 2019), Hlm. 152. https://www.google.co.id/books/edition/Metodologi_Penelitian_Hukum_Normatif_dal/-MpADwAAQBAJ?hl=en&gbpv=1.

[11] Badrian Fitra Pamungkas, "Perlindungan Hukum Folklor Reog Ponorogo Sebagai Ikon Seni Budaya (Tradisional) Unggulan Kabupaten Ponorogo (Pelaksanaan Pasal 38 Ayat (2) Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta)" (Universitas Brawijaya, 2016), Hlm. 46. http://repository.ub.ac.id/id/eprint/112675/.

entire contents of the forest to the Kingdom of Kediri to fulfill his promise and as a form of his seriousness to the Goddess Sangga Langit.[12]

Regardless of whether the legend is true or not, the story told in Babad Kelana Sewandana indeed manifests the storyline of each reog ballet performance itself. In every reog dance, there are several figures who are the main actors, such as Singo Barong, Kelana Sewandana, Bujang Anom, Jathilan, and also Warok.[13] These characters then act out the storyline as told in Babad Kelana Sewandana. Talking about reog, of course it can be seen that reog is an intangible cultural heritage. Until now it is not known for certain when this dance art was created. Likewise, who created the dance art is still a big question mark in the minds of researchers. Although in some of the sources previously described the discussion about reog has been written in inscriptions or has been packaged epically in the form of folk legends. However, this has not been able to determine when and by whom the creation of the reog dance occurred.

On this basis, the art of reog dance can be categorized as a form of traditional cultural expression. Traditional cultural expressions themselves are a form of intellectual property which has a slightly different concept from the concept of intellectual property in general. Expressions of intellectual culture are more universal in nature than other types of intellectual property. This is because the expression of intellectual property itself, it is not known exactly who its creator is. From there, this traditional cultural expression is recognized as common property. Traditional cultural expressions themselves are classified into two parts, namely tangible, in the form of cultural expressions relating to something that can be physically touched and intangible cultural expressions,[14] which are defined as cultural expressions which are usually manifested in the form of values, concepts or behavior of a related society. with certain cultures or beliefs that have developed and are believed in society.

According to the legal system, three types of wealth are categorized. The first is the personal wealth that most people have, which are intangibles; the second is wealth in the form of materials, such as land and buildings; and the third is intellectual property. All countries recognize intellectual property (IP) rights in the form of products of ideas, such as copyrights, patents, brands, and trade secrets.[15]

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[12] Mustaqim. Shafira Nur Annisa, Nayla Lutpiana Dewi, Putri Jesika Amanda Z, Mustika Bunga H, Diana Hernida Putri, "Hak Kekayaan Intelektual Dan Kreativitas Seni Studi Kasus Perlindungan Seni Dan Warisan Budaya Reog Ponorogo," *Jurnal Hukum Dan HAM Wara Sains* Vol. 2, No. 12 (2023): 1139–1148, Hlm, 1146. https://wnj.westscience-press.com/index.php/jhhws/article/view/868/742.

[13] Andi Farid Hidayanto, "Topeng Reog Ponorogo Dalam Tinjauan Seni Tradisi," *Eksis* Vol. 8, No. 1 (2012): 2133–38, Https://Karyailmiah.Polnes.Ac.Id/Images/Download-PDF/Arsip Jurnal/EKSIS-VOL.08-NO.1-APRIL-2012/No 17 - Andi Farid - 2133 - 2138 - Topeng Reog Ponorogo Dalam Tinjauan Seni Tradisi.pdf.

[14] Abdul Fatah Fikril Kamil, "Upaya Indonesia Dalam Perlindungan Genetic Resources, Traditional Knowledge, And Folklore Di World Intellectual Property Organization Periode 2009 - 2017" (Skripsi: UIN Syarif Hidayatullah Jakarta, 2019), Hlm, 48. https://repository.uinjkt.ac.id/dspace/bitstream/123456789/49340/1/ABDUL FATAH FIKRIL KAMIL.FISIP.pdf.

[15] Ahmad Hidayat, "Legal Protection of Intellectual Property Rights Intellectual Property Rights in the Field of Patents According to Law Number 13 of 2016," *IJSSHR: International Journal of Social Science and Human Resources* Vol. 6, No. 10 (2023): 5875–5879, Hlm. 5875. https://ijsshr.in/v6i10/9.php.

In this regard, the art of reog dance itself is classified as a form of traditional cultural expression which is included in the intagible. This is based on the characteristic elements of the art of reog dance itself. Reog is a ballet that of course cannot be touched physically. It can be confirmed that the Reog ballet is part of an intagible cultural expression. Apart from that, every reog dance has a strong character so that it can provide suggestions to everyone who sees and hears the music from the reog performance itself. From this it can be said that the reog dance is also able to provide suggestions for mobilizing the masses in large numbers. This can be found in every reog performance which can be said to be never empty of spectators who want to watch the performance. Another characteristic that later became the difference between reog art was the very strong mystical element in it. This is proven by the existence of certain offerings or ceremonies carried out before the performance. Such characters attract the audience to continue watching the show until the end. In fact, it is not uncommon for the mystical element to be maintained from the beginning to the end of the event, causing the audience to also feel the mystical aura within it, to the point that sometimes some audience members become possessed.

Apart from the uniqueness and characteristics of all reog performances, the traditional cultural expression of reog can be categorized as folklore. Folklore itself is defined as a traditional creation created by certain individuals or groups within the scope of society, which later on this traditional creation can show the socio-cultural identity of an area which is based on certain standards and values that have been spoken, known, followed, and carried out from generation to generation.[16] From the definition above, of course, it can be seen that the factors possessed by each group in society are different. And to differentiate one fochlor from fochlor from other areas, of course you can judge it from the characteristics of each fochlor. The characteristics of the folklors, which then include physical characteristics, social characteristics, and cultural characteristics, are what will later become the difference between the folklors. With this, of course, the folklore owned by each culture will be able to add to the richness of the treasures of the culture concerned, as well as become the branding value of the culture itself. Because IPR, business, innovation and capital are components that work together to increase the value of a business.[17]

Even though in a theoretical study the art of reog is categorized as a folklore which was created by an individual or a certain group, the creation of the art of reog itself is not certain as to who created it. In its development, the term folklore itself was then replaced using the term Traditional Cultural Expression according to the provisions of Article 38 Law Number 28 of 2014 concerning Copyright (hereinafter referred to as Law Number 28 of 2014).[18] However, of course this still raises big questions regarding who then holds the intellectual

[16] Pamungkas, "Perlindungan Hukum Folklor Reog Ponorogo Sebagai Ikon Seni Budaya (Tradisional) Unggulan Kabupaten Ponorogo (Pelaksanaan Pasal 38 Ayat (2) Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta).", Hlm. 50.
[17] Riza Yudha Patria. Mieke Yustia Ayu Ratna Sari, "Tantangan Pemanfaatan Hak Kekayaan Intelektual Sebagai Solusi Permodalan," *Lex Review* Vol. 20, No. 2 (2020): 111–137, Hlm. 113. https://ojs.uph.edu/index.php/LR/article/view/2671/1487.
[18] See Article 38 UU Copyright Law: JDIH BPK RI, "*Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta*," Pub. L. No. 28 (2014), https://peraturan.bpk.go.id/Download/28018/UU Nomor 28 Tahun 2014.pdf.

property rights rather than the Reog art itself. In this regard, as a form of legal protection for one form of cultural heritage, the government then implemented a regulation.[19] The content of the statutory provisions states that for every traditional cultural expression whose creator is not known for certain, the intellectual property rights in that cultural extension are owned by the state.[20] Such provisions are contained in Article 39 of Law No. 28/2014 concerning Copyright.

There are regulations regarding traditional cultural expressions in Law No. 28/2014 concerning Copyright is actually a synergy from the government as an effort to preserve, develop and empower existing cultural heritage. Although in practice violations often occur. It requires seriousness and cooperation from various parties to participate in maintaining the cultural heritage of Reog itself. Intellectual Property Rights are divided into two main segments, namely Copyright and Patent Rights. In the context of Patents, protection focuses on objects that can be seen and touched, not on intangible aspects. A new discovery or breakthrough can receive patent protection if the discovery includes creative elements in the domains of science, art and literature. This concept is in line with the application of folklore to Copyright Law Number 28 of 2014.[21] Regulations regarding the protection of Intellectual Property Rights, especially for Copyright in Indonesia, are stated in Law Number 28 of 2014, which confirms that Copyright is an exclusive right which is automatically given to the creator in accordance with the declarative principle after the work is produced in real form, without prejudice to restrictions in accordance with applicable legal regulations (*vide article 1*).

Law Number 28 of 2014 clearly outlines the types of cultural heritage that can receive protection from the Copyright Law. For example, protection of cultural heritage such as angklung is regulated in this law. With this law, the government provides protection while guaranteeing legal certainty regarding the rights of citizens, as well as establishing sanctions for violators. However, its implementation still faces challenges, especially due to a lack of understanding among dance artists. One method of protecting a work is to register it, although registration is not an absolute requirement for obtaining a copyright because the protection of a work applies from the time the work is created and does not depend on registration. However, proof of registration can be important evidence in court if a copyright dispute arises in the future. And it also needs to be acknowledged that the Reog ballet itself is part of Indonesia's cultural diversity. Such a gift is certainly an obligation for all of us to continue to protect and preserve it.

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[19] Perlindungan hukum diartikan sebagai suatu bentuk perlindungan terhadap harkat, martabat, juga mencakup perlindungan terhadap hak asasi manusia yang diberikan kepada subjek hukum yang berada dalam wilayah negara hukum yang didasarkan pada ketentuan hukum yang berlaku dengan tujuan untuk mencegah terjadinya kesewenang-wenangan: Dalam Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, Cet. Ke-1 (Surabaya: Bina Ilmu, 1987), Hlm. 37.

[20] See Article 39 UU Copyright Law: JDIH BPK RI, *Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta*.

[21] Komang Dea Febriantini, "Perlindungan Hukum Internasional Terhadap Warisan Budaya Indonesia Yang Di Klaim Oleh Nagara Lain," *Jurnal Pendidikan Kewarganegaraan Undiksha* Vol. 10, No. 3 (2022): 206–213, Hlm. 210. https://doi.org/10.23887/jpku.v10i3.52027.

3.2. The Role of Legal Politics in International Dispute Resolution

Legal politics can be understood as a basis that determines the direction in which a political product, in this case in the form of legislation, is created. In other words, legal politics is an important point in formulating goals, establishing, and implementing a policy product.[22] Of course, legal politics is also related to the formulation of norms that will later be used in the process of forming a regulation. Etymologically, legal politics is a translation of the Dutch legal term rechtspolitiek, which is a formation of the two words recht and politiek. Meanwhile, in the Dutch dictionary written by Van der Tas, the word politiek means policy, which in Indonesian means policy. From this explanation it can be said that legal politics briefly means legal policy. According to Soedarto, legal politics is a policy from the state through authorized state bodies to establish the desired regulations, which are expected to be used to express what is contained in society and to achieve what is aspired to.[23]

Satjipto Rahardjo defines legal politics as the activity of choosing and the methods to be used to achieve a social goal with certain laws in society.[24] Moh. Mahfud MD said that legal politics is legal policy or an official line (policy) regarding law that will be enforced either by enacting new laws or by replacing old laws, in order to achieve state goals.[25] In line with what has been explained previously, in the provisions of Article 39 of Law No. 28/2014 concerning Copyright, it is explained that for traditional cultural expressions whose creators are not yet known with certainty, the intellectual property rights are held by the state. From this it can be interpreted that traditional cultural expressions are protected, supervised and developed by the state. In other words, it is the state that has the authority and capability as well as the responsibility to continue to strive for the existence of every existing traditional cultural expression. The government's responsibility in this case can of course be manifested in the form of structured, systematic and active policy making while still involving the role of traditional communities as parties directly involved in the process of actualizing traditional cultural expressions.

In this regard, to support this goal, the concrete steps that have been taken by the government so far are still limited to regional administrative steps such as inventory efforts, guarding efforts and maintenance efforts. From this it is found that the steps taken by the government are in fact only carried out within the scope of groups that are involved and interact directly with these traditional cultural expressions. Meanwhile, the government's role is still not truly capable of being present in the midst of it. So far, the government's role has been more or less confined to the administrative sector only. Of course, if you look in the mirror at such conditions, there is a very sharp difference between *das sollen* and *das sein* that

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[22] M. Hum Dr. Isharyanto, S. H., *Politik Hukum*, Cet. Ke-1 (Surakarta: CV. Kekata Group, 2016), Hlm. 1-2. https://layanan.hukum.uns.ac.id/data/RENSI file/Buku ISHARYANTO/18. BUKU POLITIK HUKUM %282016%29.pdf.

[23] Wenni Anggita Darwance, Yokotani, "Politik Hukum Kewenangan Pemerintah Daerah Dalam Pengaturan Hak Kekayaan Intelektual," *Journal of Political Issues* Vol. 2, No. 2 (2021): 124–34, Hlm, 128. https://jpi.ubb.ac.id/index.php/JPI/article/view/40/28.

[24] Surisman dan Inayah, "Hak Kekayaan Intelektual Komunal Sebagai Upaya Perlindungan Hukum Terhadap Produk Kerajinan," *Legal Standing: Jurnal Ilmu Hukum* Vol. 4, No. 2 (2020): 87–95,Hlm. 93. https://journal.umpo.ac.id/index.php/LS/article/view/2967/1593.

[25] Wenni Anggita Darwance, Yokotani, "Politik Hukum Kewenangan Pemerintah Daerah Dalam Pengaturan Hak Kekayaan Intelektual,", Hlm. 128.

occurs.[26] It can be said that the government's role in this case is still very lacking in the process of developing traditional cultural expressions themselves. Considering the diversity of regions in Indonesia. Meanwhile, the community still plays an active role in efforts to develop traditional cultural expressions. In addition, the process of efforts to introduce or publicize culture in the international scope cannot be maximized. This can be seen from the many cases of claims about Indonesian cultural heritage that have been involved in cases of cultural claims by other countries.

This reflects that the legal protection provided so far is only limited to regions in Indonesia. As is the theory regarding territorial legal principles, which in other words, these regulations only apply within the Indonesian region. The arrangements made by the government have not been able to provide a forward-looking view regarding aspects of protecting national culture in the context of an international worldview. This concept is in fact in line with the results of research conducted by Peter Jaszi, in which the results of his research revealed a particular concern regarding the development of culture in Indonesia. According to him, the problems that occur in the process of cultural development in Indonesia occur in statements and recognition that develop in society. that groups of traditional artists are custodians and also guardians of traditional cultural expressions themselves.[27] From this, it can be seen that the problem that is occurring is not related to economic problems or the commercialization process of traditional cultural expressions themselves.

In line with this, in the international context itself, regulations regarding intellectual property rights relate to the creation of a work where it is not known for certain who the creator is in the 1967 Berne Convention, or what is known as The Berne Convention for the Protection of Literary and Artistic Works. There are regulations regarding traditional cultural expressions. Apart from that, several international legal instruments discuss the protection of traditional cultural expressions.[28] These instruments are like the Model Provision for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Forms of Prejudicial Action. This instrument was formed by United Nations Educational, Scientific, and Cultural Organization (hereinafter UNESCO) and World Intellectual Property Organization (hereinafter WIPO) in 1982.[29] This instrument was formed with the specific aim of protecting various aspects relating to intellectual property rights which include traditional cultural expressions whose creators are unknown (folklor) but are used without rights.

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[26] Pamungkas, "Perlindungan Hukum Folklor Reog Ponorogo Sebagai Ikon Seni Budaya (Tradisional) Unggulan Kabupaten Ponorogo (Pelaksanaan Pasal 38 Ayat (2) Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta).", Hlm. 7.

[27] Peter I Jaszi, "Traditional Culture: A Step Forward for Protection in Indonesia-A Research Report," *Institute for Press and Development Studies* Vol. 1, No. 1 (2009): 1–125, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1000&context=pijip_trad_knowledge.

[28] Laina Rafianti dan Qoliqina Zolla Sabrina, "Perlindungan Bagi 'Kustodian' Ekspresi Budaya Tradisional Nadran Menurut Hukum Internasional Dan Implementasinya Dalam Hukum Hak Kekayaan Intelektual Di Indonesia," *Padjajaran Jurnal Ilmu Hukum* Vol. 1, No. 3 (2014): 498–521, www.wipo.int/edocs/mdocs/tk/en/wipo_iptl_bkk_09/wipo_iptk_bkk_09_topic1_1.pdf.

[29] Irfan Ardiansyah, "Perlindungan Hukum Hak Kekayaan Intelektual Terhadap Budaya Tradisional Di Indonesia," *Jurnal Trias Politika* Vol. 6, No. 1 (2022): 123–129, Hlm, 126. https://www.journal.unrika.ac.id/index.php/jurnaltriaspolitika/article/view/3894/pdf.

The second instrument is the Recommendation on the Safeguarding of Traditional Culture and Folklore which was created in 1989. This instrument more or less discusses the scope of folklore, which includes definition, maintenance, preservation, dissemination, legal protection, as well as forms of international cooperation related to regulation. the. The scope of the course includes matters relating to language, literature, music, dance, myths that develop in society, traditional games, rituals, certain traditional ceremonies, architecture, and also other branches of art. The third instrument is The Matatua Declaration on Cultural and Intellectual Property Rights of Indigenous People in 1993. This instrument was implemented through a declaration held in New Zealand on 12-18 June 1993. This declaration was attended by more than 150 delegates consisting of 14 countries around the world. This declaration was made to recognize the rights of a community to its intellectual and cultural property.

The next instrument is the Agreement on Trade Related Aspects on Intellectual Property Rights (hereinafter TRIPs) which was formed in 1994. This instrument contains provisions regarding copyright as stated in Article 9 TRIPs.[30] Moreover, in this article there is also a relationship between TRIPs and the previous instrument, namely the Berne convention or Berne Convention. However, the difference between these two instruments is that TRIPs does not pay too much attention to the moral rights aspect in their regulation. However, it pays more attention to the aspect of economic rights in it. In contrast to Berne who paid more attention to the absolute protection of moral rights. The fifth instrument is the UNESCO Convention for the safeguarding of the Intangible Cultural Heritage 2003. This instrument regulates intangible cultural heritage which is passed down from generation to generation. In other words, this instrument was created as a practical step to identify various elements of intangible cultural heritage within the area. Different from the previous instrument, the next instrument, namely the UNESCO convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005, has the aim of promoting the diversity of cultural expressions.[31] The last instrument is the Beijing Treaty on Audiovisual Performance 2012. The existence of this instrument is motivated by the desire of WIPO which wants to practice the unification of performers' rights to performances that use audiovisual media. This instrument departs from the rapid development of information technology in the modern era like today.

On this basis, it can be understood that the role of legal politics is to determine how a regulation is determined. Likewise in the international realm. Determination of international legal provisions also really requires an identification of the state of world politics. This is none other than an effort to create a good regulatory product, which can accommodate the objectives of the statutory regulations to be achieved. This includes the aim of resolving a

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[30] See Article 9 number 1 of TRIPs "*Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom*." And see Article 9 number 2 of TRIPs "*Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such*.": In World Trade Organization, "Agreement on Trade-Related Aspects on Intellectual Property Rights" (1994), https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.

[31] Laina Rafianti dan Qoliqina Zolla Sabrina, "Perlindungan Bagi 'Kustodian' Ekspresi Budaya Tradisional Nadran Menurut Hukum Internasional Dan Implementasinya Dalam Hukum Hak Kekayaan Intelektual Di Indonesia,", Hlm. 500.

dispute. In this case, it can be said that there is not yet a policy product, especially in the international realm, that can properly accommodate the concept of protection rather than the expression of traditional culture itself. Including the concept related to legal protection of biological resources and traditional knowledge, which was later ratified through the 1992 Convention on Biological Diversity (hereinafter CBD). Which of course is also influenced by legal politics.

Not only that, the political and legal conception also influences the obstacles that occur in the process of protecting international cultural expression itself. It should be noted that to date, Indonesian intellectual property that has received recognition from UNESCO only includes three forms of art, consisting of keris, batik and wayang. The rest of the traditional cultural expressions, including reog, have not yet received recognition from UNESCO. This is none other than because the types of intellectual property that are specifically regulated and recognized only include intellectual property such as copyrights, trademark rights, industrial product designs, geographical indications, patents, integrated circuit layout designs and finally trade secrets.[32] Apart from these seven types, there are no definite provisions regarding international recognition as part of the type of intellectual property. If assessed from the perspective of urgency, traditional cultural expressions are no less important for their existence to be immediately recognized.

Even though it has a deep and distinctive historical background, there is a possibility that it no longer seems appropriate to current developments which are heavily influenced by the current influx of digital information. In a situation like this, the main difficulty lies in how to maintain and increase the value of Reog Ponorogo so that it remains significant in the digital age. Maintaining Culture vs. Update: On the one hand, it is vital to maintain the authenticity and unity of Reog Ponorogo as a crucial element of East Java's cultural heritage. However, on the other hand, there is a need to modernize this art so that it is more attractive to the younger generation who are familiar with technology. This conflict highlights the difference between efforts to preserve tradition and the need to adapt to current developments. Synergy Between Technology and Culture: Despite challenges, technology offers opportunities to improve Reog Ponorogo.[33]

For example, the application of technology in the production and marketing processes of shows can expand Reog Ponorogo's reach to the international stage. The use of virtual reality can also give viewers a deeper experience in understanding and appreciating the uniqueness of Reog Ponorogo. Local policies such as Reog Ponorogo are not only valuable heritage to maintain but can also be an inspiration for innovation in overcoming today's challenges. By finding the ideal balance between maintaining tradition and adopting technological innovation, Reog Ponorogo has the potential to continue to grow and make a

[32] Surya Prahara, *Hak Kekayaan Intelektual: Perlindungan Foklor Dalam Konteks Hak Kekayaan Komunal Yang Bersifat SUI Generis*, *LPPM Universitas Bung Hatta November*, Cet. Ke-1 (Sumatera Barat: LPPM Universitas Bung Hatta, 2021), Hlm. 233. https://lppm.bunghatta.ac.id/images/buku_2021/buku/Buku_Ajar_Hak_Kekayaan__.pdf.
[33] Tegar Prayoga Purwantoro, "Reog Ponorogo Dan Tantangan Teknologi Modern," kompasiana.com, 2024, accessed April 08, 2024, https://www.kompasiana.com/tegarprayoga6561/65dfd79c14709363361fdd24/reog-ponorogo-dan-tantangan-teknologi-modern.

significant contribution to the cultural identity of East Java and Indonesia at large. Therefore, it is very important for local communities, the government and various related parties to collaborate in efforts to promote, protect and develop local wisdom so that it remains maintained and relevant in this digital era.

3.3. Settlement of International Intellectual Property Rights Disputes

With regard to intellectual property rights themselves, of course culture is also included in them. The emergence of disputes that occur and involve culture in them will automatically also bring up points of dispute regarding intellectual property rights. One thing that is still a hot topic of discussion is the reog cultural claim case that occurred between Indonesia and Malaysia. There were many anomalies which later became obstacles to the process of registering the reog cultural dance with UNESCO. With regard to reog itself, it has actually received protection from the Indonesian government whose authority has been handed down to the Ponorogo Regency Government, in fact with this the Reog Ponorogo dance art has received copyright protection with the number 026377. Of course, this is in accordance with Article 9, Article 12 paragraph (1) letter e and Article 30 paragraph (3) of Law Number 19 of 2002 concerning Copyright (hereinafter referred to as Law No. 19/2002).

With regard to disputes that occur between Indonesia and Malaysia, from the point of view of resolving intellectual property rights disputes in the international realm, they can be resolved through the courts or using settlement methods outside the court. Resolving intellectual property rights disputes can be done through court efforts in the international realm, such as the UN. In this regard, the World Trade Organization (hereinafter WTO) also has the authority to decide intellectual property rights disputes. The WTO procedural framework for dispute resolution has been contained in articles XXII and XXIII of GATT published in 1994 and Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter DSU). Even though this procedure contains provisions for dispute resolution that are similar to those of a court, countries in dispute must still seek to resolve their disputes independently. Before forming the panel. It is hoped that in the first stage, there will be inter-governmental consultation and mediation taking place.[34]

Apart from that, the international institution that also has authority is the Dispute Settlement Body (hereinafter DSB). The DSB is also known as the General Council, in which case the DSB has the authority to participate in forming a panel consisting of experts with the authority to examine the cases that occur.[35] Also has the authority to decide whether a decision is accepted or rejected on appeal. The DSB also has the authority to examine the implementation of decisions and recommendations, as well as authorize its re-alization if a decision is not implemented properly by a country. The appeal stage must of course be based on certain regulations that have received approval from the WTO. When the panel and the appeal arrive at the conclusion that the defendant's actions violate the agreement (GATT-

[34] Afrizal Fahrul Jaya, "Peranan Hukum Internasional Dalam Upaya Penyelesaian Sengketa Hak Atas Kekayaan Intelektual Antara Indonesia Dan Malaysia," *Docplayer.Info* (Skripsi: Universitas Hasanuddin, 2014), Hlm. 55. http://docplayer.info/37117871-Peranan-hukum-internasional-dalam-upaya-penyelesaian-sengketa-hak-atas-kekayaan-intelektual-antara-indonesia-dan-malaysia.html.

[35] Jemiran, "Penegakan Hukum Atas Hak Kekayaan Intelektualstudi Kasus Pelanggaran Desain Industri," *Journal Presumption of Law* 2, no. 2 (2020): 87–109, Hlm. 89. https://ejournal.unma.ac.id/index.php/jpl/article/view/800/503.

WTO), the panel will demand in its recommendation that the defeated country adjust its trade policy to WTO regulations without delay. The new Panel and Appeal Body reports can be said to have permanent legal force (legally binding) after going through the ratification stage in the DSB process. The aim of the WTO dispute settlement system is of course to ensure that all WTO members respect the commitments they have signed and ratified.

The DSU-WTO stipulates that if legally binding recommendations and decisions are not implemented within the specified time period, the defendant country (the losing country) will be asked to pay compensation or face "retaliation". Generally, compensation or retaliation takes the form of concessions or market access. Even after a case is decided, there is still a long way to go before trade sanctions are implemented. Of course, at a stage like this, it is important for the defendant to always align the policies taken with all forms of advice or decision recommendations from the DSB. Then the last thing related to the institution which has authority in non-litigation matters in an effort to resolve IPR disputes is the World Intellectual Property Organization (WIPO). WIPO then established the WIPO Arbitration Center (hereinafter abbreviated to WAC) which has the authority to resolve international IPR disputes. WAC is part of the WIPO International Bureau.[36] WAC opened in October 1994 and is headquartered in Geneva. Its main task is to organize the arbitration and play the role of resource person. The WIPO regulations were created to be a model for resolving intellectual property rights disputes outside of court that can be used in three jurisdictions throughout the world.[37] The methods that can then be taken to resolve IPR disputes can be done through making an agreement to submit an IPR dispute before a dispute arises. As well as making an agreement to submit an IPR dispute after a dispute arises.

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[36] Dyah Permata Budi Asri, "Perlindungan Hukum Terhadap Kebudayaan Melalui World Heritage Centre UNESCO," *JH IUS QUIA IUSTUM* 25, no. 2 (2018): 256–76, https://journal.uii.ac.id/IUSTUM/article/view/10706/8685.

[37] Muhammad Fardi Sofari, "Perlindungan Hukum Terhadap Traditional Knowladge Di Indonesia Dalam Sistem Hak Kekayaan Intelektual Berdasarkan World Intelectual Property Organitation," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* Vol. 5, No. 2 (2023): 1677–1690, Hlm. 1687. https://ejournal.insuriponorogo.ac.id/index.php/almanhaj/article/view/3095/2034.

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4. Conclusions

REOG dance is a cultural dance originating from Ponorogo, East Java. In this regard, REOG traditional dance is of course part of the nation's cultural heritage. As a cultural heritage, Reog also has intellectual property rights as a form of appreciation for cultural values that must be protected, guarded, developed, and preserved. Although in this case no one knows for certain who the creator of the reog art itself is. On this basis, if we look at the provisions of Article 38 Law No. 28/2014 concerning Copyright, it is explained that traditional cultural expressions whose creators are not known for certain, their intellectual property rights are protected by the state.

However, in practice, the guarantee of protection provided by the country has not been able to protect traditional cultural expressions absolutely, including in terms of protection from efforts to claim cultural heritage by other countries. On this basis, a protection effort is needed that has the authority and capability to provide protection for cultural heritage in the world. In this regard, of course, the policy-making process cannot be separated from the legal politics that exist in the world. Because it is certain that the role of legal politics will be very determining in the process of forming regulations, which in this case synergizes in efforts to resolve intellectual property rights disputes that occur in the international realm.

In line with this, the protection of intellectual property rights in the form of traditional cultural expressions itself has been accommodated by several institutions that have the authority to adjudicate and resolve disputes relating to intellectual property rights in the world domain. Apart from this, efforts to resolve international disputes in the field of intellectual property rights can also be done through non-litigation efforts as in general, namely through mediation, arbitration or conciliation. It only differs in who carries out the process.

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