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***“Protection of Traditional Cloth in the Concept of Intellectual Property
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PROTECTION OF TRADITIONAL CLOTH IN THE CONCEPT OF INTELLECTUAL
PROPERTY RIGHTS IN ASEAN
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This article aims to analyze how the protection of traditional cloth within the framework of Intellectual Property Rights in ASEAN. This is done to discover and find out the concepts of ASEAN countries on intellectual property rights and protection mechanisms for traditional cloth as a part of traditional cultural expression (TCE). As we know, every country has its own traditional cultural heritage. One of the traditional cultural heritages is traditional cloth. One form of traditional cultural expression is through traditional cloth. In Indonesia, the protection of traditional cloth is through Communal Intellectual Property Rights, whose ownership is recognized and protected by the State with regulation of Communal Intellectual Property Rights being part of copyright law. As the concept of protection of traditional cloth in the framework of intellectual property rights in ASEAN countries has been established, it is hoped that a Communal Intellectual Property protection mechanism can be formed within ASEAN to continue advancing cooperation in economic and cultural fields, and protect the ASEAN Economic Community. This study uses the normative legal method, namely by examining positive laws. The data source comes from library research. The data material comes from primary legal materials, namely regulations on intellectual property rights, secondary legal materials consisting of books, articles and journals, and tertiary legal materials in the form of encyclopedias that can clarify primary and secondary legal materials. Based on research, Indonesia and Laos regulate traditional cultural expressions (communal intellectual rights) by including it in copyright regulations. The Philippines, Thailand and Cambodia already have laws and regulations regarding traditional cultural expressions separate from copyrights, trademarks and patents. However, in the Philippines, it is only regulated with respect to the rights of indigenous peoples without any explanation regarding the regulation of copyrighted cultural creations arising from these indigenous peoples. This is unlike the consideration of whether moral and economic values emerge like those currently being assessed by the World Intellectual Property Organization (WIPO). In Thailand, the law regulates national cultural organizations whose actions must be approved and supervised by the State. In Cambodia, cultural expressions are referred to as the expression of a copyrighted work known to the creator and not the work of the communal community as explained by WIPO.

Keywords: Traditional Cloth, Intellectual Property Rights, ASEAN

I. INTRODUCTION

The Association of South East Asian Nations (ASEAN), which is a cooperation organization for Southeast Asian countries, was established based on the agreement of the five foreign ministers of Indonesia, Thailand, Singapore, Malaysia and the Philippines on 8 August 1967 in Bangkok through the signing of the Bangkok Declaration. On 7 January 1984, Brunei Darussalam entered as a new member of ASEAN, Vietnam became a member on 28 July 1995, Myanmar and Laos became members on 28 July 1997, and Cambodia on 16 December 1998. ASEAN currently has 10 Member States.

The Bangkok Declaration (the Declaration) is an important instrument for ASEAN. The Preamble of the Declaration affirms the desire of ASEAN Member States to establish a solid foundation for advancing regional cooperation, strengthening economic and social stability, and maintaining security from outside interference. The goals and objectives of ASEAN itself are to increase economic growth, advance social and cultural development, promote regional peace and stability, promote active cooperation, promote cooperation with international organizations and other regions that have the same aims and objectives as ASEAN, and help each other in the following fields: economy, social, culture, science and technology, and trade.¹

One of the goals of social and cultural development is the framework for cooperation that has been continuously developed by member countries. One of them is traditional culture. Currently, the national government is paying special attention to the development of arts and culture to be "sold" to the international cultural market. By carrying out the theme of diversity, creativity and sustainability, ASEAN is expected to be able to promote ASEAN culture to foreign countries as the main body encouraging the region's creative industry, cultural tourism and sustainable development. It seems that ASEAN understands the importance of culture both in its development process and for its member countries. This is clearly conveyed by the existence of culture as an aspect of the ASEAN Socio-Cultural Pillar. ASEAN has taken a smart step in choosing culture as

¹ Huala Adolf, *Hukum Ekonomi Internasional*, CV Keni Media, Bandung, Cet. Kelima, 2010, at p 98.

a medium for building regional integrity. This is despite lingering controversies between Indonesia and Malaysia of claiming cultural heritage which will certainly have an impact on ASEAN.²

Until now, the development and existence of art and culture are weak in terms of protection. For example, protection of the work of an artist and the fruit of his intellectual thoughts in the form of poetry, songs, fairy tales, stories, etc., through legal instruments have not been specifically established across all ASEAN Member States, and especially in Indonesia. Indigenous people tend to understand Traditional Cultural Expressions (TCEs) as cultural heritage that is communally owned (jointly owned), which creates the assumption that traditional knowledge and cultural expressions should be open and shared. In this way, there is no concept of monopoly on the use of TCEs as would otherwise be the case through intellectual property law. Therefore, legal regulation is important in protecting TCEs to address this vacuum.

This condition will continue to harm indigenous peoples in particular, because the use of TCEs can easily be claimed as belonging to other parties who previously published and registered them. This creates a conflict of interest between developed countries and developing countries. Developed countries want TCEs to be considered as common property so that they can be accessed. Meanwhile, developing countries want to establish a strong intellectual property rights regime to protect their interests regarding TCEs. In addition, the development of modern technology, especially in the field of telecommunications, can cause problems with TCEs, such as the commercialization of TCEs without the permission of the indigenous peoples of the owners, or distortion, alteration or modification of TCEs. In Indonesia, one of the cases that has occurred is the case of Jepara carving furniture, namely the foreign entrepreneur P.T. Harrison & Grill-Java, who registered a catalog containing drawings of traditional Jepara carved furniture designs, and with the copyright, issued a summons to prohibit local craftsmen from producing the carving models listed in the catalog. In addition, there are Balinese silver carvings that are registered by foreigners both living in Indonesia and abroad. Furthermore, traditional dances, cloths and food from a certain traditional culture of society are recognized by other countries.³

² <http://setnas-asean.id/site/uploads/document/magazine/5e2813434c249-revisi-asean-magazine-02-alternatif-2-display-compressed-1.pdf>

³ <http://home.indo.net.id/hiraps/haki/copyright/HAKI/nas07.htm>, accessed 25 January 2021

Some of the descriptions above explain various forms of violations, encroachment and inappropriate use of TCEs, which until now have no specific laws or regulations to handle, control and resolve conflicts with. Even the existing legal regime has not adequately protected them. This will have a bad impact for indigenous communities who own TCEs, who may feel that their cultural values and social identities are slowly distorted and lose sacred and noble cultural values and customs in seeing them turn into mere commercial commodities. This is the background of the need for a legal system that can provide comprehensive protection for TCEs.

One example of the heritage of TCEs is cloth (clothing). Clothing is one of the products of human culture that has developed extensively. At first, clothes only functioned as cover and body protection from the weather. However, clothing is now also a status symbol for the wearer. The raw material for clothing is obtained not only from plant fibers, such as cotton or bark, but also animal skins. These materials are obtained from the environment itself and beyond. In the past decades, there were still ethnic groups in Southeast Asia who wore clothes in the form of loops or tufted skirts made from strung grass. The invention of the loom in the Neolithic era led to a revolution in clothes making. In addition, the entry of other cultural elements and groups such as Chinese traders into Southeast Asia added to existing knowledge about materials, techniques and technology for making clothes. All this shows that almost a large part of Asia, especially in ASEAN countries, has had a certain form of clothing-based TCE.⁴

ASEAN countries have their own distinctive traditional fabrics. Cambodia calls it *sampot*, Myanmar calls it *longyi*, *pha biang* which comes from Thailand, *aodai* from Vietnam, the Philippines has *barot* and Laos with its *sinh*. Meanwhile, Indonesia, Malaysia, Singapore and Brunei Darussalam, which is a Malay family, has similarities to its distinctive traditional fabrics such as *sarong* and *songket*. Not only that, Indonesia, which consists of 34 provinces, has its own traditional cloth. This proves that ASEAN has a very diverse range of TCEs which is a legacy that must be maintained, not only to pass it on to future generations, but also to prevent TCE-related disputes.

⁴ http://munas.kemdikbud.go.id/ebook/file/tm/TMB7_%20Pakaian%20Tradisional%20Asean.pdf, accessed 25 January 2021

II. HISTORY OF DEVELOPMENT OF EXPRESSION OF TRADITIONAL CULTURE AND INTELLECTUAL PROPERTY RIGHTS

Intellectual property is creativity that results from human innovation in order to meet the needs and welfare of human life. Human creativity and a person's intellectual asset has long had a significant influence on human civilization, among others, through discoveries and results in the fields of creative and artistic works.⁵ It merits formal recognition and appreciation of the results by establishing a legal system: the intellectual property rights legal regime. This legal regime provides protection against the work of inventors or creators from other parties who illegally use or utilize their works. In addition, the intellectual property rights legal regime also provides protection for the economic interests of inventions or inventors or creators.

The term “traditional cultural expression” first originated from countries that are members of the WIPO Working Group (related government authorities) reaching a consensus using the term “Traditional Cultural Expressions”, instead of using “folklore”, which is seen as degrading in certain cultures, regions and countries.⁶ TCEs have enormous cultural value as a form of cultural heritage that continues to develop even in modern societies around the world. In addition, they also play an important role as a form of social identity and cultural expression for a society. Furthermore, TCEs have economic potential related to the tourism industry and the creative economy industry because they can contribute to a country's economic income.

The term “traditional knowledge” from the WIPO perspective is broadly defined as indigenous knowledge and folklore, namely literature based on tradition, artistic or scientific works, performances, inventions, scientific discoveries, designs, brands (names or symbols), information that is not disclosed by all innovations and based creations. tradition, which is a cultural expression that is conveyed from generation to generation related to a particular society or area, is generally developed in a non-systematic manner continuously as a response to a changing environment. There are several reasons that underlie developing countries and development agencies demanding

⁵ Siswandi, Acmad Gusman Catur, Perlindungan Hukum Terhadap Asset Pengetahuan Tradisional.

⁶ Annex. WIPO/GRTKF/IC/7/INF/4

international involvement in efforts to maintain, develop, and protect traditional knowledge. First, traditional knowledge plays an important role in the economic and social life of a country; recognizing and enhancing the values contained in traditional knowledge will help strengthen identity and increase its use to achieve social and development goals. In short, traditional knowledge has the potential to create sustainable economic development in many countries. Second, developing countries and developed countries can implement international agreements that affect how traditional knowledge related to genetic resources is protected and disseminated so that their national interests are protected.⁷ In addition, in the realm of intellectual property rights, there have been developments in the doctrine related to the scope of protection of intellectual property rights. One of the causes of this development is due to the view that rights relating to intellectual property are inseparable from human rights, both personally and in an organized human entity. It is in this interrelated relationship that traditional knowledge becomes part of the protection within the framework of protecting intellectual property rights.⁸

The WIPO advocates for intellectual property rights to protect TCEs as a form of intellectual activity shows that the protection of traditional knowledge is important to protect the honor of individuals and communities because traditional knowledge is held collectively as a reflection of cultural values and traditions. Gradually these TCEs will disappear in line with the erosion of traditional culture with the progress of the times and the marginalization of indigenous peoples. This is due to a lack of awareness of the importance of intellectual work assets and poorly documented customary knowledge. The increasing number of cases of violations of the use of traditional cultural expressions of indigenous peoples has led to communal awareness of the existence and recognition of intellectual rights of indigenous peoples as inheritance from generation to generation. This has raised awareness of the protection of intellectual property rights in TCEs owned by indigenous peoples.

⁷ WIPO Publication No. 920 Booklet No.2, at p 10.

⁸ Muhammad Djumhana, R. Djubaedillah, Hak Milik Intelektual Sejarah, teori, dan Praktiknya di Indonesia, Bandung: Citra Aditya, 2014, p 12

Furthermore, in general there are at least 5 main reasons why traditional knowledge must be protected⁹, namely:

1. Justice (equity): Ensuring fairness and justice if the owner of traditional knowledge whose knowledge is utilized and commercialized gets profit sharing or compensation, both monetary and non-monetary.
2. Conservation: Protection for traditional knowledge, means also protection for the maintenance of the environment, biodiversity, and sustainable agricultural activities
3. Maintaining traditional and cultural practices (preservation): Protection of traditional knowledge can be used to increase the value and trust of the community, both inside and outside the community, on the values of traditional knowledge
4. Preventing abuse and avoiding biopiracy: Protection of traditional knowledge is one way to reduce biopiracy practices, while ensuring fairness and balanced treatment between the owners and users of traditional knowledge. According to Moni Wekesa, to prevent misuse of traditional knowledge, there are at least three important things that must be considered:
 - a) First: documenting traditional knowledge is done through building a database of traditional knowledge;
 - b) Second: the obligation to state the origin of the material to be applied for legal protection through the intellectual property regime;
 - c) Third: parties seeking legal recognition through the intellectual property rights regime must be able to show evidence of approval for use, sharing of ownership, and sharing of benefits from the owner of traditional knowledge.
5. As an effort to promote the use and importance of the development of traditional knowledge. Apart from safeguards by limiting access to traditional knowledge, the government must also have the aim of supporting the use of traditional knowledge itself and developing measures aimed at preventing abuse.

III. INTERNATIONAL REGULATIONS REGARDING INTELLECTUAL PROPERTY RIGHTS

⁹ Mochtar, Rori, Marselo, Perlindungan Pengetahuan Tradisional Secara Sui Generis Untuk Menyongsong Masyarakat Ekonomi Asean, jurnal SASI Vol. 24 No. 1, Januari-Juni 2018: p 1-10.

International organizations have made significant contributions directly to protecting TCEs. In 1982, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and WIPO offered a model called "Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other Forms of Prejudicial Action", abbreviated as "Provision Model".¹⁰ The Provision Model basically builds a *sui generis* system that provides comprehensive protection for TCEs which becomes a legal model for countries by referring and considering their national legal system. For example, this South Pacific Legal Model refers to the Model Provisions and then establishes new exclusive rights as rights of the type of intellectual property.¹¹ The Model Provisions also provide regulations regarding the recognition of renewable energy sources, which are a moral right.¹²

In 2000, WIPO established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) to discuss a *sui generis* system to protect genetic resources, traditional knowledge, and TCEs to accelerate the progress of protection of TCEs. Since 2012, the IGC has held 22 sessions related to biological resources, traditional knowledge, and TCEs, with the IGC preparing draft articles related to TCE protection for the 22nd session. The draft of the articles on TCEs protection provides a *sui generis* system that sets out to protect TCEs, including 12 objectives to do so.¹³

The issue of traditional intellectual property rights has been a matter of debate at the international level since 2001, when the first session of the ICG was held at the WIPO headquarters in Geneva, Switzerland. In fact, the substance of TCEs has been the subject of debate since 1967, when the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) added Article 15(4), which states that works that have not been published and which are not known to the creator can be protected as copyright if it is suspected that the creator is a citizen of a party to

¹⁰ Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other Forms of Prejudicial Action 1982. WIPO. http://www.wipo.int/wipolex/en/text.jsp?file_id14184668, accessed 25 January 2021.

¹¹ Model Provisions, pt III, para 32.

¹² Pasal II, s 5.

¹³ The Protection of Traditional Cultural Expressions: Draft Articles, WIPO Doc WIPO/GRTKF/ IC/22/4 (2012) objectives.

the Convention.¹⁴ This was followed by the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, and thereafter, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (ICH Convention), which contains provisions to protect intangible cultural heritage. The ICH Convention is very important for the world of intangible cultural heritage in human history, because it seeks to save the intangible cultural heritage that is under threat of degeneration, annihilation, destruction, especially because of the lack of resources to save such inheritance. Next was the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (the UNESCO Convention). This Convention first aims to protect the diversity of cultural expressions. Compared to the ICH Convention, this Convention clearly considers the protection of the diversity of cultural expressions from the perspective of human rights in its text. Its Preamble explicitly mentions the need to “recognize the importance of intellectual property rights in supporting people engaged in cultural creativity which can provide positive support for a closer relationship between protection of intellectual property rights and TCEs”. The UNESCO Convention provides recognition of the possibility of using intellectual property rights in order to protect TCEs.

Although both Conventions recognize the role of community in saving intangible cultural heritage and fostering cultural diversity, the power to exercise these rights is only conferred on state authorities. For example, the ICH Convention states that governments of member states must establish national inventories within their territories and provide other means of preserving intangible cultural heritage. Communities have private and hereditary rights to preserve, use and develop their TCEs by themselves. The community believes that this is the private property of the community, which means that TCEs is held communally, and is not a kind of public wealth that can be accessed by anyone from outside the community, especially for elements that are secret and sacred.¹⁵ However, these two Conventions seem to deprive the community of the possibility of intellectual property over TCEs.

¹⁴ Dyah Permata Budi, *Perlindungan Hukum terhadap Kebudayaan melalui World Heritage Center UNESCO*, jurnal IUS QUIA IUSTUM Vol. 25 Issue 2, Mei 2018: p 256-276

¹⁵ Diah, Raymundus, Rini. *Ekspresi Budaya Tradisional dan Hak Kekayaan Intelektual*. Malang: Dioma, 2019

Several international legal instruments that protect human rights and the rights of indigenous peoples can be involved regarding the protection of TCEs. The Universal Declaration of Human Rights states that "everyone has the right to be protected by moral and material interests because of the scientific, literary and artistic productions of which he is the creator." The International Covenant on Economic, Social and Cultural Rights includes the right to self-determination and the recognition of the right of everyone to "benefit from the protection of the moral and material interests that result from the artistic, scientific, and literary production of which he is the creator." The International Covenant on Civil and Political Rights provides that "members of cultural minorities must not be denied the right, in community with other members of their group, to enjoy their own culture, to be recognized and practice their own religion, or to use their own language."¹⁶

The WIPO observes that ethnic communities expect national legislation to respect their culture, recognize their customary law, moral and economic rights and prevent improper use.¹⁷ Most of these expectations can be achieved through an intellectual property approach. Copyright laws are inadequate, because the requirements for a creation to be recognized, the creator must be known and the originality element in copyright law is not found in TCEs. TCEs has been spread from generation to generation for centuries.¹⁸ It is impossible to know the name of the creator of the TCEs. Thus, the characteristics of the unknown creator's identity seem inconsistent with the identities of the authors that must be known in copyright, because of the creator's moral rights. In addition, the period of copyright protection (in terms of economic rights) is limited, that is, the life of the creator plus 70 years.¹⁹

In the ASEAN region, a framework for cooperation related to intellectual property rights has been created where this agreement is inspired by the need to provide a solid foundation for economic development, expansion and realization of the ASEAN Free Trade Area for the advancement of Member States. This is the ASEAN Framework Agreement on Intellectual Property Cooperation (the Framework). The promotion of cooperation and good understanding of intellectual property

¹⁶ Ibid, p 29

¹⁷ WIPO, 2001, p. 69–191

¹⁸ Sherman and Bently, 2009, p.91

¹⁹ Berne Convention Article 7

rights between ASEAN countries will encourage dynamism, synergy and regional growth.²⁰ Under the ASEAN Economic Community Blueprint 2025, the ASEAN Intellectual Property Rights Action Plan 2016-2025 is expected to be able to build a regional electronic information network, an intellectual property (IP) database and a joint protection system for industrial designs, patents and copyrights and the creation of ASEAN standards and practices. The Framework is a derivative of the TRIPS Agreement where Member States "are required to implement intra-ASEAN intellectual property arrangements in a manner that is in line with the objectives, principles and norms stipulated in the relevant conventions and the TRIPS Agreement", for mutual benefit "for the creators, producers and users of intellectual property and in a manner conducive to social and economic well-being". ASEAN Member States must work together to achieve the goals of the region.²¹

Some opinions emphasize the need and importance of establishing a system outside the intellectual property rights system, or special protection (*sui generis*) to protect TCEs.²² Intellectual property laws only protect individual moral and economic rights, and not cultural and communal rights.²³ Meanwhile, other opinions suggest that existing intellectual property laws, especially copyright laws, are used because copyright protection is basically uniform throughout the world so that the regulation of TCEs at the global level can avoid regulatory gaps.²⁴ Some researchers even assert that "the human rights framework for protecting TCEs is clearly alive, or relatively better, than protection through *sui generis* regimes and intellectual property."²⁵

These conventions have also been ratified by ASEAN countries. Furthermore, countries that have ratified the conventions are obliged to take steps in protecting and promoting their respective traditional cultural expressions.²⁶ Although ASEAN already has a cooperation framework on intellectual property rights, the scope of protection for intellectual property rights jointly signed

²⁰ ASEAN Framework Agreement on Intellectual Property Cooperation, paragraph 4.

²¹ ASEAN Framework Agreement on Intellectual Property Cooperation, Article 3

²² Zhou, 2006, p 295

²³ Janke, 1998, p 181.

²⁴ Fuentes, 2003, p 101.

²⁵ Nwauche, 2004.

²⁶ Convention on the Protection and Promotion of the Diversity of Cultural Expression, Article 3

by ASEAN countries is still at the level of copyright, related rights, patents, trademarks, industrial designs, integrated circuits and indications.²⁷ The framework of cooperation and protection of traditional cultural expressions has not been touched.

IV. PROTECTION OF TRADITIONAL CULTURAL EXPRESSION IN ASEAN COUNTRIES

A. SINGAPORE

Singapore is one of the countries in Southeast Asia which consists of the island of Singapore and 58 other islands. More than two islands in the territory of Singapore are uninhabited. One of the most remarkable aspects of Singapore is the cosmopolitan nature of its people. Interested in a better future, immigrants come with their own culture, language, customs and habits. Cross-breeding and cultural fusion have played a role in influencing the diversity of cultures that have formed in Singaporean society from various aspects, thus creating a diverse and dynamic cultural heritage.

Singapore consists of multiethnic groups (Malay, Chinese, Indian and European). The life order of the people is a blend of Eastern and Western cultures. Singapore has four official languages, namely English, Mandarin, Malay and Tamil. These various ethnic groups make Singapore a multi-ethnic and multicultural country. Singapore's customs and cultures have been built since 1970. This ethnic diversity has influenced Singapore to have many traditional cultures carried by the ethnic groups in Singapore, such as musical instruments and traditional dances.²⁸

Singapore has signed UNESCO Conventions related to the protection of cultural heritage and the TRIPS Agreement of the World Trade Organization (WTO), and has been a member of WIPO since 1990. The enforcer for state copyright in Singapore is the Intellectual Property Office of Singapore (IPOS), formed in 01 April 2001 with the jurisdiction of the Singapore government. IPOS advises and administers IP laws, promotes IP awareness, provides the infrastructure to facilitate IP development, and regulates copyright in Singapore. Copyright protects works such as

²⁷ ASEAN Framework Agreement on Intellectual Property Rights, Article 3

²⁸ Pepi Setya Nur Indrasari. *Keragaman Multi-etnis Budaya Di Singapura*. Foreign case study 2018, sekolah tinggi pariwisata Yogyakarta. p 4.

novels, computer programs, dramas, music, films, photographs and paintings. The copyright owner can control the commercial use and exploitation of these works, has the right to prevent others from reproducing, publishing, performing, communicating to the public, or adapting the work. However, Singapore does not yet have a specific law regulating TCEs or cultural protection.²⁹

B. MYANMAR

Myanmar culture is largely influenced by Buddhism, the main religion of its population. The community is still classified as a traditional society; there are still many people who still wear *sarongs* and smoke cigars. Some of the traditional arts in Myanmar are the Chart Period Dance which is similar to Indonesian traditional dances. Most of the dance themes in Myanmar are closely related to beliefs and myths that are also characteristic of Indonesian dance.³⁰

Burma has not signed the Berne Convention but has signed the WTO's TRIPS Agreement. Burma's basic copyright laws are the Copyright Act 1911 (enacted in 1914 and sometimes known as the 1914 Act) and the Goods Trademarks Act 1889 and also regulated in the *Law Pyidaungsu Hluttaw* Number 15/2009.³¹ In 2004, a new copyright law was to be drafted based on the WIPO Provision Model but the law never came into effect. However, until now, Myanmar has not had laws and regulations regarding TCEs and other cultural protection.³²

C. INDONESIA

Indonesia is the largest archipelago country in the world consisting of 17,504 islands. Indonesia's history has been influenced by many other nations. From Sabang in the tip of Aceh to Merauke in Papua, Indonesia consists of 34 Provinces, which means it has various ethnic groups, languages and religions. This social and cultural diversity forms a unity/state. In addition, Indonesia has natural areas that support the second largest level of biodiversity in the world. As a member of the WTO and WIPO and also a signatory to the UNESCO Convention, Indonesia has ratified these international treaties and legalized them in the form of the national laws of the State of Indonesia,

²⁹ <https://sso.agc.gov.sg/Act/AELA1993>

³⁰ Analisah, "Budaya Negara Myanmar", <https://analisah.wordpress.com/2014/02/01/budaya-negara-myanmar/> (accessed 9 January 2021)

³¹ Myanmar, WIPO, (accessed 9 January 2021)

³² <https://www.myanmar-law-library.org/law-library/laws-and-regulations/>

namely the Copyright Law No. 28 of 2014 and the Law Act No. 5 of 2017 concerning the advancement of culture. However, Indonesia does not yet have legal protection constructs of communal intellectual property rights or TCEs. This issue still falls within the scope of what is regulated in the copyright regime.³³

D. THE PHILLIPINES

The Philippines is an archipelago consisting of 7,641 islands. The traditional culture of the Philippines is heavily influenced by Austronesian traditions. The cultural landscape also has Spanish, American, Japanese, Arabic and Indonesian influences. The main religions in this country are Christianity and Islam, which have played an important role in shaping Philippine culture.

The ancient literature of the Philippines is mainly composed of legends and folk tales which were the main form of pre-Spanish literature in the country. These stories are based on specific themes and aim to pass down cultural traditions and beliefs through generations. Although much of this folklore exists as oral literature, written publishing has existed predominantly during the Spanish colonial era.³⁴ As a country ratifying the UNESCO Convention, the Philippines already has laws and regulations regarding Indigenous Cultural Communities Rights, namely Republic Act No. 8371 and copyright protection through Republic Act No. 8293. However, in these statutory regulations, there is no explanation linking the protection of communal intellectual property rights to TCEs.³⁵

E. MALAYSIA

Malaysia is a federation country consisting of 13 states and 3 countries that belong to the Southeast Asia region. On 16 September 1963 in accordance with United Nations General Assembly Resolution 1514 in the process of decolonization, Singapore, Sarawak, North Borneo or what is now better known as Sabah, turned into a state part of a newly formed federation called Malaysia. Malaysia is also regarded as one of the 18 most biodiverse countries in the world. The Malay tribe

³³ Undang-undang nomor 28 Tahun 2014

³⁴ <https://ms.history-hub.com/budaya-filipina> (accessed 25 January 2021)

³⁵ <https://www.loc.gov/law/help/guide/nations/philippines.php>

makes up the largest part of the Malaysian population. There are also large Chinese-Malaysian and Indian-Malaysian communities. The three main ethnic groups in Malaysia are Malays, Chinese and Indians.³⁶

Malaysian culture is heavily influenced by these ethnicities. For example, musical instruments consist of drums, flutes, gongs and so on. The country has a strong tradition in dance, half of which come from Thailand, India and Portugal. Apart from that, there are also *wayang kulit*, *silat*, and handicrafts such as *batik*, embroidery, and engraved silver and copper. A known luxury textile is *songket*. In Malaysia, the regulations regarding trademark rights, copyrights, industrial designs and patents are separate from one another, unlike other Southeast Asian countries. In addition, Malaysia also has laws and regulations related to traditional knowledge, but these regulations are integrated with the protection of plant varieties, i.e. the Protection of New Plant Varieties and Traditional Knowledge Act 2004/634) where in the context of international regulations traditional knowledge is inseparable from cultural expressions.³⁷

F. BRUNEI DARUSSALAM

Brunei is the oldest country among the kingdoms in Malay land. The existence of Old Brunei is based on Arabic, Chinese and oral traditions. Brunei's culture seems to be synonymous with Malay culture, with strong influence from Islam, but appears more conservative than Malaysia and Indonesia. About two-thirds of Brunei's population are Malays. The most important ethnic minority group that controls the country's economy are the Chinese (Han) who make up approximately 15% of the population.³⁸ Protection of intellectual property rights in Brunei is divided into two aspects, namely copyright (Copyrights Order S 14/2000) and Patent Rights (Patent Order S 57/2011). Meanwhile, the protection of culture and TCEs does not exist even though Brunei has ratified international conventions related to the protection of cultural expressions.³⁹

³⁶ Kahn, Joel S. (1998). [Southeast Asian Identities: Culture and the Politics of Representation in Indonesia, Malaysian, Singapore and Thailand](#). Singapore: Institute of Southeast Asian Studies. m/s. 169. ISBN 981-3055-79-0.

³⁷ <https://www.loc.gov/law/help/guide/nations/malaysia.php>

³⁸ Abdul Ghofur, Islam dan Politik di Brunei Darussalam, Jurnal TOLERANSI:Media Komunikasi Umat Beragama vol.7 no.1 januari-Juni 2015: p 53-69

³⁹ <https://www.loc.gov/law/help/guide/nations/brunei.php>

G. LAOS

The indigenous people of Laos are Austro-Hungarian people, who lived as hunter-gatherers before farming. Laos has an official number of more than forty-seven ethnicities divided into 149 sub-groups and 80 different languages. The Lao Loum has throughout history represented the majority of the region's ethnicity and language. In Southeast Asia, traditional Lao culture is considered one of the cultures of India (along with Burma, Thailand and Cambodia).⁴⁰ Weaving is a form of artistic cultural expression that dominates in Laos, is common across all ethnicities and is the most recognized cultural export abroad. Laotian mothers will often pass their weaving skills on to their daughters as a sign of marriage eligibility. Each region and tribe has its own traditional weaving techniques.⁴¹ Laos integrates personal and communal intellectual property rights into Law No. 38 / NA of November 15 2017 on Intellectual Property. where there are copyright regimes, related rights, patents, brands, geographic indications, industrial designs, plant varieties and traditional cultural expressions.⁴²

H. VIETNAM

Vietnamese culture developed over the centuries since the ancient culture of *Đông Sơn* which was based on a rice farming economy. Some elements of Vietnam's national culture originates from China, which applies elements of Confucianism and Taoism to traditional political systems and philosophies. Lately there have also been Western cultural influences, particularly from France and the United States. For several decades, the influence of foreign culture was avoided and emphasized the appreciation and sharing of the cultures of communist countries such as the Soviet Union, the People's Republic of China, Cuba, etc. Since the 1990s, Vietnam has had great exposure to the culture and media of Southeast Asia, Europe and America.⁴³

⁴⁰ "Human Development Indices and Indicators Laos: 2018 Statistical update" (PDF). United Nations Development Programme. 15 September 2018 (accessed 15 January 2021)

⁴¹ Chong, T. Nationalism in Southeast Asia: Revisiting Kahin, Roff, and Anderson. *Journal of Social Issues in Southeast Asia*, Vol. 24, No.1, 2019: pp 1-17.

⁴² <https://www.loc.gov/law/help/guide/nations/laos.php>

⁴³ Karnow, Stanley. *Vietnam: A History*. Penguin (Non-Classics); edisi kedua (June 1, 1997). ISBN 0-14-026547-3

Vietnam divides its intellectual property system into three parts: first, copyrights are managed by the Vietnam Copyright Administration.; second, industrial property rights or industrial property rights are managed by the State Intellectual Property Office (NOIP); third, plant variety rights are regulated by the Plant Variety Protection Office. Among the three divisions, the NOIP plays the biggest role because it is not only a national institution, but an institution provides a database office by providing consulting services before submitting copyrights and patents so that there are no disputes or similarities with other inventions.⁴⁴

I. THAILAND

Thailand's origins are traditionally attributed to a short-lived kingdom, the Sukhothai Kingdom, which was founded in 1238. This kingdom later continued to the Ayutthaya Kingdom which was founded in the mid-14th century and is larger than Sukhothai. Thai culture is strongly influenced by China and India. The strong influence of Indian, Chinese and other Southeast Asian cultures is still inherent in traditional Thai culture. Buddhism, Animism and Westernization play important roles in shaping this culture. Buddhism in Thailand is heavily influenced by traditional beliefs about ancestral spirits and nature, which have been incorporated into Buddhist cosmology. Most Thais own spirit houses: miniature wooden houses in which they believe household spirits live. They offer food and drink offerings to the spirits to please them.⁴⁵ As a country that has a variety of cultures, it seems that Thailand also does not have a regulatory mechanism for TCEs. Thailand only describes national organizations related to culture through the National Cultural Act BE 2489 (1996), which must obtain permission and are under state supervision. If this is not done, the state will not give the right and dissolve it. Intellectual property rights are regulated in the Intellectual Property and International Trade Court in the Act Procedure BE 2539 (1996), which is concerned with copyright, trademark rights and patent rights.⁴⁶

J. CAMBODIA

⁴⁴ <https://www.loc.gov/law/help/guide/nations/vietnam.php>

⁴⁵ Isdarmanto. The advantage collaboration program of Tourism Education based on Entrepreneurship in Culinary Products both Thailand and Indonesian countries. *International Journal of Tourism and Hospitality Study*, Vol.1, No.1, 2016

⁴⁶ <https://www.loc.gov/law/help/guide/nations/thailand.php>

Cambodia's golden age was between the 9th and 14th centuries AD under the period of the Angkor Kingdom, which at that time was a strong and prosperous kingdom that managed to control almost all of mainland Southeast Asia. Cambodian society itself is divided into several different ethnic types. The majority of Cambodian people or around 90% of its total population are people of Khmer ethnicity, the original inhabitants of Cambodia. The rest or a small part of the Cambodian population are Vietnamese, Chinese, Cham-Malays, Burmese, Laotians, Japanese, Thai, Filipinos, Europeans, and ethnic seminomadic communities, or better known as Khmer Loeu who usually live in the hills of Cambodia.⁴⁷ The art, architecture, music and dance that exist in Cambodia today have received a lot of influence from many other kingdoms such as Thailand and Laos. Cambodia's population is predominantly Buddhist with 90% of the population adhering to Theravada Buddhism. 1% of the population is Christian and the rest are Muslims, atheists, or adherents of animist beliefs. Regulations related to Intellectual Property Rights are regulated in separate laws such as laws on amendment on patent, model and industrial design, and laws on geographic indication and copyrights. However, what is interesting is that Cambodia has had laws and regulations related to TCEs that have been in effect since 2003, but the cultural expressions referred to here are limited to expressions of copyrighted works known to the creators and not works of the communal community as described by WIPO.⁴⁸

V. CONCLUSION

Based on the explanation above, it can be concluded that there is not one country in ASEAN that has laws and regulations related to TCEs. Until now, Indonesia and Laos also regulate TCEs as communal intellectual rights by including them in copyright regulations. In this regulation, it is stipulated that the rights of national cultural property which are not known by the creator shall belong to the state. Alternatively, the Philippines, Thailand and Cambodia already have laws and regulations regarding TCEs that are separate from copyrights, trademarks and patents. However, in the Philippines it is only regulated with respect to the rights of indigenous peoples without any reference to the WIPO's assessment of whether they are cultural creations arising from indigenous peoples which creates moral/economic values. Furthermore, in Thailand, the law regulates national cultural organizations whose actions must be approved and supervised by the State. In addition, in

⁴⁷ Thomas Fitzsimmons (ed.). *Cambodia: Its People, Its Society, its Culture*. Washington: Hraf Press. 1959. p 33.

⁴⁸ <https://www.loc.gov/law/help/guide/nations/cambodia.php>

Cambodia the cultural expression referred to here is the expression of a copyrighted work known to the creator and not the work of the communal community as explained by WIPO.

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ASEAN Framework Agreement on Intellectual Property Cooperation

Convention on the Protection and Promotion of the Diversity of Cultural Expression