

LAW AND CULTURE

Normatif Luridical Analysis Of The Problem Of Misuse Of Traditional Motives Cultural Motives And Alternative Solutions From The Perspective Of Intellectual Property Legal Protection

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Abstract

Traditional cultural motifs are part of a nation's cultural heritage that reflect historical values, philosophical meanings, and communal identity. However, the development of modern industry has led to the misuse of traditional cultural motifs for commercial purposes without permission or consent from indigenous communities as the collective rights holders. This situation results in legal problems because the protection of traditional cultural expressions has not been fully accommodated within the current intellectual property law framework in Indonesia. This study aims to analyze the legal issues concerning the misuse of traditional cultural motifs, evaluate the ineffectiveness of the existing regulatory mechanisms, and formulate alternative solutions from the perspective of intellectual property law. The research applies a normative juridical method, using an approach that examines legislation, legal doctrines, and relevant academic literature. The results indicate that the misuse of traditional cultural motifs persists due to the absence of automatic protection, weaknesses in law enforcement mechanisms, low awareness among industry actors, and the limited recognition of indigenous communities' collective cultural rights. The recommended solutions include: the establishment of a national database of traditional cultural expressions, strengthening regulations on collective cultural rights, imposing requirements of communal consent before commercial use, increasing legal

sanctions, and promoting collaboration among the government, indigenous communities, and industry stakeholders. This study is expected to provide both theoretical and practical contributions toward enhancing the legal protection of traditional cultural motifs, preserving national cultural heritage, and ensuring fair benefitsharing for indigenous communities as rightful cultural owners.

Keywords: *Traditional cultural motifs, legal protection, intellectual property, collective cultural rights.*

A. INTRODUCTION

Traditional cultural motifs are a highly valued cultural heritage because they reflect the identity, history, and outlook of indigenous communities. These motifs serve not only as aesthetic ornaments but also contain philosophical meanings, spiritual symbols, and collective memories passed down through generations¹. In Indonesia, traditional cultural motifs can be found in various artistic expressions such as batik, weaving, wood carvings, sculptures, traditional dances, and ritual attributes, each reflecting local identity and customary values².

However, with the advent of globalization and the increasing development of the creative industry, the use of traditional cultural motifs has become increasingly widespread in commercial products such as fashion, merchandise, interior decoration, and even international branding. Ironically, this practice is often carried out without the permission or consent of the community. Customary communities as the holders of communal rights over these motifs³. As a result, the commercial exploitation of traditional cultural motifs not only creates injustice in terms of economic benefits but also

¹ Hobsbawm, E., *Identitas Budaya dan Memori Kolektif*, Oxford University Press, 2011, hlm. 44.

² Koentjaraningrat, *Antropologi Budaya Indonesia*, Jakarta: Rineka Cipta, 2010, hlm. 138.

³ Smith, L., *Cultural Appropriation dan Hak Masyarakat Adat*, Cambridge University Press, 2018, hlm. 52.

threatens the preservation and dignity of the nation's cultural heritage.

From a legal perspective, the issue of misuse of traditional cultural motifs becomes complex because traditional cultural expressions do not automatically receive legal protection under the Intellectual Property Rights (IPR) regime, which by nature is individual and time-limited.⁴ Meanwhile, traditional cultural motifs are communal, hereditary, and not bound by time limitations. This incompatibility of characteristics has led to legal uncertainty and opened the door to cultural theft (cultural appropriation).

Several factors contributing to the legal vulnerability of traditional cultural motifs include:

1. limited protection of communal cultural rights;
2. weak law enforcement against cultural violations;
3. the absence of strong mechanisms to address cross-border misuse; and
4. low awareness among industry actors regarding the cultural rights of indigenous communities.⁵

In addition to their cultural value and social identity, traditional cultural motifs also play a significant economic role. Many local communities earn their livelihood from the production and sale of traditional artworks, such as batik, woven textiles, woodcarvings, and other handicrafts. Creative industries based on traditional culture serve as sources of community income, support local tourism, and create opportunities for exporting cultural products to international markets. Thus, preserving traditional cultural motifs is important not only from a cultural standpoint but also for its

⁴ Tobin, B., *Hak Kekayaan Intelektual dan Ekspresi Budaya Tradisional*, Geneva: WIPO Publication, 2017, hlm. 15.

⁵ Yusuf, M., "Tantangan Perlindungan Hukum Terhadap Warisan Budaya," *Jurnal Hukum dan Masyarakat*, Vol. 9 No. 2, 2022, hlm. 27.

implications for the creative economy and the welfare of local communities.⁶

However, this economic development also presents legal and social threats. Some parties use traditional cultural motifs illegally for commercial purposes without permission or compensation to indigenous communities. This practice not only causes economic harm but may also dilute the philosophical meaning and cultural values embedded in the motifs. For example, a batik motif that holds specific meaning for traditional ceremonies can lose its symbolic value when mass-produced and commercialized globally.⁷

From a legal perspective, the challenge in protecting traditional cultural motifs lies in the misalignment between collective cultural rights and an intellectual property rights system that is inherently individualistic. Copyrights, patents, and trademarks are generally granted to individuals or legal entities for a limited duration, whereas cultural motifs are collective, hereditary, and not subject to any specific time limit. This incompatibility creates legal gaps that may be exploited by parties seeking to illegally appropriate cultural motifs.⁸

In addition, the issue of misuse of traditional cultural motifs also has an international dimension. Several Indonesian cultural motifs have been claimed or used by foreign entities as part of commercial products, leading to cultural disputes and cross-border copyright claims. These cases highlight the need for a more comprehensive legal protection strategy, both nationally and

⁶ Hadi, "Makna Filosofis Motif Batik dan Perlindungan Hukum", *Jurnal Hukum dan Budaya*, Vol. 8, No. 1, 2022, hlm. 33.

⁷ Suryadinata, *Kekayaan Budaya dan Hukum Kekayaan Intelektual*, Jakarta: Gramedia, 2018, hlm. 78.

⁸ Tobin, B., *Intellectual Property and Traditional Cultural Expressions*, Geneva: WIPO Publication, 2017, hlm. 15.

internationally, to ensure that the cultural rights of indigenous communities are recognized and respected.⁹

These phenomena reaffirm that the protection of traditional cultural motifs cannot remain merely symbolic; it must be strengthened legally through regulations, dispute resolution mechanisms, and community awareness. Accordingly, this study focuses on a normative juridical analysis of the misuse of traditional cultural motifs, identifying the weaknesses of existing regulations, and formulating alternative solutions for effective legal remedies.

Based on these realities, a normative juridical analysis is needed to examine the existing legal framework, identify the root causes of cultural misuse, and formulate effective legal solutions. The urgency of this research lies not only in the aspect of legal protection but also in ensuring that indigenous communities, as cultural owners, receive fair benefits from their cultural heritage.

B. RESULTS AND DISCUSSION

I. Theoretical Riview

Legal protection for traditional cultural expressions in Indonesia can be analyzed through several approaches, including normative juridical, customary law, and intellectual property frameworks. The normative juridical approach emphasizes the examination of existing laws and regulations, including Law No. 28 of 2014 on Copyright, Law No. 11 of 2010 on Cultural Heritage, and their implementing regulations. This approach is useful for assessing the effectiveness of legal provisions in formally protecting traditional cultural motifs.¹⁰

Customary law plays a strategic role in preserving traditional cultural motifs. Because these motifs are communal and inherited

⁹ Kusuma, *Hak Kolektif dan Budaya Lokal*, Yogyakarta: Gadjah Mada University Press, 2019, hlm. 102.

¹⁰ Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta, Pasal 42.

across generations, customary law regulates the ownership, use, and distribution of cultural motifs within communities. Indigenous peoples have their own sanction mechanisms to protect their collective rights, including prohibitions against unauthorized use of motifs.¹¹

Modern intellectual property concepts are also relevant in protecting traditional cultural motifs, particularly within the context of the creative economy. Copyrights, patents, trademarks, and related rights may be used to safeguard cultural motifs that have economic value. However, such protection must be aligned with the collective and hereditary nature of these motifs to avoid conflicts between positive law and customary law¹².

II. The Role of Traditional Cultural Motifs in Identity and the Economy

Traditional cultural motifs are not merely aesthetic symbols but represent the social and spiritual identity of communities. Each motif carries different philosophical meanings depending on the region and its people. For instance, the Parang motif in Java symbolizes strength and bravery, while the Kawung motif represents harmony and balance.¹³

Economically, traditional cultural motifs are significant assets for local communities. The sale of batik, woven textiles, carved wood, and other traditional crafts provides livelihoods for artisans. Moreover, creative industries based on traditional culture support tourism, create export opportunities, and enhance regional income.¹⁴

¹¹ Koentjaraningrat, *Antropologi Budaya Indonesia*, Jakarta: Rineka Cipta, 2010, hlm. 138.

¹² Tobin, B., *Intellectual Property and Traditional Cultural Expressions*, Geneva: WIPO Publication, 2017, hlm. 15.

¹³ Hadi, "Makna Filosofis Motif Batik dan Perlindungan Hukum", *Jurnal Hukum dan Budaya*, Vol. 8, No. 1, 2022, hlm. 33.

¹⁴ Suryadinata, *Kekayaan Budaya dan Hukum Kekayaan Intelektual*, Jakarta: Gramedia, 2018, hlm. 78.

III. Legal Issues Concerning Traditional Cultural Motifs

Several common legal issues associated with traditional cultural motifs include:

1. Commercial exploitation without the consent of indigenous communities, leading to economic losses and cultural harm.¹⁵
2. Gaps between individual rights and collective rights. The intellectual property system is individualistic and time-limited, whereas traditional motifs are communal and hereditary.¹⁶
3. Weak enforcement of national and international laws concerning violations of traditional cultural rights.¹⁷
4. Low public and industrial awareness regarding the importance of protecting indigenous cultural rights, resulting in frequent misuse of traditional motifs.¹⁸

Traditional cultural motifs are an integral part of the social identity, history, and philosophy of indigenous communities. These motifs hold aesthetic, symbolic, and economic value. In Indonesia, traditional motifs such as batik, woven textiles, carvings, and regional artworks are valuable cultural assets. However, in practice, traditional motifs often face legal challenges that may harm indigenous communities as the rightful holders of these cultural expressions.

One of the most common legal issues is the exploitation of cultural motifs without the consent of indigenous communities.

¹⁵ Yusuf, M., "Tantangan Perlindungan Hukum Terhadap Warisan Budaya," *Jurnal Hukum dan Masyarakat*, Vol. 9 No. 2, 2022, hlm. 27.

¹⁶ Smith, L., *Cultural Appropriation dan Hak Masyarakat Adat*, Cambridge University Press, 2018, hlm. 52.

¹⁷ Kusuma, *Hak Kolektif dan Budaya Lokal*, Yogyakarta: Gadjah Mada University Press, 2019, hlm. 102.

¹⁸ Direktorat Jenderal Kekayaan Intelektual, *Panduan Pendaftaran Hak Cipta Kolektif*, 2020.

Many domestic and international companies use these motifs for commercial purposes without respecting the rights of indigenous communities. For example, classic batik motifs from Solo and Pekalongan have been used in international clothing products without permission from local artisans, causing economic harm and diminishing the symbolic meaning embedded in the motifs.

Furthermore, Indonesia's intellectual property system, like many others globally, focuses on the protection of individual rights with limited duration, whereas traditional cultural motifs are communal and hereditary. This gap creates legal loopholes that enable third parties to exploit cultural motifs without proper authorization, leaving indigenous rights inadequately protected.

Another legal issue is the weakness in law enforcement. Many cases of cultural motif misuse receive insufficient attention due to lack of evidence, limited understanding among law enforcement officers, or low prioritization of cultural protection within the legal system. This situation results in injustice for indigenous communities seeking to protect their cultural motifs.¹⁹

Legal issues also often involve conflicts between national and international law. Many traditional motifs are used in international markets, yet Indonesia lacks effective mechanisms for cross-border cultural protection. The case of the Sikka woven motif from East Nusa Tenggara being used by foreign fashion producers without local consent exemplifies this weakness. This highlights the need for comprehensive legal protection mechanisms at both national and international levels.²⁰

The impacts of these legal issues are far reaching. Economically, unauthorized exploitation deprives indigenous communities of potential income from the commercialization of their

¹⁹ Kusuma, D., *Hak Kolektif dan Budaya Lokal*, Yogyakarta: Gadjah Mada University Press, 2019, hlm. 102

²⁰ Kusuma, D., *Hak Kolektif dan Budaya Lokal*, Yogyakarta: Gadjah Mada University Press, 2019, hlm. 102.

cultural motifs. Culturally, misuse may distort the symbolic and philosophical meanings of motifs such as when motifs originally used for traditional ceremonies become mass produced items unrelated to their cultural context. Socially, lack of adequate protection may create conflict and dissatisfaction between indigenous communities and parties exploiting their motifs.²¹

Various case studies illustrate the importance of effective legal protection. Classic batik motifs from Solo and Pekalongan have been used internationally without consent; the Sikka woven motif has been commercialized abroad without involving local communities; and Toraja carvings and Papuan art have been mass-produced into merchandise without indigenous approval. These cases show that without appropriate legal safeguards, traditional motifs may lose their philosophical value while causing economic losses to rightful owners.

Therefore, legal protection for traditional cultural motifs must be strengthened through mechanisms such as collective copyright registration, national cultural expression databases, communal consent (free prior informed consent), and stronger regulations and legal sanctions. Collaboration among the government, indigenous communities, and creative industries is essential to ensure that traditional motifs are not only legally protected but also developed in ways that bring economic and social benefits to indigenous communities. Through comprehensive and integrative protection strategies, traditional cultural motifs can remain preserved, respected, and securely recognized as national identity both domestically and internationally.²²

²¹ Smith, L., *Cultural Appropriation dan Hak Masyarakat Adat*, Cambridge University Press, 2018, hlm. 52.

²² Direktorat Jenderal Kekayaan Intelektual, *Panduan Pendaftaran Hak Cipta Kolektif*, 2020.

IV. Case Analysis of Misuse of Traditional Cultural Motifs

a) Batik Solo and Pekalongan Case

Several classic batik motifs were used by international companies without permission from local artisans. This resulted in copyright disputes and international claims regarding the use of traditional cultural motifs.²³

b) Use of Sikka Woven Motifs in Foreign Fashion Products

Sikka woven motifs from East Nusa Tenggara were used by foreign fashion producers for commercial design without involving the local community. This case highlights the weakness of international protection for traditional cultural expressions.²⁴

c) Toraja Carvings and Papuan Art Case

Toraja carvings and Papuan artwork have also been misused in the tourism and merchandise industries without community approval. This demonstrates the importance of collective rights registration and formal recognition of cultural motifs²⁵

V. Legal Protection Strategies

Legal protection strategies for traditional cultural motifs include:

1. Collective Copyright Registration: Indigenous communities register cultural motifs collectively with the Directorate General of Intellectual Property to obtain legal recognition²⁶.

²³ Hadi, 2022, hlm. 36.

²⁴ Smith, 2018, hlm. 55.

²⁵ Yusuf, 2022, hlm. 29.

²⁶ Undang-Undang No. 28 Tahun 2014, Pasal 42.

2. National Database of Cultural Expressions: An official documentation system to verify cultural motif ownership and prevent illegal claims²⁷.
3. Communal Consent (Free Prior Informed Consent): Any commercial use of traditional motifs must obtain permission from indigenous communities or relevant customary institutions²⁸.
4. Government Indigenous Community Industry Collaboration: Cooperation among stakeholders to protect cultural motifs while supporting the development of creative industries²⁹.
5. Strengthening Legal Sanctions: Criminal and civil enforcement against violations to create deterrent effects.³⁰

VI. Recommendations and Implications

Based on the analysis, the current legal protection system remains suboptimal. Protection for traditional cultural motifs needs to:

1. Harmonize national law with customary law.
2. Strengthen mechanisms recognizing collective cultural rights.
3. Increase public and industry awareness of ethical use of traditional motifs.
4. Develop cross-sectoral regulations integrating national, customary, and international law.

With these strategies, traditional cultural motifs can be preserved, protected, and provide equitable economic benefits to indigenous communities.

²⁷ Direktorat Jenderal Kekayaan Intelektual, 2020.

²⁸ Smith, 2018, hlm. 56.

²⁹ Hadi, 2022, hlm. 38.

³⁰ Yusuf, 2022, hlm. 30.

C. CLOSING

1) Conclusion

Based on the discussion, it can be concluded that:

1. Traditional cultural motifs in Indonesia hold significant aesthetic, philosophical, social, and economic value. Each region has unique motifs reflecting community identity and passed down through generations.³¹
2. Legal protection for traditional cultural motifs still faces challenges, particularly disparities between individual and collective rights, weak law enforcement, and limited public and industrial awareness.³²
3. Cases of misuse of traditional motifs, both nationally and internationally, demonstrate the need for more effective protection mechanisms through collective copyright registration, national databases, and communal consent.³³
4. Optimal protection strategies require collaboration among the government, indigenous communities, and the creative industry, along with stronger legal sanctions for violations.³⁴
5. Comprehensive and integrative legal protection will ensure the preservation of traditional cultural motifs, improve the welfare of indigenous communities, and contribute to Indonesia's creative economy.³⁵

³¹ Koentjaraningrat, *Antropologi Budaya Indonesia*, Jakarta: Rineka Cipta, 2010, hlm. 138.

³² Hadi, "Makna Filosofis Motif Batik dan Perlindungan Hukum", *Jurnal Hukum dan Budaya*, Vol. 8, No. 1, 2022, hlm. 33.

³³ Smith, L., *Cultural Appropriation dan Hak Masyarakat Adat*, Cambridge University Press, 2018, hlm. 52.

³⁴ Yusuf, M., "Tantangan Perlindungan Hukum Terhadap Warisan Budaya," *Jurnal Hukum dan Masyarakat*, Vol. 9 No. 2, 2022, hlm. 27.

³⁵ Direktorat Jenderal Kekayaan Intelektual, *Panduan Pendaftaran Hak Cipta Kolektif*, 2020.

2) Suggestions

Based on the conclusions above, the following suggestions are proposed:

1. The government should strengthen legal regulations accommodating collective cultural rights and ensure harmonization between national, customary, and international law.
2. Indigenous communities are encouraged to collectively register traditional motifs to obtain legal recognition and formal protection.
3. Creative industries and other parties using traditional motifs must respect indigenous rights through fair licensing and compensation mechanisms.
4. Education and public awareness regarding the importance of preserving cultural motifs and collective rights must be increased for the general public, industry players, and academics.
5. Legal enforcement against motif misuse must be strengthened through clearer sanctions to ensure effective protection.

Through these measures, traditional cultural motifs in Indonesia can be protected, preserved, and bring sustainable cultural, social, and economic benefits.

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Siti Anisa N, Ulmi Meilinda

LAW AND CULTURE

Normatif Luridical Analysis Of The Problem Of Misuse Of Traditional Motives Cultural Motives And Alternative Solutions From The Perspective Of Intellectual Property Legal Protection

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