

# Implementation Of Protection Of Traditional Cultural Expression In West Lampung Regency

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## ABSTRACT

The West Lampung Regency Government has cultural potential in which it contains Traditional Cultural Expressions (hereinafter referred to as EBT) in various types and cultural values and local wisdom are maintained in each particular indigenous group. Such as traditional dances, traditional ceremonies, and traditions that grow in the people of West Lampung. The position of the state as the copyright holder of NRE is contained in the provisions of Article 38 paragraph 1 of Law Number 28 of 2014 concerning Copyright. The state is obliged to take inventory, maintain, and maintain NRE as mandated by Article 38 paragraph (2) of the Copyright Law. The problem in this study is, how is the state's control over traditional cultural expressions in Indonesia and how is the implementation of the protection of traditional cultural expressions in West Lampung Regency in particular. This research is an empirical juridical research. From the results of the study found the fact that state control has been carried out through an inventory carried out by the Ministry of Law and Human Rights in collaboration with the Ministry of Education and Culture, but there are still many local governments that have not protected knowledge and traditional cultural expressions to the fullest where there are no legal, institutional and cultural arrangements. legal culture that supports the protection of traditional cultural expressions, including West Lampung Regency whose implementation of the protection of traditional cultural expressions has not been optimal.

## ABSTRAK

Pemerintah Kabupaten Lampung Barat memiliki potensi budaya yang didalamnya terkandung Ekspresi Budaya Tradisional (selanjutnya disebut EBT) dalam berbagai jenis dan nilai-nilai budaya serta kearifan lokal yang tetap terjaga pada masing-masing kelompok adat tertentu. Seperti tarian tradisional, upacara adat, dan tradisi yang tumbuh di masyarakat Lampung Barat. Kedudukan negara sebagai pemegang hak cipta EBT tertuang dalam ketentuan Pasal 38 ayat 1 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta. Negara wajib menginventarisasi, memelihara, dan memelihara EBT sebagaimana diamanatkan Pasal 38 ayat (2) UU Hak Cipta. Permasalahan dalam penelitian ini adalah, bagaimana kontrol negara terhadap ekspresi budaya tradisional di Indonesia dan bagaimana implementasi perlindungan ekspresi budaya tradisional di Kabupaten Lampung Barat pada khususnya. Penelitian ini merupakan penelitian yuridis empiris. Dari hasil kajian ditemukan fakta bahwa penguasaan negara telah dilakukan melalui inventarisasi yang dilakukan oleh Kementerian Hukum dan HAM bekerjasama dengan Kementerian Pendidikan dan Kebudayaan, namun masih banyak pemerintah daerah yang belum melakukan perlindungan. pengetahuan dan ekspresi budaya tradisional secara maksimal di mana tidak ada pengaturan hukum, kelembagaan dan budaya. budaya hukum yang mendukung perlindungan ekspresi budaya tradisional, termasuk Kabupaten Lampung Barat yang pelaksanaan perlindungan ekspresi budaya tradisionalnya belum optimal.

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## I. INTRODUCTION

West Lampung Regency is one of the most remote regencies in Lampung Province which is directly adjacent to South Sumatra Province. Besides being famous for its potential advantages in agriculture such as coffee, West Lampung Regency has potential advantages in the field of tourism. It is recorded that until 2021, West Lampung Regency (Lambar) has had 77 tourist destinations consisting of religious tourism, culture, lakes, nature, history, agro-tourism, culture and nature reserves. From the wealth of tourism potential that West Lampung has, many tourists make Lambar Regency an option for traveling.

It can be seen that starting from 2018 the number of tourists visiting West Lampung reached 17 thousand tourists, while in 2019 tourist visits increased quite significantly which reached up to 600 percent, to 110 thousand visitors. Furthermore, in 2020, despite the Covid-19 Pandemic, it did not dampen tourist visits to West Lampung, tourist visits increased again to 65 percent. This is of course inseparable from the potential of tourism destinations owned by the farthest district of Lampung Province. In addition to the nuances that are far from the crowds and supported by its cool and fresh nature, the atmosphere of West Lampung Regency is also still rural.

There are many types of leading tourism found and developed. The tourism is in the form of nature tourism, agro tourism, cultural tourism, culinary tourism, village tourism, historical tourism and educational tourism. Among the tours that will be the object of study in this research is cultural tourism, where cultural forms are diverse and are a very valuable asset for West Lampung Regency. In addition, due to globalization, many cultures are threatened with extinction or claimed ownership by foreign countries.

Even though the culture in West Lampung Regency has never been hit by a case of ownership claims by this state, but the West Lampung Regency Government should be careful in protecting various local cultures in West Lampung Regency from now on. This is because there are many cultural potentials of West Lampung which have the potential to be of interest to tourists visiting Lampung Province, especially West Lampung.

Tourism marketing development programs in Lampung Province generally include tourist market development, tourism image enhancement, marketing partnership development and promotion development. The creative economy development programs include Creative Economy Development based on art and culture, creative economy based on design and science and technology media and human resource creativity. Based on these tourism development programs, of course, one of the efforts is the promotion of traditional cultural values in West Lampung.

Cultural values are values that are agreed upon and embedded in a society, organizational scope, community environment, which are rooted in a habit, belief (believe), symbols, with certain characteristics that can be distinguished from one another as a reference for behavior and responses to what will happen or is happening. Local culture in an area is a very valuable asset for a certain region/region, because the local culture of an area always has characteristics that arise due to the characteristics of indigenous peoples and geographical conditions that are different from other regions. So with these different characteristics, the culture has its own uniqueness which is an attraction for domestic tourists, especially foreign tourists. Therefore, every area that is rich in local culture is almost certain to be visited by tourists every year, and this situation will ultimately increase local revenue (PAD). The tourism potential in West Lampung Regency is a very valuable asset for the local government, so it requires efforts on management, promotion and packaging so that it will have attractiveness and competitiveness with tourism in other areas and even in other countries.

Traditional Cultural Expressions in the form of traditional culture in Indonesia are regulated in Law Number 28 of 2014 concerning Copyright, especially in Chapter V which regulates Traditional

Cultural Expressions and Protected Works. It is described in more detail 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.

What is meant by "traditional cultural expressions" includes one or a combination of the following forms of expression: a. Verbal textual, both oral and written, in the form of prose or poetry, in various themes and content of the message, which can be in the form of literary works or informative narratives; b. Music, including vocal, instrumental, or a combination thereof; c. Movement, including dance; d. Theatre, which includes puppet shows and folk plays; e. Fine arts, both in two-dimensional and three-dimensional forms made of various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles and others or a combination thereof; and f. Traditional ceremonies.

The affirmation contained in the article is that the Copyright on Traditional Cultural Expressions is held by the state, so that the state is obliged to take inventory, safeguard and maintain these traditional cultural expressions. The definition of traditional cultural expressions is also explained in the previous Copyright Law, namely Law Number 19 of 2002, especially Article 10 paragraph (2). Although the Act does not explain in detail the meaning of traditional cultural expressions, it is explained that traditional cultural expressions are part of Folklore. Folklore is intended as a product of folk culture that is common property, such as stories, saga, fairy tales, legends, chronicles, songs, handicrafts, choreography, dances, calligraphy, and other works of art. And based on the statement, as the copyright holder for the works of prehistoric, historical, and other national cultural objects is the state.

The regulation of traditional cultural expressions in the Copyright Law means that traditional cultural expressions are part of Intellectual Property Rights (IPR), because that culture is also the result of the thought of human intellectual works, although sometimes the inventor of the culture is not known. The emergence of many disputes in the field of intellectual property rights indicates that so far, the concepts used in the protection of local culture have not been applied optimally, or maybe even there are no technical regulations for the existing problems, especially those that regulate these issues. Therefore, the diversity of cultures that exist in Indonesia is in dire need of an effort to protect it, especially the protection of the law in it as an intellectual work. Such steps need to be taken as an effort to create a form of legal certainty

## II. RESEARCH METHOD

The approach method used in this research is normative legal research which includes research on legal principles, the level of legal synchronization (Soerjono Soekamto and Sri Mamudji, 2001). The research approach used is empirical juridical research, namely a research approach that can be observed in real life. The type of research used is descriptive research method, namely research conducted by examining library materials (secondary data) or legal research literature (Ediwarman, 2010).

## III. RESULT AND DISCUSSION

### 1. State Control over the Protection of Traditional Cultural Expressions in Indonesia

The existence of guaranteed legal protection for NRE works in the Copyright regime provides fresh air for the preservation of intellectual works of indigenous peoples throughout Indonesia. It should be realized that a human intellectual work that has economic value, namely works of art

and culture as a result of human creativity in producing various high-quality intellectual works, is not born just like that. So that artistic and cultural works deserve protection which in the end can increase the level of welfare, not only for the indigenous peoples where the arts grow and develop, but also for the Indonesian nation and state. The results of intellectual works born from the processing and processing of human creativity, initiative and power that are so deep and of high economic value should be given collective legal protection to obtain exclusive rights to works that have been preserved by their indigenous peoples to this day.

The living museum has become a name for the Indonesian people thanks to its diverse traditions and culture. The diversity of cultures and traditions is born from the life process of the Indonesian people who depend on their natural conditions. Nature and the development of the life of the Indonesian people cannot be separated, this is because natural conditions affect the lifestyle of the community which then produces a diverse culture. Apart from natural conditions, the culture that was born was also produced because of the intellectual abilities of the Indonesian people who had always been very creative. A culture and tradition is born because of the creation of taste and human initiative in a community group, including what happened in Indonesia. All that creativity then produces culture and tradition as a form of intellectual works of high value in the midst of today's world development. This situation becomes an opportunity for claims by certain individuals if there is no protection from the government. Considering that intellectual property such as culture and tradition is an expression of traditional culture (hereinafter referred to as EBT) in Indonesia, there are so many extra efforts needed to prevent claims by illegal parties as in the case of illegal claims on gymnastics by neighboring countries such as Malaysia in 2010. that the government has not maximally carried out legal protection efforts to protect the cultural wealth contained in various forms of traditional cultural expressions of the community.

After the incident, the government finally evaluated the Copyright regulations, especially on several provisions related to IPR. This is because in Law no. 28 of 2014 concerning Copyright (hereinafter referred to as UUHC) in principle regulates the protection of artistic and literary works as objects of protection. However, works of art and literature which are inherited from generation to generation have not initially received legal protection from the Copyright Act as a form of EBT. Whereas NRE is not the majority of works, the creator is not known and has been passed down from generation to generation in a community that bears it, namely indigenous peoples in an area. And the legal protection has not been able to keep up with the times, so on that basis, changes to the laws and regulations related to Copyright have been made through the establishment of UUHC.

However, the current legal system, particularly regarding IPR, does not provide adequate protection for NRE. In fact, the main requirement for NRE protection is to know the hopes of the NRE community who actually become its "master". It is also very important to review current issues regarding adequate protection schemes for NRE. However, this research is only at an early stage, namely examining the historicity of the inclusion of NRE into the realm of copyright law and the meaning of the role of the state as the copyright holder of NRE.

Over a period of 28 years, the Indonesian Copyright law has been changed 4 (four) times since the first promulgation of the national UUHC in 1982. The four laws list NRE as one of the fields protected by copyright law. Important concepts in UUHC- Moral Rights (HM) and Economic Rights (HE), completely cannot be applied to NRE, because EBT cannot be traced to who the original creator was – so moral rights are attached to it. If the concept of moral rights which is the main concept is not included in NRE, let alone the concept of economic rights – which is a further concept of the consequences of these moral rights. In addition, the state is authorized by law to hold the copyright on NRE. Authorization of copyright on NRE is a problem at both theoretical and practical levels. At the theoretical level, NRE is not copyright and cannot be categorized as copyright. At the practical level, the role of the state as the copyright holder still needs to be clarified in its concrete implementation. Whereas in the perspective of Copyright based on UUHC regarding EBT it has been regulated in Article 38 UUHC which stipulates that:

Copyrights for traditional cultural expressions are held by the state. The state is obliged to make an inventory, maintain, and maintain traditional cultural expressions as referred to in paragraph (1). 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. 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.

If you look closely, NRE basically exists in the state, where a country has an obligation to maintain, make an inventory and maintain NRE in accordance with the provisions of UUHC Article 38 Paragraph (1). Furthermore, it is specifically explained that the Provincial, Regency/City Regional Governments are the embodiment of the state which plays an important role in the protection and utilization of the growing NRE. Not only that, it is also obligatory to take inventory, maintain, and maintain as mandated in Article 38 paragraph (2) UUHC. Furthermore, in the provisions of Article 39 of the UUHC it can be said that NRE which does not know who its Creator is as a collective work of traditional communities, but the state has the copyright rights for the benefit of the Creator as referred to in Article 39 paragraph (1) and paragraph (3). Article 60 of the UUHC explains that there is no time limit for the protection of NRE as an object of Copyright.

The development of NRE does not escape the existence of monopoly and commercialization, although it has been clearly stated that the Regional and State Governments are the highest authority over Copyright, but it does not rule out the possibility of certain parties without permission to damage and illegally use Copyrights commercially. On the other hand, the provisions of Article 38 paragraph (4) UUHC related to state power over the regulation of EBT further in Government Regulations have not yet been implemented. This dynamic then creates legal problems, namely the occurrence of legal uncertainty in practice.

Moreover, there are many opinions stating that the regulation of EBT in UUHC is not appropriate because of the fundamental difference in principle between the concept of EBT and the concept of Copyright. In addition, the rights of indigenous peoples are not guaranteed for certain as the bearers of NRE on Moral Rights and Economic Rights arising from the existence of Exclusive Rights in Copyrights. Therefore, the position of the state as the holder of Copyright on EBT without any further regulation on the extent of state control and the non-regulation of the rights of indigenous peoples who carry NRE in the UUHC also creates legal problems that need to be re-examined whether NRE remains in the Copyright regime and its control. exists in the State or is NRE specifically regulated in laws and regulations separate from UUHC by giving control of EBT to their customary communities as bearers of EBT which have been passed down from generation to generation.

Traditional culture and heritage can be communal (shared) that is the current understanding of society. This is what triggers the emergence of the public domain, where traditional culture becomes something that is open to the public. The concept does not contain a monopoly on NRE as in the IPR concept. For this reason, the legal regulation of the protection of knowledge and NRE becomes an urgency to be protected and registered and its existence published considering how easy it is to be claimed illegally by other parties. The reasons for the commercial value of the use of NRE, (2) consideration of a fair world trade system, and (3) the importance of protecting the rights of local communities make the urgency of protecting NRE to be fulfilled immediately.

Talking about the protection of traditional cultural expressions will of course discuss the existence of indigenous peoples. Customary law communities are people who are strong in upholding the culture, customs, beliefs that have been passed down from generation to generation from generation to generation. In order to meet the needs of life, the community is very dependent on natural resources. This encourages bamboo music, as well as dances as his own. The use of the same thing is also experienced by developing countries that own EBT such as India, Peru, Brazil and several African countries. Therefore, NRE is important to obtain protection that is able to accommodate customary law which is still carried out by the community.

Protecting legal subjects and being binding and having sanctions for violators is the definition of legal protection. The nature and task of the law is legal protection which is manifested in the form of legal certainty for the community. Legal protection for EBT is very urgent to be realized by developing countries for the sake of the continuity of cultural heritage (intangible heritage) which absolutely must be preserved. In order to provide legal protection for NRE, efforts can be made, namely: Inventory and documentation as short-term NRE protection measures. This effort can not only be informative, but also as evidence. Taking pictures (photos) documentation and making writings or special notes made by the government is one of the steps for documenting EBT. Legal products (regulations) of NRE protection as a medium-term and long-term effort. Legal products in the form of laws and regulations that specifically regulate the protection of EBT are a form of international struggle for the protection of EBT and a form of fighting for the national interest of the nation.

NRE has received attention and has been discussed internationally since forty years. This discussion began with the revision of the 1967 Berne Convention in Stockholm and in Paris 1971 which was later adapted to the TRIPs Agreement and the United Nations Convention on Biological Diversity. Thus, Indonesia as a developing country which is also a member of the TRIPs Agreement must be able to adapt the intellectual property legal system to the conditions of the State regarding the protection of EBT works.

Then Indonesia combines the concept of individual ownership as well as the concept of collective ownership as contained in the concept of Copyright protection in UUHC as part of the type of intellectual property that needs to be protected. Copyright law recognizes Copyright protection automatically, when it has materialized in tangible form as regulated in Article 2 paragraph (2) of the Berne Convention stating: "It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specific categories of works shall not be protected unless they have been fixed in some material form." This means that an intellectual work in the fields of art, literature and science gets protection when it has been manifested and fixed as a real form. This policy has finally received criticism from several experts because the basic principles of communal NRE protection are not in line with the concept of individual protection in the Copyright regime.

In this case, traditional cultural expressions contain several values such as economy, spirituality, and communality. All of these values are respected by traditional societies. NRE represents the identity of indigenous peoples in certain areas. The term NRE encapsulates the expression of both verbal, musical, and cultural products by artists. Traditional knowledge and traditional cultural expressions can be categorized as such if they have the following characteristics: Taught and implemented from generation to generation; It is knowledge of the environment and its relationship to everything; It is holistic, so that it cannot be separated from the community that built it; It is a way of life that is used jointly by the community and therefore there are community values.

Protection of a culture that arises for the needs of developing countries in protecting their creative human resources, Intellectual Property Rights (IPR) with cultural expressions there are quite serious conflicts. In this case, where between a country that owns cultural expressions and another party (in this case a foreigner) wants to take advantage of an NRE. Foreign parties say that the abundant traditional resources and wealth are ancestral heritages that can be used by anyone at any time (common heritage of mankind). International attention to the protection of intellectual property rights that provides protection for traditional knowledge. This becomes a very complex problem when intellectual property originating from tradition is faced with a very modern IPR system.

Furthermore, indigenous intellectual property, which is an umbrella legal term used in forums both nationally and internationally, is aimed at identifying the special rights of indigenous peoples (indigenous peoples special rights) to claims against all the authenticity of his group which is

known today, was known before and will be known. As the terminology developed by Christopher Beat Graber "Indigenous Intellectual Property is an umbrella legal term used in national and international forums to identify indigenous peoples special rights to claim (from within their own laws) all that their indigenous groups know now, have known, or will know".

The concept of intellectual property rights as a medium for protecting traditional knowledge and traditional cultural expressions is a development of the dominant western legal tradition. In general, there are several parties who may become the subject of property rights holders of traditional knowledge and traditional cultural expressions, as for the parties in question, namely: Indigenous peoples (This category is taken into account because they are the original owners of traditional knowledge and cultural expressions); Central Government and Local Government (This category is included because they act as protectors and managers, apart from that the owners of rights are still indigenous peoples); Third parties (the categories referred to here are parties who want to utilize traditional knowledge and traditional cultural expressions but still pay attention to the interests of the rights holders).

Many parties give the opinion that the IPR regime has values that contradict the values of NRE. IPR is basically individual and does not have a communal nature. IPR as a "right" cannot be separated from economic problems. IPR is synonymous with the commercialization of intellectual works. The concept of protection of NRE by using IPR can be done through 2 (two) protection models. Both of these protection models were developed by WIPO. These protection models are called Defensive Protection and Positive Protection:

**Defensive Protection:** The term defensive protection refers to efforts aimed at preventing the granting of IPR to EBT related to the use of EBT by other parties without the knowledge and permission of the NRE owner. Defensive protection itself consists of 2 (two) aspects, namely: 16 Legal Aspect : This aspect itself will ensure the prior art limitation for NRE by ensuring in the law that the oral disclosure of EBT is prior art; Practice Aspect : This aspect will ensure how an NRE is available and open for documentation by parties who want to protect the NRE. **Positive Protection:** Defensive Protection can be one of the effective policies to prevent the granting of IPR to unauthorized parties. However, this does not automatically stop the misappropriation of traditional knowledge. National laws are needed to support the implementation of this policy. Positive law is the main mechanism in efforts to achieve protection and benefit sharing for NRE owners. Significant progress that should be noted in this positive protection effort is the agreement of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression in the United Nations Education, Scientific, and Cultural Organization (UNESCO) forum. in the realm of conservation. Indonesia itself has signed and ratified these two UNESCO Conventions. The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage was ratified in the Presidential Regulation of the Republic of Indonesia Number 78 of 2007 concerning Ratification of the Convention for the Safeguarding of the Intangible Cultural Heritage, while the Convention on the Protection and Promotion of the Diversity of Cultural Expression 2005 was ratified by Presidential Regulation of the Republic of Indonesia Number 78 of 2011 concerning Ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expression (Convention on the Protection and Promotion of Diversity of Cultural Expression). These conventions have described the importance of protecting traditional knowledge and traditional cultural expressions. The convention provides an avenue for developing countries to protect their traditional knowledge and traditional cultural expressions.

This system can be carried out in 2 (two) forms of legal action, namely by making effective use of laws related to IPR or through the formation of special laws governing EBT itself (Sui Generis Law). Furthermore, the protection obtained from the IPR legislation can be divided into 2 (two), namely: 18 IPR protection to support economic growth (IP Protection to Support economic development). This is where traditional communities expect that the protection of intellectual

property rights for the results of creativity and innovation is based on their cultural traditions and can provide commercial benefits which in the future can contribute to their economic growth. Protection of intellectual property rights to prevent inappropriate misuse and commercialization of cultural heritage.

Based on this explanation, the characteristics of the integrated cultural data collection system can be said to be a function that will become Defensive Protection, in which an integrated cultural data collection system can be accessed globally. This form can also be used by other countries and also as a recommendation from the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC-GRTKF). As mentioned above, in the formation of a cultural database, an integrated cultural data collection system in the form of the National Digital Library, of course this system can be used as a useful and appropriate medium in carrying out a legal protection for knowledge and traditional cultural expressions.

Protection and preservation of traditional culture can be considered as two sides of the same coin, but there is also a difference in viewing the two, it does not mean that the two cannot complement each other. Because it will be very difficult to talk about cultural preservation without talking about protection and on the other hand it is difficult to talk about protection without talking about preservation.<sup>36</sup> Preventive protection measures need to be conducted to collect data or inventory of Indonesian traditional culture to prevent cases of cultural claims by other countries which will certainly harm the Indonesian people themselves and this data collection is also important for the preservation of Indonesian culture to pass down from generation to generation.

#### **b. Implementation of Protection of Traditional Cultural Expressions in West Lampung District**

The tourism sector as one of the economic assets of West Lampung Regency is a sector that is seen as having very promising prospects as well as being able to provide a very significant income contribution both macro (regional economy) and micro associated with a multiplier impact that is able to create extensive employment and income for the community. and small and medium scale enterprises.

In addition to its importance for the regional economy, tourism potentials in West Lampung Regency are dominated by natural wealth assets in the form of fertile agricultural land, green mountains and not forgetting the attraction of traditional cultural expressions which are also their own character in the local cultural values of the community. West Lampung Regency. The government of West Lampung Regency has cultural potential in the culture of West Lampung Regency which contains Traditional Cultural Expressions in various forms, both tangible and intangible which vary in the form of temples and sites, traditional houses, historical places, monuments, museums, ceremonies. customs, village culture and various kinds of arts. In addition, West Lampung Regency is also rife with various cultural and artistic activities, as well as community participation which is quite dynamic towards the diversity of culture and customs in West Lampung Regency.

Law Number 28 of 2014 concerning Copyright regulates traditional cultural expressions as stated in Article 38 of the Copyright Law that copyright on traditional cultural expressions is held and protected by the state and applies without limits in accordance with Article 60 paragraph (1) of the Law. Copyright Law Number 28 of 2014, which reads Copyright on traditional cultural expressions held by the state as referred to in Article 38 paragraph (1) is valid indefinitely.

In the explanation of the definition of folklore in which there are expressions of local culture, it can be seen that folklore is a collective culture that is passed down from generation to generation traditionally and is recognized as their own. Folklore is the work of traditional knowledge and expressions of traditional culture which includes art or folk culture. Edi Sedyawati stated that the word "traditional knowledge" is often distinguished by the term folklore, but in social or cultural studies the two are often considered synonymous.

Elucidation of Article 38 paragraph (1) of Law Number 28 of 2014 concerning Copyright, it is stated that "traditional cultural expressions" include one or a combination of the following forms of expression: a. Verbal textual, both oral and written, in the form of prose or poetry, in various themes and content of the message, which can be in the form of literary works or informative narratives; b. Music, including vocal, instrumental, or a combination thereof; c. Movement, including dance; d. Theatre, which includes puppet shows and folk plays; e. Fine arts, both in two-dimensional and 3-dimensional forms made of various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles and others or a combination thereof; and f. Traditional ceremonies.

Traditional Cultural Expression is a term used by WIPO (World International Property Organization) in various international forums. The meaning of Traditional Cultural Expressions put forward by WIPO is intended to provide an outline for a cultural work that is traditional and owned by a traditional community as an intellectual work that comes from traditional culture belonging to traditional community groups. Giving this meaning will be a reference for determining an intellectual work from traditional culture and linking it to a community group as the bearer. Eddy Damian argues that Traditional Cultural Expression is a creation in the field of art that contains elements of traditional heritage characteristics as a national culture which is a shared resource developed and maintained or preserved by certain traditional communities or societies or certain social organizations in a continuous period of time. Traditional cultural expressions that are "rural agrarian magic religion" are material forms that develop from generation to generation and are not novelty, only in the form of repetition, taught communally and not always meaningful in industrial culture.

In West Lampung Regency, forms of traditional cultural expression are intangible cultures, cultural values and local wisdom that are maintained in each particular indigenous group. Such as traditional dances, traditional ceremonies, and traditions that grow in society. Local wisdom is a conceptual idea that lives in society, grows and develops continuously in public awareness, functions in regulating people's lives from those related to sacred to profane lives.

Based on the data obtained, in West Lampung Regency so far the cultural management has been carried out by inventorying and documenting the existing cultures in West Lampung Regency. Documentation and inventory efforts have been carried out even though the data is incomplete due to lack of human resources. In addition to these activities, the form of management is to always hold festivals, traditional ceremonies and other activities that are included in the annual agenda of the Education and Culture Office together with the Youth, Sports and Tourism Office.

Lampung culture which is part of the culture of the Indonesian nation and at the same time as a national asset, its existence needs to be maintained, empowered, fostered, preserved and developed so that it can play a role in efforts to create Lampung people who have identity, have noble character, are civilized and enhance public understanding of values. the noble values of the nation's culture to the maximum based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

In Lampung culture, the existence of accessories or jewelry besides functioning aesthetically is to beautify the appearance of the wearer. Lampung traditional accessories also have a social function, which is to characterize the wearer's stratification or social status in society. In addition, traditional accessories also have a symbolic function. The accessories worn give an implied message and a certain symbolic meaning, especially in traditional rituals. Of the three functions, traditional Lampung accessories have a more prominent character in their social and symbolic functions. This can be seen from the accessories used in the traditional Lampung wedding procession – each accessory has a specific symbolic meaning. The aesthetic value of Tapis Fabric is united in several principles and provisions, namely (1) the principle of organic unity, (2) the principle of a theme or concept, (3) the principle of balance, (4) the principle of graded, (5) the principle of complexity, and

(6) the principle of earnestness. One of them is a special bird bracelet that is used only when the bride and groom are side by side.

Based on the reasons above, it is necessary for efforts and concrete steps that are efficient and effective in carrying out the maintenance of Lampung culture in the sense of protecting and preserving all cultural products created by the ancestors of the Lampung people. This is because the protection of Traditional Cultural Expressions (EBT) can provide a driving force in improving the welfare of the entire community to the countryside. Based on Article 1 paragraph (12) of Law Number 6 of 2014 concerning Village Government, defining Village Community Empowerment is an effort to develop community independence and welfare by increasing knowledge, attitudes, skills, behavior, abilities, awareness, and utilizing resources through the determination of policies, programs, activities and assistance that are in accordance with the essence of the problem and the priority needs of the village community, of course including the needs of indigenous peoples who generally live in rural areas.

The above reasons are in accordance with the purpose of the Lampung Province Regional Regulation (Perda) Number 2 of 2008 concerning the Maintenance of Lampung Culture, that Lampung culture which is part of the culture of the Indonesian nation and at the same time as a national asset, its existence needs to be maintained, empowered, fostered, preserved and developed. so that they can play a role in efforts to create Lampung people who have identity, have noble character, are civilized and enhance public understanding of the noble values of the nation's culture to the maximum based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The above reason is reinforced by the implementation of Lampung Provincial Regulation Number 27 of 2014 concerning the Architecture of Lampung Ornate Buildings that the realization of Lampung's ornate buildings is part of Lampung culture which contains many philosophical values of the Lampung people that need to be maintained and preserved in order to remain living and sustainable following the progress and development of the times. This regional regulation was made as one of the efforts of the Lampung Provincial Government to preserve the cultural values of the Lampung people, especially the physical identity of the Lampung Ornate Building Architecture as part of the Lampung culture and to encourage and empower / foster community participation in maintaining and developing the architectural values of the building. Lampung Ornate Building so that it reflects the identity and identity of the people and culture of Lampung.

The two Lampung Provincial Regulations are basically in accordance with the provisions in Article 2 of the Joint Regulation of the Minister of Home Affairs and the Minister of Culture and Tourism Number 42 of 2009 concerning Guidelines for Cultural Preservation, that the Regional Government carries out Cultural Preservation in the region which is carried out through the protection, development and utilization of .

The implementation of the legal protection policy for Lampung Culture based on the Lampung Provincial Regulation above which is manifested in the form of regional regulations until now not all districts and cities in Lampung Province have regulations related to cultural preservation policies in their regions, including West Lampung does not yet have a policy that specifically regulates the protection of traditional cultural expressions. Implementation is more manifested in the form of various activities in the context of socialization.

The Indigenous Peoples of Lampung consist of two major groups, namely: (1) the indigenous people of Pepadun consisting of Abung Siwo Mego, Pubian Telu Suku, Rarem Mega Pak, Bunga Mayang Sungkai, Way Kanan Lima Kebuwaiyan and Melinting and Jabung; (2) the Saibatin indigenous peoples which can be grouped based on their mukim area, namely: Saibatin in West Lampung, West Coast, Semaka Tanggamus and Kalianda. When viewed from the aspect of the area/territorial inhabited by a group of Lampung indigenous peoples, it turns out that a group of indigenous peoples is located in more than one district in Lampung Province. Like the Pepadun Indigenous Peoples, apart from being in Tulang Bawang Regency, they are also in North Lampung

Regency, East Lampung Regency, Central Lampung Regency, and Way Kanan Regency. Meanwhile, the Saibatin Indigenous Peoples are located in South Lampung Regency, West Lampung Regency, West Coast Regency, and Tanggamus Regency.

The two Lampung Indigenous People groups have various forms of artistic cultural heritage from the nation's ancestral heritage, both in the fields of fine arts, dance, sound art, music, literature, theater, and matography and so on. The results of the work of the ancestors of the Lampung Nation are basically expressions of traditional culture that must be protected by law, considering that these intellectual works besides reflecting the cultural diversity of the Indonesian nation, there are also sacred values contained in them which are still recognized and obeyed by the people of Indonesia. Indigenous peoples in Lampung in particular and Indonesia in general, in addition to having high economic value.

Some of the traditional cultural expressions owned by West Lampung Regency include: Sekura is a hereditary tradition that is held after Ramadan, starting from 1 Shawwal to 6 Shawwal. Sekura is also an event for community gatherings between pekon (villages) during Eid using costumes and tuping (masks) typical of Lampung. Nyambai, The traditional Nyambai procession contained in the nayuh ritual or wedding ceremony which is only carried out by the Saibatin indigenous people in West Lampung has standard procedures (determined by Sutan or the local Saibatin Customary leader) so that in the procession or implementation, all you have to do is follow the same paths as the traditional activities. previously carried out. The sequence of traditional nyambai activities in the Saibatin indigenous people of West Lampung are: preparation, opening, implementation of nyambai, and closing.

Ngelemang, The ngelemang tradition is also one of the mandatory activities for the people of Lampung when there are traditional events or family celebrations. When it comes to history, this tradition was originally carried out by the Paksi in Sekala Brak, especially the Paksi Buay Bejalan in Way which is located in the Puncak area, Umbul Limau village. For now, the area is known as the Sukarame area, West Lampung district. If you taste leman, it is like sticky rice cooked with coconut milk so that it looks very tasty. However, what is characteristic of leman is the glutinous rice and coconut milk wrapped in banana leaves, cooked in a bamboo stick and then grilled until cooked.

In addition to the 3 kinds of traditional cultural expressions above, there are still many kinds of traditional cultural expressions owned by West Lampung Regency. To discuss the factors constraining the implementation of local government policies in West Lampung Regency in protecting Lampung culture, the legal components theorized by Lawrence M. Friedman, namely aspects of substance, structure and culture are very relevant to be used as a knife of analysis. In addition, it is also necessary to pay attention to a principle that the legal system of a nation cannot be separated from its human context because the law exists and is intended for human life. Therefore, legal norms always contain the legal culture of the society that shapes them. The above reasons are in accordance with Satjipto Rahardjo's opinion that law is not an institute that fell from the sky, but is rooted in a certain socio-cultural community. The community can be likened to a mother who breastfeeds her child. In this case, the people who feed the law with all its values, history and traditions. Therefore, the characteristics of the Lampung people are also relevant to be considered in the discussion.

The existence of a special character of the people of West Lampung Regency, either directly or indirectly, will affect the implementation of local government policies in West Lampung Regency in protecting and preserving traditional cultural expressions. This is because policy as an object of law, its validity is largely determined by the effectiveness of the law in society (law effectively legitimates policy). The condition of the absence of Regency and City Regional Regulations specifically as a legal umbrella to protect the culture of West Lampung is currently seen as one of the causes of obstacles to implementing local government policies. The consequences that arise with such conditions are that although there have been various efforts made by the Regional

Government to protect traditional cultural expressions, on the other hand there is no legal protection because there is no positive law that regulates it. This is because the legislation (law) is seen as the most effective means to oversee the policies of the state authorities (law effectively legitimates policy), or in other words that 'proper attention to the use of law in public policy formulation and implementation requires an awareness of the conditions under which law is effective'. One understanding of law is a norm that directs people to achieve certain ideals and conditions without ignoring the world of reality. Therefore, the law is mainly made consciously by the state and is used to achieve a certain goal.

In relation to the implementation of local government policies in West Lampung Regency, a special institution should be formed whose main duties and functions (Tupoksi) are in charge of activities related to the policy of protecting Lampung's cultural heritage, especially in relation to traditional cultural expressions. Considering that the regional regulation does not yet exist as discussed in the section on legal substance above, in practice there is no specific institution that has a specific task of carrying out activities related to Lampung culture.

In law enforcement involved values, ideas, attitudes and behavior related to the law. This is what Friedman conceptualized as legal culture. This legal culture is distinguished between internal legal culture, namely the legal culture of lawyers and judges, and external legal culture, namely the legal culture of the wider community. Lampung society consists of natives and immigrants, which if the percentage is far more immigrants than natives. The condition of heterogeneity or diversity of society is believed to cause its own obstacles in the implementation of the protection of traditional cultural expressions in West Lampung Regency.

However, at least the Department of Youth, Sports and Tourism of West Lampung Regency already has a database of types of tourism in West Lampung Regency. Although it is still far from perfect, these efforts have been made by the Department of Youth, Sports and Tourism of West Lampung Regency. The obstacle is not implementing the database and cultural inventory program in West Lampung Regency due to the limited human resources that handle these problems. The diversity of culture in West Lampung Regency will certainly provide economic benefits for the surrounding community, especially for regional income. In comparison with this, the government of West Lampung Regency as the copyright holder for various traditional cultural expressions in West Lampung, which in this case takes the benefits of culture-based tourism potential, needs to seek protection of culture in West Lampung which has the potential to increase Regional Original Income. (PAD) West Lampung Regency.

The positive way of protecting Traditional Knowledge and Traditional Cultural Expressions is through the formation of laws. It is called positive protection because this protection relies on the creation of new legal provisions that become positive through enforcement. Protection of Intellectual Property Rights on traditional knowledge is important to do because it is based on three considerations, namely: (1) Economic value, (2) Development of national character contained in traditional knowledge (traditional knowledge) and folklore, and (3) Enforcement of the Rights regime. Intellectual Property is unavoidable.

As a country consisting of various ethnic groups and very rich in diversity of traditions and cultures, Indonesia certainly has its own interests in the legal protection of intellectual property of traditional indigenous people. In addition, Indonesia's position as a country with extraordinary biodiversity (mega biodiversity) has made Indonesia a country that has great resource potential for development in the arts. Because the legal protection of the intellectual property of traditional indigenous peoples is still weak, the potential possessed by Indonesia is actually more used by foreign parties illegally.

#### IV. CONCLUSION

The position of the state as the copyright holder of NRE is contained in the provisions of Article 38 paragraph 1 UUHC. The state is obliged to take inventory, maintain, and maintain NRE as

mandated by Article 38 paragraph (2) UUHC. As well as in the provisions of Article 39 of the UUHC it can be said that NRE whose Creator is unknown is a collective work of traditional communities, when referring to the provisions of Article 39 paragraph (1) and paragraph (3) that the Copyright on the Work is held by the state for the benefit of the Author. However, the Copyright held by the State on NRE as regulated in Article 38 paragraph (4) UUHC to be further regulated in Government Regulations has not yet existed. The status of indigenous peoples as bearers of Traditional Cultural Expressions in the perspective of Copyright law needs to be emphasized and even given rights as Copyright Holders for NRE by making separate arrangements regarding NRE from UUHC.

The implementation of the protection of traditional cultural expressions in West Lampung Regency has not been accommodated optimally, judging from the rule of law there is no special regulation regarding the protection of traditional cultural expressions belonging to the region, seen from the legal structure there is also no special institution that accommodates all matters relating to efforts to protect traditional cultural expressions in West Lampung Regency, and when viewed from the legal culture of the community, the heterogeneity of society in Lampung Province in general and West Lampung Regency in particular has a higher percentage of immigrants than indigenous people. From this fact, the protection of traditional cultural expressions in West Lampung Regency is still very minimal.

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