

# Legal Protection Of Sasak Geguritan As An Expression Of Traditional Culture

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**Abstract.** For Indonesians, intellectual property, especially traditional songs, is a common heritage within the Indonesian community and always carries the value of togetherness. The Indonesian government protects traditional songs as expressions of traditional culture through Law No. 28 of 2014 on copyright. To this end, the paper will explain how lawmakers provided legal protection for Ekspresi Budaya Tradisional before and after the Copyright Act came into effect. This study employs the normative method of analysing the obtained legal materials. The protection of Ekspresi Budaya Tradisional in Indonesia under Law No. 28 of 2014 aims to prevent monopolistic practices or commercialisation and to avoid the destruction or commercial use of Ekspresi Budaya Tradisional without the State's consent as the Copyright Holder. However, despite this government effort, many aspects of protection periods still need improvement and do not comply with international conventions or regulations ratified in Indonesia.

**Keywords:** Folklore; Copyright; Legal Protection mechanism; irrigation; efficiency; information; technology; trend.

## INTRODUCTION

Pancasila is the fundamental ideology of the Indonesian State [1]. The name Pancasila consists of two Sanskrit words [2]. Panca means five, and sila means principle or basis. Pancasila is a formulation and guideline for national and State life for all Indonesian people [3]. According to the author [4], Pancasila serves as the philosophical basis of the Indonesian State, providing the intellectual foundation and ideology that guide the Indonesian people as a unifying force, a symbol of integrity, and a defence of the nation and State.

According to the author [5], Pancasila comes from the words "wacana" and "sila," which mean. Thus, Pancasila comprises five foundations that contain guidelines or rules for necessary and good behaviour [6]. The five principles form a unity that cannot be separated. The relationship between the five principles is very close, interconnected, and does not stand alone [7].

The five main pillars of the Pancasila are the One Almighty God, just and civilised humanity, the unity of Indonesia, democracy led by the wisdom of deliberation/representation, and social justice for all Indonesian people. They are stated in the

4th § of the Preamble (Opening) of the 1945 Constitution [8]. The fundamental values of Pancasila in Indonesia are not yet concrete enough to reflect our typical desires [9]. As an abstract value, Pancasila must be concrete, and efforts to achieve this involve making its fundamental values the basic norms and normative sources for the preparation of positive Indonesian state laws [10].

The Law explains that Pancasila is the basis of the State, leading lawmakers to conclude that it serves as the foundation, providing the source and framework of norms and performing constitutive and regulatory functions in drafting state laws [11].

Pancasila, in its position, is often referred to as the Philosophical Basis or Philosophical Basis of the State (Philosophische Grundlage) of the State, state ideology or (staatsidee) [12]. In this sense, Pancasila is a fundamental value and norm for regulating the government of the State, or, in other words, a basis for controlling the organisation of the State [13]. Consequently, all implementation and administration of the State, especially all laws and regulations, including the reform process in all fields, are described and de-

rived from the values of Pancasila [6]. So, Pancasila is the source of all sources of Law; it is the source of state legal rules that constitutionally regulate the Republic of Indonesia and all its elements, namely the people, territory, and state government [14]. As the Basis of the State of Indonesia, Pancasila has the power to regulate the organisation of the state apparatus in accordance with the opening of the 1945 Constitution, and it also functions as an ideology with essential values. The Indonesian people must implement these values in their national life. The manifestation of Pancasila values in the cultural field includes, among others, recognition and appreciation of intellectual property rights related to culture. Intellectual Property Rights are rights owned by an individual or group over the results of their creations or scholarly works.

In this context, the State recognises the cultural diversity of Indonesian society and its ownership of products born of that culture [15]. This constitutional guarantee is not intended to be limited to mere recognition; further, Article 34, § 2, of the Constitution of the Unitary State of the Republic of Indonesia requires the State to develop welfare policies that are affirmative action in support of the interests of citizens, including indigenous peoples. In line with the mandate of the Constitution, the General Declaration of Human Rights emphasises the right to obtain moral and material benefits arising from ownership of scientific, written, or artistic works.

Author [16] the Geguritan text is usually read at traditional rituals, traditional rituals that are intended, such as ngurisan (shaving the hair of a newborn baby), bisoq tian (7 months of pregnancy), nyiwaq (commemoration of someone's death on the 9th day), merarik (wedding) and other events. This pepaosan text has a significant psychological influence on the Sasak people. The Pepaosan text describes the process by which society begins to adopt Islam, also called the seed of Islam; this is related to the circumcision process as the beginning of a child's conversion to Islam. That is why, as mentioned earlier, circumcision is also commonly called beselam in Lombok society. Usually, people in Parampuan Village hold the circumcision ceremony in Rabiul Awal, the Islamic month widely known as the Prophet Muhammad's birthday. However, some parents hold circumcision ceremonies for their children outside that month. Because the text is quite long, readers rarely read it in its entirety in one sitting.

## METHOD

This study uses a normative legal research method, namely a literature review of the legal materials obtained. Protection of Traditional Cultural Expressions in Indonesia, as provided in Law No. 28 of 2014 concerning Copyright, aims to prevent commercialisation and actions that damage or commercialise without permission from the State as the Copyright Holder. However, the government's efforts still need improvement in terms of the duration of protection.

## RESULTS AND DISCUSSION

*The Nature of Geguritan Protection Based on Law No. 28 of 2014 Concerning Copyright.* A branch of science that has a special focus on values, for example, logic, ethics and aesthetics. Logicians discuss the value of truth to establish the rules of correct and sequential thinking. Aesthetic concerns what is considered good or embodies good values, specifically related to human behaviour in everyday life, particularly interactions with others. At the same time, aesthetics discusses the value of beauty, both the beauty of God's creation and the beauty made by humans.

States that value is something that humans uphold because it contains the meaning of goodness, nobility, glory, and so on, so that it can be believed and used as a guideline in life. Another definition: value is the price, meaning, content, and message, spirit or soul, that is ingrained or implied in facts, concepts, and theories, so that it is functionally meaningful. Values function as guides, controllers, and determinants of a person's behaviour, serving as standards.

Protection of traditional knowledge is critical to prevent misuse and improper exploitation. Conventional knowledge protection also prevents the cultural identity of the community that owns it from being lost, unlike traditional knowledge. Conventional knowledge protection is regulated in international Law and national Law. Currently, the international community protects.

Traditional knowledge is part of Intellectual Property Rights (IPR). The World Intellectual Property Organisation (WIPO) has given serious consideration to protecting traditional knowledge through various forms of intellectual property rights, including copyright, patents, plant varieties, industrial designs, and trademarks. However, in practice, protecting traditional knowledge through IPR may be challeng-

ing due to issues related to ownership, originality, duration, fixation, creativity, and uniqueness. In addition to being IPR, the international community also protects traditional knowledge as the rights of indigenous peoples. Conventional knowledge recognition by the international community is regulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In line with global efforts to protect traditional knowledge, Indonesia also safeguards it through its laws and regulations [17]. According to the author [18], several Indonesian laws and regulations can be used as a basis for protecting traditional knowledge, namely:

*The Role of the Sasak Community in Protecting Geguritan as an Expression of Traditional Culture*

*Advancing Culture.* Law No. 5 of 2017 concerning the Advancement of Culture (UUPK) regulates traditional knowledge. In the UUPK, traditional knowledge is one of the objects of cultural advancement. Objects of cultural advancement include: a) oral tradition; b) manuscripts; c) customs; d) rites; e) traditional knowledge; f) traditional technology; g) art; h) language; i) folk games; and j) traditional sports.

The objects of cultural advancement outlined in the UUPK narrow the scope of traditional knowledge. Authors [19] this is because oral traditions, manuscripts, customs, rites, conventional technology, art, language, folk games which are expressions of traditional culture are precisely the distribution of results and/or access to the use of genetic resources and/or traditional knowledge as referred to in § 1 are carried out in accordance with laws and regulations and international agreements in the field of genetic resources and traditional knowledge – article 26 § 3 of the Patent Law. Patents, as referred to in Article 2, letter a, are granted for new inventions that contain inventive steps and can be applied in industry.

*The Importance of Preserving Cultural Heritage.* The relationship between cultural heritage and community identity: Cultural heritage is a community's identity. Traditions, practices, and values that are inherited form the collective identity of a community. Cultural heritage reflects a community's history, beliefs, and way of life. By preserving cultural heritage, communities can maintain their cultural roots and strengthen their identity as a unique and distinct group.

*Traditional Skills Development.* Supporting traditional artists, artisans, and musicians in developing their skills: Local communities can provide concrete support to help them develop their skills [20]. This can be achieved through training, workshops, or mentoring programs that improve their technical and artistic abilities [21]. In addition, providing them with access to resources, such as raw materials or traditional musical instruments, helps develop their skills. This support ensures that conventional cultural practices continue to create high-quality works [22].

*Role of local communities.* Organising cultural festivals and art shows to promote local traditions: Local communities can play a vital role in preserving cultural heritage by hosting these events. Local communities can promote their traditions to the broader public through these events. Cultural festivals provide a platform for communities to showcase their artistic practices, such as dance, music, craft exhibitions, and traditional cuisine. This not only appreciates local artists but also raises awareness of the importance of preserving cultural heritage and the richness of the local community.

*Contribution of the youth.* The role of the youth in bringing local traditions into a modern context is significant: Youth have a unique understanding of culture and the challenges of the contemporary world. They can play a vital role in bringing local traditions into the modern context by adopting creative, innovative approaches. The youth can combine traditional elements with technology, social media, contemporary art, and other communication tools to bring local traditions to a broader audience. In this way, the traditions remain relevant, inspire the younger generation, and attract a wider audience.

*Pepaosan.* Pepaosan is a language used by the Sasak Tribe. In general, pepaosan is the reading of a lontar manuscript – the literal meaning of pepaosan means reading (maos, mepaos, pepaosan, memaca). Pepaosan comes from the word paos/maos, meaning 'reading,' with the prefix me- + maos. Readers read a writing (geguritan) found on the lontar. Therefore, we can generally conclude that pepaosan involves reading a lontar (geguritan) manuscript accompanied by songs, chants/rhythms. The expression used in reading this manuscript is through the beauty of words arranged in such a way as to form verses (Carik).

Lovers and preservers of culture, such as puppeteers and pembayun, usually read the gegugri-

tan on the lontar leaves during pepaosan. Pembayun is an elder trusted by the community to lead a Sasak traditional marriage at the sorong serah event. Pembayun for the Sasak people is highly respected, like giving respect to a puppeteer. The language used by Pembayun, puppeteers and Sasak nobles is Kawi (Old Javanese).

*Formation of Regional Regulations on the Protection of Traditional Cultural Expressions.* Under Articles 18B § 2 and 28I § 3 of the 1945 Constitution, traditional knowledge, which is the conventional right and cultural identity of indigenous peoples, is recognised as a constitutional right. Traditional knowledge as a cultural identity and the right of indigenous peoples under Article 28I §) of the 1945 Constitution are part of Human Rights (HAM). The protection of traditional knowledge, which is part of the culture and intellectual property of indigenous peoples, is fundamentally connected to the realisation of territorial rights and the self-determination of indigenous peoples.

Law No. 28 of 2014 concerning Copyright, Article 38 § 4, stipulates that copyright held by the State for Traditional Cultural Expressions, as referred to in Article 38 § 1, is regulated by government regulations; this means that the party holding the copyright for geguritan sasak, as a traditional cultural expression, is the State. The regional government represents the State as the highest authority in the region where the culture originated. As the holder of the Copyright for Traditional Cultural Expressions, it receives exclusive rights to the creation, including the rights to publish, reproduce, translate, adapt, arrange, transform, distribute, perform, announce, communicate, and rent the work.

The formulation above means that the Law grants the regional government authority to regulate copyright [23]. Geguritan Sasak is a result of cultural expression. The regional government – whether provincial, city, or district – bears essential duties and functions in protecting Traditional Cultural Expression, since the culture originates from and is practised in their region. Legal measures that the regional government can take if a violation occurs include filing lawsuits against the reproduction of copyrighted Geguritan Sasak works without permission for commercial purposes [24].

Regional Regulations on the Protection of Traditional Cultural Expressions in Legal Instruments for Intellectual Property Rights in Indonesia

Regional regulations are a type of legislation in Indonesia, as outlined in Law No. 12 of 2011 concerning the Formation of Legislation. Every legislation in Indonesia has a legal standing and force in accordance with the hierarchy of legislation. The formation of regional regulations on the protection of traditional cultural expressions must still be based on higher regulations, namely the 1945 Constitution of the Republic of Indonesia and laws.

Therefore, at the regional level, legal regulations are also needed to protect traditional cultural expressions, as part of regional policies on intellectual property rights in the cultural sector [25]. Regional governments also need to establish legal regulations to protect traditional cultural expressions as part of their intellectual property policies in the cultural sector.

## CONCLUSIONS

From the description above, we can draw the following conclusions:

- 1) It is necessary to protect traditional cultural expressions through the adoption of Regional Regulations. Protection of Traditional Cultural Expressions protects the identity and character of a nation. In addition, it implements regional policies on the mechanisms for using and protecting intellectual property rights in the cultural sector. The position of regional regulations on the protection of traditional cultural expressions is that they constitute autonomous frameworks that govern the policy for protecting intellectual property rights in the cultural sector. These regional regulations must comply with higher laws and regulations, but, as part of the intellectual property rights legal system, the regulation of the use and protection of traditional cultural expressions should remain within the framework of applicable intellectual property rights laws, both nationally and internationally.
- 2) The community's role in protecting Geguritan as a traditional cultural expression is essential to its maintenance and preservation. Traditional cultural expressions are embedded in society and are inherited from one generation to the next. There are many ways the community maintains traditional cultural expression; one is the geguritan reading festival called pepaosan. In Pepaosan, more than one person has their respective duties.
- 3) Certainty of legal protection for Sasak geguritan as a traditional cultural expression, with re-

gional regulations that prohibit and sanction the exploitation of traditional cultural expressions (folklore) by foreign parties.

### Conflict of interest

The author declares that no funders, enumerators, or anything else influenced this research's outcome, investigation, design, interpretation, or publication. Hence, the authors affirm that there is no conflict of interest.

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