



Supervision Arrangements in Order to Strengthen the Protection of Traditional Cultural Expressions as Intellectual Property

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Abstract

The government is responsible for protecting, not only traditional cultural expressions as part of biodiversity, but also as the property of local communities. Legal regulations related to the aspect of supervision in the protection of traditional cultural expressions have not been explicitly stated in statutory regulations. Regulating aspects of supervision related to the protection of Traditional Cultural Expressions are very important in order to provide a sense of security and comfort to indigenous peoples as owners of these Traditional Cultural Expressions, and to maintain respect for the communal community. The purpose of this paper is to find a juridical basis regarding the supervision of traditional cultural expressions. The research method in the preparation of this article is the normative legal research method, in which this research examines the laws and regulations that are related to legal problems that occur. The results showed that the aspects of supervision in the laws and regulations relating to the protection of traditional cultural expressions have not been regulated in a substantial and detailed manner and only become part of Article 38 paragraph (2) of the Copyright Law. The existence of an aspect of supervision carried out by related parties is very important as part of Article 38 paragraph (3) of the Copyright Law.

I. Introduction

Along with the rapid development of the times and progress in the era of economic globalization in the field of technology, information and communication, it has encouraged changes in the investment sector which are no longer only in the factory industry, but also penetrated the creative industry that comes from the work of human intellectuals. Indonesia as one of the countries rich in intellectual works and has become a member of the World Trade Organization on January 1, 1995 which has ratified TRIP's through Law Number 7 of 1994 as a form of Indonesia's commitment to protect intellectual works by complying with TRIP's Agreement as the basis for the protection of Intellectual Property (hereinafter abbreviated as KI).¹ KI is the result of

¹ Ni Ketut Supasti Dharmawan, *Harmonisasi Hukum Kekayaan Intelektual Indonesia* (Denpasar: Swasta Nulus, 2018).

someone's thoughts which are expressed and then poured into products in the form of technology, science, literature and cultural arts which of course can be realized with struggle.² Copyright is one of the IP legal regimes that protects intellectual works related to the fields of science, art and literature.

It is important to provide legal protection for a work because in its manufacture it certainly requires no small amount of sacrifice. That there is a long period of time and many sacrifices to produce a creative work such as the sacrifice of time, thought, intellect, and energy and often requires a lot of material. Related to this, it makes an intellectual work of high economic value and has many benefits for its creator. This is the natural right of the creator to take advantage of his creation so that it becomes the basis for the concept of copyright protection based on individual rights.

Individual property rights holders get economic benefits from their intellectual property. Traditionally, indigenous peoples do not really understand the basic philosophy of IP so that a lot of traditional knowledge of indigenous peoples is used without permission and the distribution of benefits is fair to indigenous peoples. The discussion on the need for protection of traditional knowledge has become an important issue in the meetings of the Council for Trade-Related Aspects of Intellectual Property Rights at the World Trade Organization (WTO). The Indonesian government has made efforts to adjust the provisions of Indonesia's positive law in the field of Copyright while still taking into account the needs and conditions of the country.

The works referred to, both new intellectual works and intellectual works that have existed for a long time and are inherited as traditional works, still have benefits for the current generation. This intellectual work certainly requires a legal protection from the State, including traditional works. The issue that is currently developing in the scope of intellectual property studies is the legal protection of intellectual property produced by indigenous peoples or traditional communities in Indonesia. Traditional knowledge is closely related to intellectual property and is contained in almost all branches of IP, such as copyrights, patents, trademarks and trade secrets.

In fact, there is no realization of profit sharing for the traditional knowledge owner community.³ The government is responsible for protecting, not only traditional knowledge as part of biodiversity, but also traditional knowledge as belonging to local communities. That is, protection is given integrally to its material form and ownership. So that in the preparation of legal provisions in the field of Copyright, the government and legislative institutions combine the two concepts, namely the concept of individual ownership as well as the concept of collective ownership as contained in Law Number 28 of 2014 concerning Copyright (hereinafter abbreviated as UUHC).

Since the enactment of the UUHC, it has provided a bright spot for the protection of intellectual works of communal communities such as works of traditional cultural expressions which of course adhere to the concept of collective ownership but there are no regulations regarding the supervision of Traditional Cultural Expressions

² Lily Karuna Dewi and Putu Tuni Cakabawa Landra, "Perlindungan Produk-Produk Berpotensi Hak Kekayaan Intelektual Melalui Indikasi Geografis," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 3 (2019): 1-17, <https://doi.org/https://doi.org/10.24843/KM.2019.v07.i03.p02>.

³ Wina Puspitasari, "Perlindungan Hukum Terhadap Pengetahuan Tradisional Dengan Sistem Perizinan: Perspektif Negara Kesejahteraan," *Padjadjaran Journal of Law* 1, no. 1 (2014), <https://doi.org/https://doi.org/10.22304/pjih.v1n1.a3>.

(hereinafter abbreviated as EBT) in Indonesia. It is necessary to regulate the field of supervision more deeply related to EBT because the protection of traditional knowledge is important to protect the honor of indigenous peoples. That as a noble inheritance for their ancestors to be born or created for the common benefit.

This ambiguity of regulation in the field of supervision has resulted in the absence of legal certainty in the supervision of EBT protection, with this background it is considered important to conduct research on the supervision regulation in the protection of EBT, as outlined in a scientific article entitled "Supervision Arrangements in the Context of Strengthening Protection of Expressions. Traditional Culture as Intellectual Property". This writing focuses on 2 (two) problems, among others, first, how to regulate supervision in ensuring the protection of traditional cultural expressions and second, how important the monitoring is in ensuring the protection of traditional cultural expressions in Indonesia. The purpose of this paper is to be able to identify and understand the monitoring arrangements in ensuring the protection of traditional cultural expressions in Indonesia and to examine the importance of such supervision in ensuring the protection of traditional cultural expressions in Indonesia because the existing EBT protection is not optimal. The regulation on the supervision aspect in EBT actually needs to be studied further, so that there is firm protection.

From the results of the search that the author has done, the writing of the article entitled Supervision Arrangements in Strengthening the Protection of Traditional Cultural Expressions as Intellectual Property can be said to be new and no one has reviewed it before. So this article has an element of renewal as a contribution to the protection of traditional cultural expressions in Indonesia. Although this paper has had an update and does not contain elements of plagiarism in it, as a comparison element, the following articles will describe similar issues.

1. Journal with the author Karlina Sofyarto in 2018 entitled "Perlindungan Hukum Hak Kekayaan Intelektual Atas Pengetahuan Tradisional Terhadap Perolehan Manfaat Ekonomi". This journal raises issues, namely: the Indonesian government's efforts to protect intellectual property rights on traditional knowledge and what factors are behind traditional knowledge that has not been optimally utilized as an economic resource.⁴

Based on the observation of journal titles and issues by Karlina Sofyarto, focusing on the legal protection of intellectual property rights in an effort to utilize the economy, while the paper on Controlling Regulations in Strengthening Protection of Traditional Cultural Expressions as Intellectual Property focuses on regulating the supervision of traditional cultural expressions. Therefore, it is ensured that this paper does not have plagiarism elements and has elements of renewal which are expected to be useful for the development of Legal Studies in Indonesia.

2. Research Methods

The normative legal research method is the method used in this research. The focus of the study is the obscurity of norms in regulatory arrangements in order to strengthen

⁴ Karlina Sofyarto, "Perlindungan Hukum Hak Kekayaan Intelektual Atas Pengetahuan Tradisional Terhadap Perolehan Manfaat Ekonomi," *Kanun Jurnal Ilmu Hukum* 20, no. 1 (2018): 149-62, <https://doi.org/https://doi.org/10.24815/kanun.v20i1.9832>.

the protection of traditional cultural expressions. This norm condition, which is called the obscurity of norms, occurs due to the availability of laws and regulations, but the formulation of words or sentences is not clear, causing ambiguity of understanding. The approach method used in the preparation of this scientific article is the statutory approach or it can also be called the statue approach, as well as the analytical & conceptual approach.⁵ Furthermore, the legal material review technique applied in writing this article is a document study technique by reviewing the legislation in the field of Traditional Cultural Expression, and the analysis of legal materials used is none other than descriptive techniques, deductive techniques and qualitative analysis.

3. Results and Discussion

3.1 Supervision Arrangements to Ensure the Protection of Traditional Cultural Expressions in Indonesia

Indonesia as a nation with extraordinary works of traditional arts and culture makes EBT in Indonesia as diverse as many ethnic groups that live in Indonesia. In the Indonesian legal system, the emphasis is on setting norms or what is called written law which is conceptual. The characteristics that form the basis for the application of the civil law system can be said that the law gains binding power when it has been realized in a systematic and codified statutory regulation. This characteristic is inseparable from one of the objectives of the law, namely legal certainty. The purpose of the law is only achieved if the legal actions of each individual in his life have been written down into a statutory regulation. Based on the flow of positivism which is in line with civil law thinking, it can be said that it is mandatory for every policy to be contained in written legislation. Therefore, supervision arrangements in the protection of EBT as a part of government policy must be explicitly stipulated in a statutory regulation in Indonesia.

The concept of legal protection according to Satjipto Rahardjo, legal protection is an effort to protect individual interests by allocating a power to him to act with the aim of his interests. According to C.S.T Kansil, that legal protection is given in the context of the rights and obligations that are related between humans as legal subjects and their environment and the obligations they have as legal subjects to take legal action.⁶ In terms of the application of copyright protection, it departs from the idea that it is one of the most valuable assets for a person and the concept of protection is based on various legal theories, including: reward theory, namely appreciation of the creator for his intellectual work and as a recognition for his creativity. Risk theory, this theory states that a work has a risk of being plagiarized by others, therefore a creation should obtain legal protection.⁷ The reward theory is intended to comprehensively understand the urgency of legal protection of intellectual property. The theory of appreciation is used as the basis for awarding an author for his efforts in producing a work or invention. With these theories, a concept of legal protection for creations has emerged from a creator. This can be done through the protection of their economic rights or the

⁵ Peter Mahmud Marzuki, "Penelitian Hukum, Edisi Revisi, Cetakan Ke-12," *Jakarta: Kencana*, 2016. p. 96.

⁶ Dewa Ayu Dian Sawitri and Ni Ketut Supasti Dharmawan, "Perlindungan Transformasi Karya Cipta Lontar Dalam Bentuk Digitalisasi," *Acta Comitatus: Jurnal Hukum Kenotariatan* 5, no. 2 (2020): 298–308, <https://doi.org/https://doi.org/10.24843/AC.2020.v05.i02.p08>.

⁷ *Ibid.*

protection of their moral rights or even both. So that the basis for the protection of copyright law, in this case EBT, must refer to the principles in the intellectual property system, namely: the principle of nature justice; economic principles (the economic argument); the principle of culture (the culture argument); and social principles (the social argument).

A work can be classified as an EBT work if it includes the things contained in The World Intellectual Property Organization (the WIPO), among others, in the form of containing the identity of traditional cultural heritage and the values of local community wisdom, which describe the knowledge and skills and are transformed from fundamental values and beliefs through a work of traditional cultural expression. Regarding Traditional Cultural Expressions, it is regulated in Article 38 of Law Number 28 of 2014 concerning Copyright. In more detail, it is described in Article 38 paragraphs (1) to (4), as follows: (1) Copyrights for traditional cultural expressions are held by the state; (2) The state is obliged to make an inventory, maintain, and maintain traditional cultural expressions as referred to in paragraph (1); (3) The use of traditional cultural expressions as referred to in paragraph (1) must pay attention to the values that live in the community that bears it; (4) Further provisions regarding Copyrights held by the state on traditional cultural expressions as referred to in paragraph (1) shall be regulated by a Government Regulation. EBT is one of the creations that is protected through Article 38 of the Copyright Law and the explanation of Article 38 paragraph (1) of the UUHC reads: :

“EBT includes one or a combination of the following forms of expression:

1. Verbal textual, both oral and written, in the form of prose or poetry, in various themes and content of the message, in the form of literary works or informative narratives;
2. Music, including, inter alia, vocal, instrumental, or a combination thereof;
3. Movement, including, among others, dance;
4. Theatre, which includes, among others, wayang dan performances folk plays;
5. Fine arts, both two-dimensional and three-dimensional made of, various materials such as leather, wood, bamboo, metal, stone, ceramic, paper, textile, etc. or a combination thereof; and
6. Traditional ceremonies.”

EBT regulations have existed nationally and internationally, but remain a hot topic of debate because researchers, especially scholars from developing countries where EBT is grown and preserved, think that the intellectual property law regime has not been able to properly protect EBT works. , therefore Sui Generic protection becomes important to realize.⁸ Communities and government, especially local governments, play an important role in contributing to the protection of the basic potential of

⁸Ni Ketut Supasti Dharmawan, “Protecting Traditional Balinese Weaving Trough Copyright Law: Is It Appropriate?,” *Diponegoro Law Review* 2, no. 1 (2017): 57-84, <https://doi.org/https://doi.org/10.14710/dilrev.2.1.2017.57-84>.

traditional culture.⁹ As regulated in Article 38 UUHC that the State holds the copyright on EBT. The takeover of this copyright is carried out with an automatic mechanism which is carried out directly by the State without discussing it with indigenous peoples first. This gives the impression that the protection provided is only focused on the protection of EBT and overrides the position of indigenous peoples as parties who continuously conserve EBT.¹⁰

The supervision arrangement in question is the supervision of the existence of EBT so that it still has benefits for everyone, especially the communal community as the bearer and preserver of a work of traditional cultural expression. The importance of paying attention to the benefits for indigenous peoples is no less important than the EBT inventory process which is also a state obligation. The protection of EBT originating from the existence of traditional communities with their traditional knowledge becomes very important to do, at least for three reasons, namely the potential for economic benefits resulting from the use of traditional knowledge, justice in the world trade system, and the need for protection of local community rights.

As quoted in Ostrom's Law: Property rights in the commons which states "...Property, as experienced on the ground, is never wholly individual nor wholly held in common, but instead always represents a mix of ownership types. Indeed, two of the most foundational institutions in modern life - the neighborhood and the corporation - plainly constitute "mixed systems of communal and individual property rights..." which in essence explains that the fact on the ground that intellectual property is never wholly individual or wholly owned together, but always represents a mixture of types of ownership which is a mixed system of communal and individual property rights.¹¹ The government is responsible for protecting, not only traditional knowledge as part of biodiversity, but also traditional knowledge as belonging to local communities. That is, protection is given integrally to its material form and ownership. Then it's very important.

The concept of legal protection for Traditional Cultural Expressions is different from the legal protection for other copyright objects as contained in UUHC.¹² Copyright registration as stipulated in the Law requires that it be carried out with the inclusion of the name of the creator, as the party who will be given legal protection, even though the principle of recording is not an obligation. However, when it comes to traditional cultural expressions that are part of copyrighted works, if the recording is done, then the state is the copyright holder as mandated in Article 38 paragraph (2) of the UUHC. This is because the creator of traditional cultural expressions is no longer known. The

⁹ Ayu Citra Santyaningtyas, "STRATEGI PERLINDUNGAN EKSPRESI BUDAYA TRADISIONAL DI INDONESIA," *JURNAL HERITAGE* 8, no. 2 (2020): 107-13, <https://doi.org/https://doi.org/10.35891/heritage.v8i2.1959>.

¹⁰ Anak Agung Sinta Paramisuari and Sagung Putri M E Purwani, "Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 1 (2019): 1-16, <https://doi.org/https://doi.org/10.24843/KM.2018.v07.i01.p04>.

¹¹ Lee Fennell, "Ostrom's Law: Property Rights in the Commons," *International Journal of the Commons* 5, no. 1 (2011).

¹² Dyah Permata Budi Asri, "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *JIPRO: Journal of Intellectual Property* 1, no. 1 (2018): 13-23.

obligation that must be carried out by the state as the copyright holder for traditional cultural expressions is to carry out an inventory and documentation of that culture.

Regarding EBT, the state's obligation as stated in Article 38 paragraph (2) UUHC, is "The state is obliged to take inventory, maintain, maintain Traditional Cultural Expressions as referred to in paragraph (1)". The concepts of coverage in terms of EBT protection are closely related to the regions as "bearers" of traditional culture, so that the provincial and district/city governments hold important tasks and functions in their protection and utilization. The State as the holder of the Copyright for Traditional Cultural Expressions shall obtain the Exclusive Rights on the Copyright Work. The exclusive rights regulated in the Copyright Law are the rights to publish, reproduce, translate, adapt, transform, distribute, perform and publish. The role of the state as the copyright holder still needs to be clarified in its concrete implementation because there is still a lack of clarity on the position of indigenous peoples as EBT bearers who should have priority benefits and clarity of position in the legal system.¹³

Sudikno Mertokusumo and A. Pitlo argued, interpretation or interpretation is one method of finding law that provides a clear explanation of the text of the Act so that the scope of the rules can be determined in relation to certain events. Interpretation by judges is an explanation that must lead to an implementation that is acceptable to the community regarding legal regulations on concrete events. This interpretation method is a means or a tool to find out the meaning of the Act. The justification lies in its usefulness to implement concrete provisions and not for the sake of the method itself. In the Big Indonesian Dictionary, the word "to guard" can also mean "to supervise". The word "guarding" in Article 38 paragraph (2) of the UUHC can be implied that in order to preserve an EBT, a supervisory arrangement is also needed. So, supervision arrangements can be included in the state's obligation to inventory, maintain, and maintain EBT in accordance with the provisions of Article 38 paragraph (2) UUHC. The difference in character between individual property rights and EBT makes the property rights legal system unable to fully protect EBT. Although both of them are derived from human intellectual creativity, the differences between the two are still visible. The idea of KI is embodied in real expression, and that is a fundamental difference. In KI, the creator is clearly known and the orientation of the findings is more towards economic motives than the expression of the creator. In EBT, the identification of the original creator is unknown because traditional/local communities produce the work from generation to generation.

Documenting the EBT is indeed important to preserve knowledge as an intellectual property asset, but in order to protect Indonesia's cultural heritage, it is not enough for the government to just create the rule of law, but an important supervisory process is carried out to ensure that there is no loss of traditional characteristics inherent as traditions of the communities or countries that carried before. EBT is an arrangement that is inseparable from the collective ownership of the Indonesian people. Although the regulation regarding the regulation of supervision in the protection of EBT is very necessary, but until now the UUHC which is the legal umbrella for EBT has not clearly regulated the regulation of supervision in it. With this, the juridical basis is blurred regarding the supervision treatment of an EBT. It should also be noted that supervision

¹³ Ida Bagus Wira Adi Manuaba and Anak Agung Gede Duwira Hadi Santosa, "Masyarakat Hukum Adat Dan Konsep Penguasaan Negara Atas Ekspresi Budaya Tradisional Di Indonesia," n.d., <https://doi.org/https://doi.org/10.24843/KS.2020.v08.i12.p01>.

in terms of supervision related to the protection of EBT for communal communities is a very important arrangement in order to pay attention to the benefits for indigenous peoples. With this, the government which is a stakeholder is obliged to immediately form a regulation that is specific and firm in relation to supervision arrangements in strengthening the protection of traditional cultural expressions where this supervision arrangement aims to ensure that EBT continues to have benefits for indigenous peoples as bearers and who preserve a work.

3.2 The Importance of Supervision Arrangements on the Protection of Traditional Cultural Expressions in Protecting the Honor of Indigenous Peoples Communities in Indonesia

EBT as a national asset has the potential to become a source of struggle between regions and between countries in assessing it as an economic resource. Traditional Cultural Expressions, in fact, there is a phenomenon of mutual claim that has been sticking out to invite the attention of many groups including legal and socio-cultural observers, both government and community elements. Intellectual work which is classified as Traditional Knowledge is if it grows and is communally owned by a particular community group or community.¹⁴ In general, what happens is that the indigenous peoples of EBT are packaged, taught and then passed on these elements to the next generation. They give what they have passed down through generations through saga, art, legend and ceremony. The elements conveyed are then gradually formed the social norms and way of life of the Indonesian nation. The fear that arises if there is no monitoring and preservation of EBT will result in the loss of Indonesian social norms and traditions. Furthermore, it can bring social implications, such as tensions or conflicts between communities, which are common in multi-ethnic countries, such as Indonesia.¹⁵ EBT has a difference with copyright because in the characteristics inherent in EBT there are values of wisdom in the relationship between humans and humans, as well as the relationship between nature and God.¹⁶

The term EBT is a translation of traditional cultural expression, namely any form, visible or invisible, where traditional knowledge and culture are expressed, displayed or manifested, and includes forms of expression or a combination thereof. EBT was created by indigenous peoples communally and from generation to generation where in EBT there are noble values that live in the indigenous people who carry it. EBT is preserved by traditional, customary communities and the unity of indigenous peoples from their ancestors to the next generation that is currently the same because the values contained therein are inherited from their ancestors. EBT contains sacred and sacred values that live in a society that has been passed down from generation to

¹⁴ Sylvana Mumi D Hutabarat, "Perkembangan Dan Perlindungan Pengetahuan Tradisional Dan Ekspresi Budaya Tradisional Ditinjau Dari Perspektif Hak Kekayaan Intelektual," *Jurnal Yuridis* 2, no. 2 (2017): 202-19, <https://doi.org/http://dx.doi.org/10.35586/.v2i2.201>.

¹⁵ Ibid.

¹⁶ Julinda Idriaty, "Perlindungan Hukum Ekspresi Budaya Tradisional Oleh Negara Sebagai Pemegang Hak Cipta Kekayaan Intelektual Komunal Masyarakat Sulawesi Tenggara Dikaitkan Dengan Hak Ekonomi Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" (Thesis, Magister Hukum Universitas Padjajaran Bandung, 2015).

generation. Sometimes traditional cultural expressions also contain a secret that is only known by the community that owns it.¹⁷

The use of the term EBT is shown in order to be able to explain and gain an understanding that what is included in a traditional art and literary work that exists in a society including the category of intellectual works inherited from generation to generation is a form of EBT. Thus, it can be formulated that EBT is part of the cultural life of indigenous peoples as owners where in EBT there are already economic, spiritual and communal values. Works that can be categorized as EBT must show the existence of an individual or communal intellectual activity. This is because EBT has a distinctive feature, namely that the communal nature of a work in a human association or individual in a community is preserved and developed by the bearer who is entitled and responsible for the EBT, both by custom and law.¹⁸ The implementation of individual property rights protection in Indonesia has encountered many obstacles caused by the different cultural characteristics of the Indonesian people which are communal and the character of the IP regime which is individual. For this reason, it is necessary to protect and improve the IP regime in Indonesia to suit the needs of the local community. Thus, if the IP regime implemented in Indonesia is in accordance with the needs of local communities, it will be able to increase knowledge-based economic growth.¹⁹

EBT is part of culture which in its form gives birth to 3 forms, namely: first, as a form that emerges from a complex of ideas, ideas, values, norms, rules and so on. Second, as a manifestation of a complexity of activities and patterned actions from behavior. humans in the Third society, as objects made by humans. Until now, EBT is considered a form of tradition with shared ownership without anyone being able to examine who the creator is. This is the reason that EBT law obtains legal protection indefinitely as regulated in Article 60 paragraph (1) of the UUHC, which reads: "Copyrights on traditional cultural expressions held by the state as referred to in Article 38 paragraph (1) are valid indefinitely " Inventorying, safeguarding and maintaining activities are closely related to protection, especially after seeing the fact that many claims have occurred, some of which have invited protests. The protection of cultural copyrighted works can be explored through national laws and regulations as well as international law.

EBT contains traditions, values, communal knowledge that are packaged and passed on to posterity through arts, legends and ceremonies which in turn form social norms and living arrangements. Besides containing social and cultural values, EBT also contains moral values that will always be attached to the community. The importance of providing protection for Express Traditional Culture is when faced with its characteristics and uniqueness and also plays a positive role in providing support to the indigenous and tribal community as the owner and bearer of the culture to

¹⁷ Yenny Eta Widyanti, "PERLINDUNGAN EKSPRESI BUDAYA TRADISIONAL INDONESIA DALAM SISTEM SUI GENERIS," *Arena Hukum* 13, no. 3 (2020): 388-415, <https://doi.org/https://doi.org/10.21776/ub.arenahukum.2020.01303.1>.

¹⁸ Afrillyanna Purba, *Pemberdayaan Perlindungan Hukum Pengetahuan Tradisional Dan Ekspresi Budaya Tradisional Sebagai Sarana Pertumbuhan Ekonomi Indonesia* (Alumni, 2012). p. 95

¹⁹ Sigit Nugroho, "Perlindungan Hak Kekayaan Intelektual Dalam Upaya Peningkatan Pembangunan Ekonomi Di Era Pasar Bebas Asean," *Supremasi Hukum: Jurnal Penelitian Hukum* 24, no. 2 (2015): 164-78, <https://doi.org/https://doi.org/10.33369/jsh.24.2.164-178>.

preserve their traditions. In addition to the government as the holder of the copyright on Traditional Cultural Expressions, the role of the community carrying the EBT works is also very important to maintain, protect and preserve them. This supervision is important to oversee all activities utilizing the creations of Traditional Cultural Expressions, both in non-commercial activities, especially for exploitation activities for commercial purposes.²⁰

The importance implied in the supervision arrangement is not only to provide a sense of security and comfort to the community as EBT carriers but also as a form of appreciation because the community also takes part in maintaining and maintaining EBT. So it can be said that the supervision arrangements carried out by related parties are very important as part of Article 38 paragraph (3) of the UUHC which reads "The use of Traditional Cultural Expressions as referred to in paragraph (1) must pay attention to the values that live in the community that bears it." Which is so that the use of EBT held by the government still pays attention to the values in the EBT-carrying community. Supervision is a very important action in guaranteeing the rights of indigenous peoples as EBT carriers because even though the copyright on EBT is held by the state, the EBT will always be attached to the personality of the community. In the future, strict supervision of EBT will have a positive impact on both the EBT itself and the community as the bearer. The word "guarding" in Article 38 paragraph (2) of the UUHC can be implied that in order to preserve an EBT, a supervisory arrangement is also needed. So, supervision arrangements can be included in the state's obligation to inventory, maintain, and maintain EBT in accordance with the provisions of Article 38 paragraph (2) UUHC.

Based on the description above, it can be said that the importance of regulatory oversight related to the protection of EBT is to provide legal certainty, legality, justice and benefits, among others, such as providing a sense of security and comfort to indigenous peoples as owners of the EBT, as well as maintaining respect for indigenous peoples, and as a basis for the relevant agencies to carry out supervision over the protection of EBT. With the supervision arrangements, the relevant agencies are able to carry out supervision in maintaining the existence of EBT from the community, protect EBT from all actions that can threaten the existence of EBT, and strive for the existence of EBT to be maintained properly as since the beginning of EBT. In other words, it is hoped that through supervision carried out by the relevant agencies directly, it can strengthen the EBT protection system in Indonesia.

4. Conclusion

EBT is part of culture which in its form gives birth to 3 forms, namely: first, as a form that arises from a complex of ideas, ideas, values, norms, rules and so on. Second, as a manifestation of the complexity of activities and patterned actions of human behavior in society. Third, as objects made by humans. Until now, EBT is considered a form of tradition with shared ownership without anyone being able to examine who the creator is. Related to as regulated in article 38 UUHC that the State holds the copyright on EBT. The legal rules related to supervision in the protection of traditional cultural expressions have not been clearly stated in the legislation. However, as Article 38

²⁰ Hendra Djaia, "Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional Dalam Perspektif Undang-Undang Hak Cipta," *Jurnal Cakrawala Hukum* 7, no. 1 (2016): 18-29. p. 27-28

paragraph (2) of the UUHC states, "The state is obliged to take inventory, maintain, maintain Traditional Cultural Expressions as referred to in paragraph (1)" then in terms of "maintaining" EBT can be included at the same time in its supervision. Inventorying, safeguarding and maintaining activities are closely related to protection, especially after seeing the fact that many claims have occurred, some of which have invited protests. The protection of cultural copyrighted works can be explored through national laws and regulations as well as international law. Supervision arrangements related to EBT protection are very important in order to provide legal certainty, legality, justice and benefits, including providing a sense of security and comfort to indigenous peoples as EBT owners, as well as maintaining respect for indigenous peoples as a basis for relevant agencies to carry out supervision of EBT protection. Supervision arrangements carried out by related parties are very important as part of Article 38 paragraph (3) of the UUHC which reads "The use of Traditional Cultural Expressions as referred to in paragraph (1) must pay attention to the values that live in the community that bears it." Which is so that the use of EBT held by the government still pays attention to the values in the EBT-carrying community.

Recommendations addressed to the Government as a representative of the state in the protection and regulation of Traditional Cultural Expressions should be able to form strict regulations related to the regulation of supervision of traditional cultural expressions, which in essence is useful to provide a juridical basis for related parties to carry out supervision, as well as a form of protection of rights, morals and economics for indigenous peoples as bearers of traditional cultural expressions because in traditional cultural expressions there will always be moral values attached to their communities.

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