



## Development of Traditional Cultural Expressions of Patingtung Art from the Aspects of Copyright and Advancement of Culture

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### Abstract

The patingtung art from Serang City has been classified as a traditional cultural expression and intangible cultural heritage of Banten Province. However, the registration of patingtung art as an intangible cultural heritage is not enough, but it must also be in accordance with the mandate of Copyright and Advancement of Culture. This research uses normative empirical research methods, an in concreto approach and descriptive qualitative data analysis by comparing the normative law of the Copyright Law and Advancement of Culture with empirical law in the form of its implementation of the protection of traditional cultural expressions of the patingtung type. The result of this study is that the development of traditional cultural expressions of Patingtung art can be carried out through three basic arrangements, namely Law Number 28 of 2014 on Copyright with inventory, Law Number 5 of 2017 on Advancement of Culture with inventory, security, maintenance, rescue and publishing. Serang City Government completes a form of conservation by preserving regional culture through Serang City Regional Ordinance Number 4 of 2013. Patingtung art activities are limited to inventory only. Maintenance is still integrated with other programs so maintenance is minimal. On the other hand, protection in the form of safety and rescue was not implemented.



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## A. Introduction

Indonesia is a pluralistic or heterogeneous nation because of its diverse ethnic groups, cultures, religions, and customs (traditions). The ethnic diversity of Indonesia is a source of national culture. Culture is always associated with a nation's national identity in the context of nationality. As a result, national culture is a nation's identity and wealth. Indonesia is divided into 33 provinces, each with its own ethnic expressions and traditional cultures. The activities and creativity of Indonesia's indigenous peoples, each with their own distinct characteristics, contribute to this diversity. Traditional Cultural Expressions is one of Indonesia's many traditional cultures. Traditional Cultural Expressions emerge gradually and incrementally from various cultural images, and their evolution is constantly influenced by culture. Traditional cultural expressions show cultural diversity. Existing Traditional Culture depicts a picture of a community living in a geographical area or as an indigenous community's identity. Rudat Art from West Java Province, Andun Dance from Bengkulu region, and Bungong Geulima Motif from Aceh region are some of the archipelago's traditional cultural expressions. Traditional Cultural Expressions was originally known as "folklor" or "folklore," which is a cultural heritage owned by indigenous peoples whose existence and preservation must be protected because it is one of a country's most valuable assets as an identity.<sup>1</sup>

Providing legal protection for Traditional Cultural Expressions is important when faced with their characteristics and uniqueness, and it also plays a positive role in assisting indigenous communities as owners and bearers of the culture to preserve their traditions. As a result, other countries do not recognize its ownership without permission.<sup>2</sup> Problems with Traditional Cultural Expressions have been identified in several studies, ranging

from legal protection issues to regulatory position issues to the problem of understanding or legal awareness, such as in Isdiyanto and Putranti's research, which states that understanding in Indonesia is still limited, owing to indigenous peoples' low legal awareness. Common law communities have the least understanding and the least protection, which is inversely proportional to their wealth.<sup>3</sup> Simatupang inquiry found that the legal protection of shared intellectual property in Indonesia has not been implemented due to the lack of coordination between the various laws and regulations. fulfil, particularly the character uniqueness of ownership, as defined by the TRIPS Agreement and the WTO. Therefore, legal status considered an independent (*sui generis*) regulatory legal philosophy.<sup>4</sup> Related to the art that is the focus of this research. According to Marina and Sunarsi's relevant research, there is currently no legal certainty of protection for traditional cultural arts as part of Indonesia's Traditional Cultural Expressions, because the arrangements are still unified in the Copyright Law, which is generally individually owned, while Traditional Cultural Expressions are communally owned. Unique communal ownership has economic value and can be commercialised.<sup>5</sup>

Martinet's intriguing research examines the relevance of traditional cultural expressions to intellectual property law, particularly in response to commodification and commercial appropriation. When traditional cultural expressions are misappropriated by people from outside the community of origin, it is said to shake the community to its core. Because traditional cultural expressions

1 Anak Agung Sinta Paramisuari dan Sagung Putri M.E. Purwani, "Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta", *Kertha Semaya Journal Ilmu Hukum* 7, no. 1 (2018): 3, <https://doi.org/10.24843/KM.2018.v07.i01.p04>

2 Dyah Permata Budi Asri, "Perlindungan Hukum Terhadap Kebudayaan Melalui World Heritage", *Jurnal Hukum Ius Quia Iustum* 25, no. 2 (2018): 259, DOI: 10.20885/iustum, vol252.art3.

3 Ilham Yuli Isdiyanto dan Deslaely Putranti, "Perlindungan Hukum Atas Ekspresi Budaya Tradisional Dan Eksistensi Masyarakat Hukum Adat Kampung Pitu", *Jurnal Penelitian Hukum De Jure* 15, no. 2 (2021): 235 <http://dx.doi.org/10.30641/kebijakan.2021.V15.231-256>

4 Taufik H. Simatupang, "Initiating the Concept of Sui Generis of the Legal Protection of Communal Intellectual Property in the Philosophy of Science Perspective", *Jurnal Penelitian Hukum De Jure* 22, no. 2 (2022): 253, <http://dx.doi.org/10.30641/de-jure.2022.V22.243-256>

5 Liza Marina dan Dessy Sunarsi, "Kepastian Perlindungan Hukum Kesenian Tradisional sebagai Ekspresi Tradisional dalam Menunjang Kepariwisata Indonesia", *Jurnal Industri Pariwisata* 2, no. 1(2019): 34 <http://jurnal.usahid.ac.id>

are regarded as public domain. They can be used by anyone without the permission of the original community. The abuse of traditional expressions is widespread, for example in 2013, the American company “Nike” commercialized women’s sportswear inspired by traditional Polynesian tattoos. This product is very detrimental to Samoan society because of the pattern and placement of tattoos copied by Nike. The existence of this case reveals a disregard for the customary rule that only men can bear the tattoo. At the heart of the issue is whether rights should be given to communities so that they can control the use of their traditional cultural expressions. Thus the existence of these rights rules will allow them to protect their economic and moral interests and defend their traditional cultural expressions from erroneous claims to intellectual property rights<sup>6</sup> Awopetu highlighted the research in terms of defending culture<sup>7</sup>, namely traditional cultural expressions in relation to intellectual property, by adapting intellectual property laws or creating sui generis laws specifically aimed at redressing the misuse of indigenous cultural resources. For example, in the United States, current provisions for traditional cultural expressions already provide defensive protection by preventing their registration by nonindigenous entities. The proposal is to adapt the collective mark and certification regime to strengthen defensive protection.

This study differs from the previous one in that it focuses on the development of protection in relation to aspects of copyright and advancement of culture. Each of these laws will be examined in the context of the normative limits of protection it regulates, and compared with what has developed in the Patingtung art. The results will show that there are still problems in applying these two laws in practice, especially in areas of indigenous wisdom. However, there are still

shortcomings in the laws in relation to the same general discussions as in the above study. Nevertheless, it is important to highlight the implications of the study. The aim of this study is to turn advocacy into advocacy development. Future policy development should not only focus on the legal situation, but also on the preservation and development of forms that still exist in many parts of Indonesia, such as the art of patingtung.

Patingtung art is found in Serang, Banten Province. Banten, as one of the provinces on the island of Java, can be observed (traced) as a cultural community or culture through the elements of its culture, particularly through the physical dimension or actions of its people.<sup>8</sup> Specific problems in Serang City are the difficulty of finding records of Patingtung art in the form of books or electronic records, the absence of local regulations to protect Patingtung art through legal instruments, and the lack of publication and documentation of this art in various media, causing Patingtung art to be increasingly forgotten. This reflects the failure of the local government to protect and promote Patingtung. On the other hand, the authority lists 34 (thirty-four) traditional cultural expressions of Banten Province, including Rampak Bedug Pandeglang, Seba Baduy, and Patingtung art. Patingtung art is a form of performance that combines pencak silat and dance. Patingtung art has developed in almost all areas of Banten since its inception and is usually performed at local ceremonies such as circumcisions and weddings. Serang City was chosen because there are still martial arts hermitages here that practice Patingtung. The art of Patingtung has been protected by the Banten provincial government, who represents the right holder.

Protective measures taken by the government include designating the Patingtung art as a traditional cultural expression, which can be found in the Community Intellectual Property Rights database, and registering the Patingtung art as an intangible cultural heritage in 2017. The purpose of registering

6 Lily Martinet, “Traditional Cultural Expressions and International Property Law”, *International Journal of Legal Information* 47, no. 1(2019):12, doi:10.1017/jli.2019.8

7 Richard Awopetu, “In Defense of Culture: Protecting Traditional Cultural Expressions in Intellectual Property”, *Emory Law Journal* 69, no. 4(2020):745, <https://scholarlycommons.law.emory.edu/elj/vol69/iss4/3>

8 Sulaiman, *Sekilas Mengenal Kekayaan Budaya Banten*, (Surabaya: JP Books, Surabaya 2019), 42.

or designating regional traditional culture is to curb the illegal misuse of a community's traditional culture. However, to protect, registration of artworks is not enough; the mandates under Article 38(2) of the Copyright Act and Article 1(4) of the Cultural Promotion Act must also be taken into account, and the protective measures contained in the above two laws have not been fully implemented. When examining the copyright provisions, it must be remembered that copyright is a literary and scientific field. Article 38, which provides preventive protection. The Copyright Act covers works where the creator is unknown, makes the State the copyright holder, and states that the State has an important role in protecting creative works. The State regulates aspects of protection by fulfilling its inherent obligation to inventory, protect, and preserve its various species.<sup>9</sup>

Legal protection requires, in addition to copyright protection, the optimal promotion of culture, i.e. the preservation of a traditional form of cultural expression that is politically sovereign, independent, economically and culturally autonomous. Traditional forms of cultural expression are also protected. Law 5 of 2017 on Advancement of Culture is the first sui generis regulation, other than intellectual property, that can protect a type of knowledge and traditional forms of cultural expression. The elements of culture, which are the main objectives of cultural promotion, are defined as the subject of cultural promotion in this law. Traditional forms of cultural expression may be protected in several stages in accordance with the provisions on cultural promotion. This may be done, *inter alia*, through inventory, publication, protection, preservation and rescue.<sup>10</sup> The aim of this law is to protect and promote aspects of culture. The role of protecting and promoting culture is assigned not only to the highest authority - the state and the local authorities representing the state - but also to the local communities involved in its protection and

promotion. Traditional cultural expressions are inherited "intangible cultural creations" that must be preserved, nurtured, developed and protected from foreign exploitation and unilateral claims (appropriation). This diversity tends to diminish over time due to the lack of cultural heritage inventories and lack of documentation. Foreigners can take advantage of this situation to market copyright and have it recognised. Cases where other countries have recognised ownership of Indonesian culture indicate that Indonesia has failed in its efforts to protect it. For example, there have been cases where Indonesian cultural claims, particularly musical instruments of the South, were registered as intellectual property of Nusa Tenggara Timur (NTT) and the state of Sri Lanka claimed ownership in 2021.<sup>11</sup> The lack of public awareness of Indonesian culture and the lack of government efforts to preserve these cultures have made Indonesia's traditional cultural expressions increasingly extinct. Based on the above, the following questions can be asked: How is forms development of Patingtung art? How the efforts made in support of Patingtung Art?

## B. Method

This research uses a normative-empirical. This method focuses its research on the application of normative legal rules (laws) to every concrete legal case that arises in society.<sup>12</sup> This study compares Copyright Law and Advancement of Culture Law with empirical law in the form of its implementation. In concrete approach, aims to test whether a specific normative postulate can or cannot be used to solve a specific legal problem in a concrete manner.<sup>13</sup> That is, to determine whether the provisions of the law applied to certain legal events in society are appropriate or not.

This research investigates whether or not the results of the application of legal

<sup>9</sup> *Ibid.*

<sup>10</sup> Andhika Putra Herzani, "Peran Pemerintah dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia", *Jurnal Hukum & Pembangunan* 50, no. 4 (2020): 965, <https://scholarhub.ui.ac.id/dharmasisya/vol2/iss2/19>

<sup>11</sup> Jabbar Ramdhani, "Sri Lanka Klaim Alat Musik Sasando, Pemprov NTT Protes ke WIPO", *DetikNews*, <https://news.detik.com/berita/d-5875631/sri-lanka-klaim-alat-musik-sasando-pemprov-ntt-protos-ke-wipo/amp>.

<sup>12</sup> Elisabeth Nurhaini Butarbutar, *Metode Penelitian Hukum*, (Bandung: Refika Aditama, 2018), 97.

<sup>13</sup> Suratman dan Philips Dillah, *Metode Penelitian Hukum*, (Bandung: Alfabeta, 2015), 61.

events in concreto, namely the Patingtung Art.

This study relied on secondary data sources as well as primary data sources for support. Data obtained through library studies (Library Research), which involves conducting research by collecting organized and systematic secondary data, which is then presented in the form of educational and informative services. Techniques for collecting data from documents and literature studies (Library Research). The legal materials obtained through the writing of literature studies, laws and regulations, the internet, concerning the protection of Patingtung Art.

Primary data is obtained through field research and is used to supplement secondary data. This study was carried out through direct interviews with respondents and sources, specifically Patingtung Art. Respondent in this study was the teacher of Padepokan Peguron Pencak Silat Macan Sakti Cipare, Mr. Herry Wijaya Interview were conducted with a direct question and answer session between researchers and respondents, sources, or informants in order to gather information.<sup>14</sup> The resource persons were the Head of the Culture Division of the Education and Culture Office of Serang City, Mrs. Evie Shofiyah Usman, which is the relevant agency in charge of culture in Serang City, and Mr. Achmad Iqbal Taufiq, as a Copyright Legal Consideration and Litigation Subcoordinator, from the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia. In this study, researchers conducted unstructured interviews, or free interviews.<sup>15</sup> The interview was conducted to supplement secondary data on the protection of Patingtung Art's Traditional Cultural Expressions. Analysed using sentences and not mathematical formulas and statistical data. Regulations obtained, literature of general theoretical concepts, or comparing with a problem or legal issue that occurs based on legal materials obtained, as well as adding the opinions of scholars who have a relationship

14 Mukti Fajar Nur Dewata dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiri*, (Yogyakarta: Pustaka Pelajar, 2015), 161.

15 Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D*, (Bandung: Alfabeta, 2013), 140.

with the research as a comparative material, then connected with the results of interviews.

### C. Result and Discussion Forms of Development of Patingtung Art

The development protections mentioned in this discussion are aimed at Patingtung art, which are governed by two laws, namely copyright and advancement of culture. Traditional cultural expressions are human intellectual creations whose ownership transcends groups and generations, and which are protected as cultural aspects under both laws and are subject to cultural promotion. Such expressions are protected by copyright as they are the intellectual labour of human creative thought expressed in various forms of useful works. Such protection is governed by three articles in the copyright law, namely Articles 38 and 39 regarding the form of protection and Article 60 regarding the term of protection.

According to research findings, Patingtung Art is a combination between movement and music, as explained in Article 38 paragraph (1). Patingtung art is a form of art. The term "art" comes from the "sansekerta" language, which means worship, offerings, and services closely related to religious ceremonies. Art is guided by rules or rules element of people's lives in certain regions, each of which is unique, limited to the environment and supporting culture.<sup>16</sup> Traditional arts serve as a means of expressing feelings that cannot be separated from customs, a reminder of an important event, a means of distinguishing one region from another, and as a national icon. Another function is communicative, which is a dialogue between the audience and the artist.<sup>17</sup> Patingtung art is one type of traditional culture used to express a sense of

16 Firman Setiawan dan Nur Halimah, "Optimalisasi Kesenian Tradisional Bernuansa Islami sebagai Salah Satu Destinasi Wisata Syariah di Madura", *Dinar: Jurnal Ekonomi dan Keuangan Islam* 6, no. 2, (2019): 35, <https://doi.org/10.21107/dinar.v5i1.5125>

17 Sahadi, "Pelestarian Kebudayaan Daerah Melalui Kesenian Tradisional Dodod Di Kampung Pamatang Desa Mekarwangi Kecamatan Saketi Kabupaten Pandeglang", *Dinamika : Jurnal Ilmiah Ilmu Administrasi Negara* 6, no. 4, (2019): 321. <http://dx.doi.org/10.25157/dinamika.v6i4.3101>

beauty from within the human soul, which is the result of the expression of human desire for beauty against the background of the community that owns the art's tradition or cultural system.<sup>18</sup> Patingtung art originating from Serang City is a set of music used to accompany pencak silat or martial arts, which lives in a community for generations and the creator is unknown.<sup>19</sup> According to Article 38 paragraph (2), which requires the state to inventory, preserve, and maintain the Patingtung Art, the Patingtung Art has currently been registered as a Traditional Cultural Expression originating in Banten Province, with registration number EBT.06.2018.0000324.

Patingtung Art as a Traditional Cultural Expression is regulated by the state, through inventory. Despite this, the Patingtung Art is still alive and thriving in Serang City. According to the Cultural Database of Serang City in 2021, Patingtung Art is spread across four sub-districts with different development conditions. The four sub-districts are: Serang sub-district, the condition of Patingtung Art is developing; Kasemen sub-district, the condition of Patingtung art is extinct; Taktakan sub-district, the condition of Patingtung art is alive; Curug sub-district, the condition of Patingtung art is growing.

Copyright in a work by an unknown author may be held by the person or group of indigenous peoples who published it for the first time. Article 39 consists of five paragraphs. Artworks that fulfil Article 39(3), where the creator is unknown and has been declared but it is not known who declared it, then the state is the copyright owner. The state manages, and traditional communities or societies that create, maintain and develop traditional cultural expressions are the owners and/or custodians. This is because the creators are usually unknown and their families are multicultural. Therefore, the government of Serang Regency as the representative of the state and the region of origin of this art **must protect the art of Patingtung.** By contin-

18 Laura Andri R.M., "Seni Pertunjukan Tradisional Di Persimpangan Zaman: Studi Kasus Kesenian Menak Koncer Sumowono Semarang", *Humanika* 23, no. 2, (2016): 25, <https://doi.org/10.14710/humanika.v23i2.13642>

19 Rohmatul Fajri, *Patingtung Warisan Tradisi*, (Serang: Dinas Pendidikan Provinsi Banten, 2010), 4.

uing to perform Patingtung using appropriate musical instruments and polite clothing, such as the culture of Serang City which uses kampret shirts and pangs pants, those who use this art must maintain its authenticity and stick to the cultural norms of the area of origin of Patingtung art as a form of appreciation and respect for the people of Serang City as the area of origin of this art. This includes copyright protection for Patingtung art which is different from other copyright objects. According to Article 60(1), copyright is valid indefinitely, which means that the legal validity of the creation is not erased because the creation has no time limit. Its hereditary and continuous nature without time limit results in the creation having no time limit. Traditional cultural expressions will become public property and vulnerable to exploitation and abuse by foreign parties if not permanently protected.<sup>20</sup>

Traditional Cultural Expressions are also legally protected on Advancement of Culture, fulfill cultural argument's principle, namely the advancement of science, literature, and art in order to improve living standards, and will benefit the community, nation, and state.<sup>21</sup> The term Traditional Cultural Expression is not mentioned terminologically in Law but protected as a cultural aspect that is the object of cultural promotion. In this case, the object of cultural promotion from the standpoint of intellectual property is Traditional Cultural Expressions, which are intellectual works of larger community groups that characterize or identify the group, also known as Communal Intellectual Property.<sup>22</sup> The term itself is mentioned. This interpretation makes this law a guide to implement the mandate of the 1945 Constitution in a concrete and strategic role, through a concrete and strategic role in the development of national culture.<sup>23</sup> According to the definition in Article 1

20 Yenny Eta Widyanti, *Op.Cit.*

21 Eman Suparman, "Perlindungan Hukum Kekayaan Intelektual Masyarakat Tradisional", *Jurnal Pengabdian Kepada Masyarakat* 2, no. 7,(2018): 3, <https://jurnal.unpad.ac.id/pkm/article/view/20287/9765>.

22 Agus Sardjono, "HKI dan UU Pemajuan Kebudayaan", *Journal of Intellectual Property* 2, no.2, (2019): 48, <https://doi.org/10.20885/jipro.vol2.iss2.art5>

23 Iman Nur Hakim dan Siti Hamidah, "Peran

**Table 1.** Safety Measures for Advancement of Culture

Regulation	Safety Measures
Article 16	Inventory includes recording and documenting, establishing and updating data.
Article 22	Safeguards are carried out by preventing foreign parties from making intellectual property claims on objects of cultural advancement, updating data in the Integrated Cultural Data Collection System, passing on objects of cultural advancement to the next generation, and fighting for objects of cultural advancement as world cultural heritage.
Article 24	Maintenance is carried out by maintaining the noble value and wisdom of the object of cultural advancement; using the object of cultural promotion in everyday life; maintaining the diversity of the object of cultural advancement; reviving and maintaining the cultural ecosystem for each object of cultural promotion; and passing on the object of cultural advancement to the next generation.
Article 26	Rescue is carried out by revitalisation; repatriation; and/or restoration.
Article 28	Publication is related to inventorying, securing, maintaining, and saving objects of cultural advancement, by disseminating information to the public both domestically and abroad using various forms of media.
Article 37	The utilisation of objects of cultural advancement by large industries and/or foreign parties must pay attention to the conditions in this article, with the aim of reviving and maintaining the ecosystem of related objects of cultural advancement.

paragraph 3, advancement of culture is “an effort to strengthen Indonesia’s cultural resilience and its contribution to world culture through the protection, development, utilisation and promotion of culture”.<sup>24</sup>

The law regulates five legal protection efforts for the Patingtung Art, which are contained in six articles, namely Article 16, 22, 24, 26, 28, and 37, which is described in the table 1.

According to the information in the table 1, the explanations are: The first protection effort is the inventory outlined in Article 16. Inventory is carried out through the Integrated Cultural Data Collection System. The inventory effort is a defensive measure aimed at preventing foreign parties from misusing intellectual property. The inventory conducted by the Indonesian government itself can first provide proof of ownership of Indonesian traditional culture through defensive protection before it is recognized by UNESCO, WIPO, or international patent offices. Furthermore, because is globally accessible, it can facilitate international recognition, par-

Kuliner Tradisional dalam Mendukung Pemajuan Kebudayaan di Destinasi Pariwisata Prioritas Yogyakarta”, *Mozaik Humaniora* 21, no. 2,(2021): 194, <http://e-journal.unair.ac.id>

24 Article 5 of Law Number 5 of 2017 concerning Advancement of Culture.

ticularly if it is compiled in multilingual/multilingual.<sup>25</sup> Based on the findings, Patingtung Art is now included in the Integrated Cultural Data Collection System. The Integrated Data Collection System, which includes a database of artworks in Indonesia and is easily accessible via the internet.

Second level is security, which is governed by Article 22. The security of Patingtung Art, which is regulated in Article 22 paragraph (1), must be carried out by government, but also people of Serang City and the parties who practice this art, must play an active role in ensuring its preservation. One method of preventing foreign parties from claiming Patingtung Art is through licensing. Foreign parties or industries interested in displaying or using a Traditional Cultural Expression can apply for a license through the Indonesian Embassy in their respective countries. Following permission, the foreign party is required to include a Traditional Cultural Expression from the Republic of Indonesia and its regional origin. Article 37, If large industries and/or foreign parties commit violations, administrative fines, suspension

25 Retnani Amurwaningsih, “Perlindungan Budaya Tradisional Indonesia Melalui Pencatatan Dalam Sistem Pendataan Kebudayaan Terpadu”, *Jurist Diction* 1, no.1, (2018): 307, <http://e-journal.unair.ac.id>

or revocation of licences will be imposed. In terms of efforts to pass on the Patingtung Art in system, the younger generation currently knows very little about it. Nonetheless, the Patingtung Art since 2010 with Registration Number 2010000429 and was designated as an Intangible Cultural Heritage of the Republic of Indonesia in 2017 with Registration Number 201700492. Patingtung art falls under two categories of Intangible Cultural Heritage: tradition and verbal expression. Definition is governed by Article 1 number 2 of Indonesian Intangible Cultural Heritage regulation. Protection in the form of protection is an effort to prevent and overcome the extinction of Indonesian Intangible Culture through the establishment of records. Although the Art of Patingtung has not yet been registered with UNESCO, it is a first step towards recognition, similar to batik.

A cultural heritage, in order to gain international acknowledgement. The cultural branch must be registered as national cultural heritage in the first stage. It will be proposed to the World Cultural Heritage Committee after being recorded. The recording national cultural heritage carried out by Cultural Value Preservation Agency, following established stages mechanisms. All national cultural heritage is recorded and registered in order to be more orderly and to avoid cases of national cultural claims by other countries. When Indonesia's cultural heritage is recognized globally, there is appreciation as well as national pride.<sup>26</sup>

The third form of protection is maintenance, which is governed by Article 24 paragraphs (3) and (4). (4). The preservation efforts referred to in Article 24 paragraphs (3) and (4) can be accomplished by preserving the purity of the culture, as users must display the culture in accordance with the values that developed in the culture's community of origin as a form of respect and appreciation. The government and the community are expected to pass on the culture to the next generation by incorporating it into daily life. According to the findings of the study, the

26 Tengku Mega Rahmadini, "Perlindungan Ekspresi Budaya Tradisional Masyarakat Adat Melayu Di Provinsi Riau", *JOM Fakultas Hukum Universitas Riau* 7, no. 1, (2020): 13-14, <http://jom.unri.ac.id>.

Serang City government and the Serang City padepokan association hold annual silahturahmi activities and competitions, which are not specifically about Patingtung Art, but are considered an integral part of silat.

The fourth protection effort is rescue. Article 26 paragraph (3) mentions rescue from advancement of cultural objects, which is carried out through revitalization, repatriation, and restoration. The explanation of Article 26 paragraph (3) explains revitalization, repatriation, and restoration. Based on research findings, effort to save the Patingtung Art that must be undertaken at this time is the revitalization of the Patingtung art in accordance with Article 26 paragraph (3) letter a. The fact that there are fewer areas in Serang City where the Patingtung Art is still performed indicates that this art requires revitalization efforts. Revitalization can be accomplished by reintroducing Patingtung Art into schools, and then teaching it to the younger generation through extracurricular silat so that it does not become extinct. 6. The fifth protection effort is regulated in Article 28. In terms of cultural promotion, music and traditional songs are frequently re-recorded in full and identical to the original to present a higher quality of traditional music and song audio products. The recording is then released without losing the song's identity, such as the title and region of origin.<sup>27</sup> Publication of Patingtung Art is limited, publications about this art can be found on the website of the West Java Province Cultural Value Preservation Center (BPNB) in an article entitled "Patingtung, Kesenian Tradisional Kabupaten Pandeglang". And the Instagram account @budayaainggeh, the official account of Sahabat Pandu Banten, introduces many Banten cultures, including Patingtung, through its uploads. Protection through publication is governed by Copyright, which only provides protection at the inventory stage for its copyright contained in Communal Intellectual Property Data Center database. Meanwhile,

27 Mohammad Ryan Hernandi, "Aransemen Kontemporer Musik Tradisional Sebagai Inovasi Pemajuan Kebudayaan Dalam Lingkup Hak Kekayaan Intelektual", *Dharmasiswa* 2, no. 2 (2022): 789, <https://scholarhub.ui.ac.id/dharmasiswa/vol2/iss2/19>



Law No. 5 of 2017 on Cultural Promotion regulates the implementation of protection efforts through the Ministry of Education and Culture, Research and TechnologyK Integrated Cultural Data Collection System. There must be an effort to homogenize the protection, so that differentiated with terms of its copyright and protection efforts in preserving and promoting it. Although it has long been rumored that a law on Traditional Cultural Expressions will be drafted, there is no current information on the draft law's discussions.

Based on the research findings in the field, the Serang Municipality is seeking additional protection measures by preserving Patingtung art in the Serang Regional Cultural Preservation Ordinance No. 4 of 2013. This regional ordinance aims to preserve the cultural aspects according to the characteristics of Serang town, as regional culture is one of the social capitals that can be used in the implementation of development. The preservation of regional culture is an effort to protect, develop and use culture, which is dynamic in nature, according to Article 1(6). Articles 4 and 5 of the City of Serang Regional Ordinance regulate aspects of culture and its protection. Art, archaeology, history, museums, language, literature, tradition, belief in Almighty God, literature, writings and cinema are also preserved, according to Article 4(1). Article Patingtung fulfils the first requirement, namely Article 4(1). Article 5 then regulates the preservation of the Patingtung art through an inventory, stating that culture can be protected by: Recording, collecting, processing and organizing cultural information; Registration; Registration of intellectual property rights; Legality of cultural aspects; Research; and Enforcement of laws and regulations.

Preservation of Regional Culture is the development of regional protection from Copyright, and advancement of culture. Implement Article 5, the Government of the City of Serang, through the Regional Education and Culture Office, publishes the 2021 Database Book the Patingtung Art has been registered and designated as an Intangible Cultural Heritage of the Republic of Indonesia from the City of Serang, and it has also been re-

cognized as a Traditional Cultural Expression and recorded for registration, registration of intellectual property rights, and legality of cultural aspects as described above. For the Patingtung Art, determination and recognition are legal. Previous research on Patingtung Art includes "Designing an Android-Based Patingtung Art Tool Introduction Application" by Ahmad Dedi and Radi and "The Development of Patingtung Art in Serang Regency Banten: A Review of the Preservation of Local Cultural Values" by Rohmatul Fajri, which examines the history of this art. According to the explanation above, the protection of Patingtung Art for inventory efforts is currently being enforced as stipulated in Article 38 paragraph (2) Copyright, Article 16 Advancement of Culture, and Article 5 Preservation of Regional Culture.

Empirically, individual silat organizations in Serang City still have voluntary initiations in their activities to teach the art of Patingtung, as well as other arts such as bandrong and terumbu. Serang City Regional Regulation No. 4/2013 on Preservation However, the existence of a Regional Regulation and an organization is insufficient. Because Patingtung Art is a regional cultural preservation object, there is no benefit sharing regulation in Banten Province or Serang City. The Serang City government does not restrict the use of Patingtung Art, and there is no licensing mechanism. The copyright, on the other hand, only conducts an inventory of Traditional Cultural Expressions and does not regulate moral rights. Users may include ownership regional origin, and the licensing mechanism is governed by the local government or cultural community. While economic rights can be obtained through benefit sharing, the DJKI does not regulate in detail. For example, if performing a performance, a few percent is distributed to each party, as long as no party is harmed or burdened in benefit sharing.

Highly sensitive to infringement of moral rights. The above moral rights protection is difficult to achieve and is not explicitly regulated by copyright law, which does not guarantee and State's position on the moral and economic rights derived from exclusive copy-

right.<sup>28</sup> Copyright can be recognised through registration. Basically, it has economic rights, and if it is marketed by a party other than the state, profit sharing can be sought. Foreign parties can use traditional cultural expressions by first signing a user agreement and applying for permission to the local government where the traditional cultural expression originated, while observing the concept of revenue sharing, which aims to show respect to traditional communities for their traditional cultural expressions.<sup>29</sup> Another objective is to empower indigenous or traditional communities to create, preserve and promote the art of Patingtung in particular. Local authorities in each region where traditional cultural expressions originate should organise benefit sharing.

### Efforts Made in Support of Traditional Cultural Expressions of Patingtung Art

The section, implementation protection for Patingtung Art is based on two laws. To implement Patingtung art, it is necessary to make efforts to implement legal protection of Patingtung art. Efforts are attempts to achieve a goal or solve a problem. Efforts to implement the protection of Patingtung Art are very important for its preservation and security from the threat of foreign recognition, as well as providing support to the surrounding community as cultural bearers who preserve Patingtung Art. Therefore, the state must present a set of legal policies and development priorities.<sup>30</sup> Local governments are given the authority to manage concurrent government affairs handed over by the centre, one of whose obligations is the management

of traditional cultural assets. As a representative of the state, the Serang City Government is obliged to make efforts to protect, as the Patingtung Art that has been carried out, they are justified:

### Inventory

Inventory efforts are listed as the first protection in Article 38 paragraph (2) of Copyright, Article 16 of Cultural Promotion, and Article 5 of the Serang City Regional Regulation which lists inventory efforts as the first. According to Article 17 of the promotion of culture, it is obligatory to record and document Cultural Heritage Objects in its possession. The article reads that the Serang City Government is obliged to record and document Cultural Heritage Objects, in this research the cultural heritage object in question is Patingtung Art. Based on the 2021 Cultural Sector Database, the following are some of the silat studios and hermitages in Serang City and their development conditions :

### Serang Sub-District

Padepokan Pager Banten Kapuren, Padepokan GOMAR (developing), Sanggar Seni Aje Kendor DPP Bandrong Indonesia (developing), Padepokan Jalak Banten (developing), PPS. Bandrong Serang (developing), PPS. Bandrong Pulo Kali (developing), PPS. Bandrong Jaya Sampurna (developing), PPS. Terumbu Anyar (developing), PPS. Terumbu Lawas (developing), PPS. Cimalati (developing), PPS. Mande Hilir (developing), PPS. Asifia (developing), PPS. Tadjimalela (developing), PPS. Perisai Diri (developing), PPS. Paku banten (developing), PPS. Macan Paku Banten (developing), PPS. Kateda (developing), PPS. Buaya Depa (developing), PPS. TTKDH Ahmad Yani (developing), PPS. Kucing Hitam (developing), PPS. Sanca Lodays (developing), PPS. Lutung Kasarung (developing), PPS. Sera (developing), PPS. Jalak Rawi (developing), PPS. Mande Macan Guling (developing), PPS. Singandani (developing), PPS. Macan Sakti (developing), Padepokan Singandaru (developing), Perguruan Ilmu Seni Budaya Pencak Silat "Haji Salam Akbar" (developing), Pusaka Cimande Banten (developing), Banten "Korkot PPSTB" (developing),

28 Ida Bagus Wira Adi Manuaba, "Masyarakat Hukum Adat Dan Konsep Penguasaan Negara Atas Ekspresi Budaya Tradisional Di Indonesia", *Jurnal Kertha Semaya* 8, no. 12, (2020): 1838-1839, <https://doi.org/10.24843/KS.2020.v08.i12.p01>

29 Ni Putu Dina Darmita Agustiani, "Pengaturan Izin Pemanfaatan Karya Ekspresi Budaya Tradisional Atas Penggunaan Komersial", *Jurnal Kertha Negara* 9, no. 12, (2021): 1024-1025, <https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/74052>

30 Taufik H. Simatupang, "Sistem Hukum Perlindungan Kekayaan Intelektual Dalam Rangka Meningkatkan Kesejahteraan Masyarakat (Law System Of Intellectual Property Protection In Order To Improve People Prosperity)", *Jurnal Penelitian Hukum De Jure* 17, no. 2, (2017): 206, <http://dx.doi.org/10.30641/dejure.2022.V22.243-256>

Padepokan Lutung Kasarung (developing), Padepokan Ki Jiwantaka (developing), Padepokan Tjimande TTKDH (developing).

### **Taktakan Sub-District**

Padepokan Cadas Putih (developing), Ki Jaga Raksa (active), Padepokan Romal Patilasan Buyut Sayar (active), Padepokan Batu Maja (developing), Padepokan Garuda Mustika Putih (active/developing), Padepokan Banyu Biru (active/developing).

### **Curug Sub-District**

Padepokan Macan Putih Terumbu Banten (active/developing), Terumbu Satria Jaya Sakti (active/developing), Terumbu Sidulang Jaya Sakti (active/developing), Organisasi pemuda Kp. Gowok (active/developing), Ki Demoy (active), Padepokan Darma Pusaka Tunggal (active).

### **Maintenance**

Protection efforts through maintenance are regulated in Article 24 advancement of culture. The City of Serang's efforts to maintain the Patingtung Art are carried out through the "Cultural Dialogue (Cultural Preservation through Silatuhrahmi Peguron Kota Serang)" activity, which was last held in February 2022. This cultural dialogue is one of the agendas of dedicated to strengthening relationship between silat peguron in Serang City. The dialogue also discussed silat, including Patingtung, how to maintain it, plans to pay trainers, and hopes that in the future, funds for cultural development and maintenance will be budgeted in each village in Serang City, as there are funds for socio-cultural activities in each village in Serang City. The Authority also contributes to maintenance efforts through promotion and dissemination activities in each region. These activities are carried out in a region by inviting speakers or presenters and providing socialisation or dissemination of intellectual property to local governments, indigenous peoples, or customary/cultural communities by the Directorate of Cooperation and Promotion. The Banten Regional Office of Law also has an intellectual property dissemination programme once a year, and also has a field that handles

intellectual property within its structure.

Based on the foregoing, efforts must be made to implement protection for other Traditional Cultural Expressions, particularly security, rescue, and publication. Currently, protection efforts in the form of a small government program are limited to inventory, namely updating data and maintenance efforts by holding silahturami between silat peguron in Serang City, but the program is not solely focused on Patingtung Art, making this art unknown to many people. The lack of safeguarding, saving, and publicizing efforts at this time makes Patingtung Art extremely vulnerable to preservation. These preservation efforts, particularly cultural data collection, are extremely beneficial in gathering information about the history and development of Patingtung Art in Serang City. Other safeguards, such as security and maintenance, may appear to be neglected. Because there are few people who can play the drums and flutes, the Patingtung Art is at risk of being forgotten by young people if peguron trainers do not introduce the silat movements. As a result, more attention is required to ensure that it is not forgotten or even extinct. The main reason for Patingtung's music's difficulty is that there is no financial assistance from the Serang City Government to pay for trainers who come from distant colonies. Peguron Pencak Silat Macan Sakti Cipare's maintenance efforts include teaching patingtung silat movements to its members from elementary to junior high school, as well as participating in cultural festivals.

As for publication, it is still not neatly stored, and efforts to save it are only carried out through silat activities, such as encouraging peguron-peguron silat to continue teaching it to the next generation. For the implementation of protection efforts, it is also not limited to one culture, Serang City always budgets the Regional Budget for cultural preservation, but the focus of cultural preservation varies from year to year and is limited to one culture. The legality of cultural institutions is expected to be strengthened. If the local government provides assistance or guidance, there must be adequate protection. Efforts to preserve the Patingtung Art

require various parties who create, maintain and disseminate it, so it needs to be effectively involved in its management. Thus, the maintenance and preservation of intangible culture is theoretically a shared responsibility between the central government, local government, and all elements of society. It is very important for us as a society to preserve the cultural heritage of our ancestors.<sup>31</sup>

Based on the description above, regarding the efforts that have been carried out on Patingtung Art, it has not been able to develop protection that is translated into the regulation of Traditional Cultural Expressions through Law Number 28 of 2014 concerning Copyright, Law Number 5 of 2017 concerning the Advancement of Culture and local level regulations in Serang City Regional Regulation Number 4 of 2013 concerning Regional Cultural Preservation. Development is only in the inventory aspect in the form of recording and documenting art and aspects of art maintenance carried out by two ministries, namely the Serang City Education and Culture Office and the Banten Ministry of Law and Human Rights Regional Office. As previously explained that to protect Patingtung Art, Traditional Cultural Expressions are regulated by Copyright in three articles, namely Article 38 and Article 39 regarding the form of protection of Traditional Cultural Expressions and Article 60 regarding the period of protection, while on the other hand from the aspect of Cultural Advancement regulates five efforts to protect Patingtung Art law which is contained in six articles, namely Article 16, Article 22, Article 24, Article 26, Article 28 and Article 37. The Regional Regulation itself provides limitations on aspects of regional cultural preservation in Article 5 part one chapter III that regional cultural protection can be carried out through: recording, collecting, processing, and organizing cultural information; registration; registration of intellectual property rights; legality of cultural aspects; research; and enforcement of laws

31 Eva Juliana Purba, Akbar Kurnia Putra, dan Budi Ardianto, "Perlindungan Hukum Warisan Budaya Tak Beda Berdasarkan Convention for The Safeguarding Of The Intangible Cultural Heritage 2003 dan Penerapannya di Indonesia", *Uti Possidetis: Journal of International Law* 1, no. 3, (2020): 112, <http://onie-journal.unja.ac.id>

and regulations. Thus, relevant to the Traditional Cultural Expression of Patingtung Art, the Serang City Government in overcoming problems with efforts to protect the Traditional Cultural Expression of Patingtung Art can be overcome by re-reading the arrangements mentioned above to then be able to rearrange step by step further development. This is to prevent damage, loss or destruction of Patingtung's Traditional Cultural Expression.

#### D. Conclusion

Based on the explanation above, it is possible to reach the following conclusion: Traditional Cultural Expressions of Patingtung Art can be developed on three different levels. First, based on Law Number 28 of 2014 concerning Copyright, the form of protection is through inventory; second, based on Law Number 5 of 2017 concerning Advancement of Culture, the form of protection can be through inventory, security, maintenance, rescue, and publication. For regional protection, the Serang City Government completes the form of protection with the preservation of regional culture in Serang City Regional Regulation Number 4 of 2013. The Traditional Cultural Expression of Patingtung Art has only been the subject of inventory efforts, with maintenance efforts still being merged with other initiatives in order to keep maintenance to a minimum. On the other hand, forms of protection such as security, rescue, and publication have not been carried out. The Serang City Government is carrying out these activities in accordance with Serang City Regional Regulation Number 4 of 2013 on Regional Cultural Preservation. Article 5 of this rule already includes protective measures, but it is worth emphasizing again in terms of legislative enforcement. In other words, these efforts have not been carried out entirely in accordance with the mandate laid out in the regulation, article by article. As a result, many people are unaware of the presence of art, and its preservation becomes precarious.

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