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Legal Protection of Bambu Gila Dance as a Traditional Cultural Expression

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Abstract

This study aims to examine the bambu gila dance as a potential intellectual property for traditional cultural expressions in Maluku which should receive legal protection as part of efforts to defend cultural heritage from claims of ownership by other parties or other countries. Bambu Gila Dance is one of the famous traditional arts from Maluku. The traditional cultural expression in the form of the Bambu Gila dance is expressly protected by the Indonesian intellectual property rights system. However, protection for Bambu Gila Dance as a traditional cultural expression cannot be realized so that it can only be used by other parties illegally. This research is a normative juridical research supported by primary legal materials and secondary legal materials with a conceptual approach and statutory approach. Legal protection for the traditional Bambu Gila dance from Maluku Province has not been effectively implemented, both based on Article 38 of Law Number 28 of 2014 Concerning Copyright, as well as in terms of the actions of government officials who have not been able to inventory traditional dance performance artworks as an expression traditional culture in Maluku including the Bambu Gila Dance. The role of the Provincial and Regency Governments in Maluku is crucial in realizing legal protection for traditional dances, including the Bambu Gila Dance, as intangible cultural heritage through the establishment of regional regulations. These regulations serve as legal basic to provide legal certainty as part of efforts for preventive legal protection for the Bambu Gila Dance.

Keywords: Traditional Dances; Bambu Gila; Traditional Cultural Expressions; IPR.

Introduction

The country of Indonesia has so much abundant natural wealth. But not only abundant natural wealth, Indonesia as an archipelagic country has various crafts as a result of people's creativity. Natural wealth and an abundance of various handicrafts are an integral part of the nation's cultural heritage which is a distinct advantage for the Indonesian people. The results of creativity in the form of crafts that are

so diverse need to get legal protection, one of which is in the field of Intellectual Property Rights.¹

Community works are part of the intellectual property obtained from the ability to think of the community so that they are able to produce an intellectual work in a tangible form with the aim of fulfilling all kinds of necessities of life in order to improve people's welfare. The results of this community's creativity then produce new innovations in various fields of life such as art, technology, and science.² With the development of people's lives through new innovations that are made of course it can improve and develop the quality of human life from time to time.³ In the end, recognition and appreciation (rewards) are needed for the results of one's creativity with a legal order called the legal regime of intellectual property rights.⁴ Through regulation of the legal system in the field of IPR, it will provide legal protection that can protect the rights of creators from various forms of violations such as claims of ownership by other parties who are not responsible.⁵ In addition, the creators will get both economic and moral benefits for the work they create. Legal protection aims to provide stimulation to produce inventions or works that are more innovative.⁶ The scope of the IPR regime includes copyrights, patents, trademarks and geographical indications, industrial designs, layout designs of integrated circuits, trade secrets, plant variety protection, as well as traditional knowledge and expressions of traditional culture. Each scope of intellectual

¹ Husamah, 'Mengusung Kembali Khazanah Identitas Budaya Bangsa' (2009) 42 Jurnal Bestari.[41].

² Acmad Gusman Catur Siswadi, 'Perlindungan Hukum Terhadap Aset Pengetahuan Tradisional' [2010] Jakarta: Pasca Sarjana FH Universitas Indonesia.

³ Kholis Roisah, 'Perlindungan Ekspresi Budaya Tradisional Dalam Sistem Hukum Kekayaan Intelektual' (2014) 43 Masalah-Masalah Hukum.[372].

⁴ Liah Anggraeni Basuki, 'Juridical Analysis of Regulations Controlling Import or Export of Goods That Are Suspected of Originating from Intellectual Property Infringement, Particularly on Registered Trademarks' (2021) 36 Yuridika.[673].

⁵ Anak Agung Ayu Gayatri, Anak Agung Sagung Laksmi Dewi and Luh Putu Suryani, 'Perlindungan Hukum Atas Hak Kekayaan Intelektual Karya Seni Musik Gamelan Bali' (2021) 2 Jurnal Preferensi Hukum.[371].

⁶ Achmad Chosyali, 'Perlindungan Hukum Hak Cipta Buku Pengetahuan Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta' (2018) 3 Refleksi Hukum: Jurnal Ilmu Hukum.[49].

property in Indonesia is regulated by various laws and regulations.⁷ The scope of IPR regulation is based on the TRIPs agreement in which many countries have joined and become participants.

This shows that the international community cares about legal protection efforts, especially in the field of IPR.⁸ The significance of Intellectual Property Rights (IPR) in protecting cultural heritage is crucial because various cultural expressions often form a part of the identity of a society. The concept of cultural heritage can encompass traditional visual arts, music, dance, crafts, language, and various other cultural aspects. There are several ways in which IPR can play a role in safeguarding cultural heritage, such as copyright protection for traditional works, trademark and industrial design protection for traditional products, and even the recognition of cultural heritage through the protection of geographical indications and traditional cultural expressions. This fact provides very good benefits for increasing legal protection for new innovations produced in various countries, including in Indonesia. As one of the member countries of the TRIPs agreement and to show its concern for the protection of IPR, Indonesia has also ratified various international rules including those relating to the TRIPs agreement and issued laws in the field of IPR.⁹

In the global context, international entities like the World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) actively contribute to safeguarding cultural heritage through diverse initiatives and programs. WIPO assumes a pivotal role in establishing international standards concerning intellectual property rights (IPR). This involves offering technical support to member nations, particularly those in the developmental stage, to enhance their capabilities in the administration

⁷ Rian Saputra and others, 'Artificial Intelligence and Intellectual Property Protection in Indonesia and Japan' (2023) 3 Journal of Human Rights, Culture and Legal System.[210].

⁸ Kholis Roisah, 'Kebijakan Hukum "Transferability" Terhadap Perlindungan Hak Kekayaan Intelektual Di Indonesia' (2015) 11 Law Reform.[241].

⁹ Cecep Tedi Siswanto, 'Pelaksanaan Hukum Hak Kekayaan Intelektual (HAKI) Terhadap Desain Industri Pada Industri Kerajinan Bambu Di Wilayah Kabupaten Sleman' (2017) 11 Jurnal Cakrawala Hukum.

and protection of intellectual property facets, including those related to cultural heritage. Concurrently, UNESCO has ratified the Convention for the Safeguarding of the Intangible Cultural Heritage, targeting the protection of non-material cultural heritage, such as traditional visual arts, music, dance, and cultural customs. Managing the World Heritage Program, UNESCO strives to identify, preserve, and promote sites and cultural heritage of outstanding universal value. Additionally, UNESCO endeavors to raise awareness about the significance of preserving cultural heritage through educational and cultural initiatives that foster an understanding of and respect for cultural diversity. Both WIPO and UNESCO collaborate with member nations and diverse stakeholders to ensure that cultural heritage, whether tangible or intangible, receives suitable and globally acknowledged protection.

Currently, an IPR issue that is so important to study is the legal protection of intellectual property produced by indigenous peoples or traditional communities. Local culture as part of the local wisdom of traditional communities is increasingly being eroded by the influence of outside culture. For this reason, efforts to preserve and protect the law for the results of the creativity of traditional communities and national culture that are inherent in the soul of the Indonesian people need to be carried out in order to protect and maintain the existence of the nation's cultural heritage. One of the efforts made is the legal protection of intellectual property rights through the preservation of traditional cultural expressions.¹⁰

Various problems occurred with the traditional wealth of native peoples (folklore), which is one of the scopes of intellectual property rights. The intellectual wealth of indigenous communities faces a potential threat from external entities that might exploit or take control without authorization. Traditional cultural products or practices are frequently singled out for trade or commercial purposes without offering advantages to the native community. External factors, notably globalization and modernization, can contribute to the deterioration of local culture. Gaps in legal recognition may lead to the diminishing uniqueness and sustainability

¹⁰Devi Rahayu, 'Perlindungan Hukum Terhadap Hak Cipta Motif Batik Tanjungbuni Madura' (2011) 23 Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada.[115].

of traditional cultural practices, presenting a hazard to the safeguarding of cultural heritage. Problems arise related to claims of ownership by other parties of the cultural heritage of traditional communities that have existed for a long time and were passed down by their ancestors from generation to generation.¹¹ Even though this traditional wealth is the cultural identity of the traditional community which they have guarded for generations as a form of respect for their ancestors.¹²

At international level, efforts to protect traditional cultural expressions have been made by various international organizations such as WIPO (World Intellectual Property Organization) and UNESCO. The efforts made by UNESCO in order to provide protection for all cultural heritage owned by various countries in the world. Whereas WIPO specifically seeks to protect cultural heritage through legal protection in the field of Intellectual Property Rights, including legal protection for traditional cultural expressions.¹³ This shows that efforts to protect the law against Traditional Cultural Expressions are a very important matter by countries in the world and international organizations.

With so many and varied ethnic groups, races, ethnicities, Indonesia is a country that is rich in culture. Every region in Indonesia has its own unique traditions and culture which is the main attraction for outsiders to always visit Indonesia. The traditions and culture of this nation have existed for centuries and are passed down from generation to generation. This cultural heritage has been a work of expression of traditional culture since time immemorial. These cultural expressions are Indonesia's wealth and heritage which the government understands must be protected from actions that harm the expression itself or the people who produce it.¹⁴

¹¹ M Martono, I Iswahyudi and Aran Handoko, 'Topeng Etnik Nusantara Dalam Perkembangan Budaya Global' (2017) 32 MUDRA Jurnal Seni Budaya.

¹² Ida Ayu Sukihana and I Gede Agus Kurniawan, 'Karya Cipta Ekspresi Budaya Tradisional: Studi Empiris Perlindungan Tari Tradisional Bali Di Kabupaten Bangli' (2018) 7 Jurnal Magister Hukum Udayana (Udayana Master Law Journal).[51].

¹³ Lorraine V. Aragon, 'Copyrighting Culture for the Nation? Intangible Property Nationalism and the Regional Arts of Indonesia' (2012) 19 International Journal of Cultural Property.[274].

¹⁴ Diah Imaningrum Susanti, Rini Susrijani and Raymundus I Made Sudhiarsa, 'Traditional Cultural Expressions and Intellectual Property Rights in Indonesia' (2019) 35 Yuridika.[257].

Traditional Cultural Expressions, which was originally referred to as folklore, is a cultural heritage owned by indigenous peoples whose existence must be protected, because for indigenous peoples, folklore is a very valuable asset as an identity provider to some people from a country. Likewise with the Indonesian people who are rich in cultural heritage which is a national asset. As a developing country that has a variety of national traditions and cultures as part of traditional cultural expressions, efforts to protect the law in the field of intellectual property rights, especially regarding traditional cultural expressions, continue to be carried out through the formulation of the Draft Law on Traditional Knowledge and Traditional Cultural Expressions. However, until now, the Indonesian government has not been able to enact the draft law. This causes the legal protection of traditional cultural expressions to still cause problems because the existence of the special law does not exist. Legal arrangements regarding traditional cultural expressions in Indonesia still refer to Law Number 28 of 2014 concerning Copyright (Copyright Law). Provisions in the Copyright Act that regulate traditional cultural expressions are contained in Chapter V Concerning Traditional Cultural Expressions and Protected Works, particularly in Article 38. However, this regulation does not fully regulate efforts to protect these traditional cultural expressions, so it does not provide enough effective legal protection for traditional cultural expressions in Indonesia.

Forms of traditional cultural expression are described in the Explanation of Article 38 paragraph (1) of the Copyright Law, namely:

“What is meant by traditional cultural expressions includes one or a combination of the following forms of expression:

1. Verbal textual, both oral and written in the form of prose and poetry, in various themes and contents of messages in the form of literary or informative works.
2. Music, including vocals, instrumentals or a combination of both.
3. Movement, including dance.
4. Theatre, including wayang performances and folk plays.
5. Fine arts, both in two-dimensional and three-dimensional forms made of various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles and others or a combination of all.
6. Traditional ceremonies.”

Indonesian traditional cultural expressions are one of the potentials in the creative economy and tourism sector. Talking about tourism and the creative economy in Indonesia, such as the tourism industry in Bali, which is almost all based on EBT, has a very large contribution as a source of regional economic income and has made Bali known throughout the world. Likewise with Indonesia's creative economy which is currently experiencing rapid development including various crafts based on traditional cultural expressions such as the art of measuring wood, silver and copper, the art of batik which exists in almost all corners of Indonesia which has existed from generation to generation with various beautiful motifs. The results of this work have a great impact on Indonesia's economic progress by increasing foreign exchange for the country.¹⁵ This is certainly a big advantage for Indonesia. However, along with the advancement of current technological science, many of these works are used and claimed by other parties which provide benefits to those other parties. Various forms of commercialization of EBT occur even at the global level without the permission of the indigenous peoples who own it. This commercialization is also accompanied by various forms of distortion, alteration or inappropriate modification of the work.

In the reality of law enforcement on intellectual property rights in Indonesia, especially with regard to traditional cultural expressions, there are still many phenomena of claims for rights to a product of creativity, and some are even left untouched by effective legal settlement efforts. For example, the case that occurred between a Jepara Carved Furniture entrepreneur and a foreign entrepreneur PT. Harisson and Grill-Java, which PT. Harisson and Grill-Java registered their Jepara Carved Furniture products and received a Copyright. This then became the basis for PT. Harisson and Grill-Java to socialize and prohibit Jepara Carved Furniture craftsmen from not making carved furniture products as registered by PT. Harisson and Grill-Java. This of course resulted in local craftsmen of Jepara Carved Furniture experiencing huge losses by not being able to make Carved Furniture products

¹⁵Dyah Permata Budi Asri, 'Perlindungan Hukum Terhadap Kebudayaan Melalui World Heritage Centre UNESCO' (2018) 25 Jurnal Hukum Ius Quia Iustum.[256].

that had been made and produced for a long time.¹⁶ Apart from that, the case is even more serious, namely the creativity in the form of more than 1,800 traditional motifs of silver carving from Bali, namely batun timun, batun poh, parta ulanda, ear bolsters and jawan that have received legality through copyright registration by foreign nationals. This is something that doesn't make sense. The results of the creativity of traditional communities in Bali were confiscated by foreign nationals and their copyrights were registered, resulting in silver carving craftsmen in Bali being banned and some even being sued by foreign nationals for being accused of copyright infringement. This is something that is sad and gives a big loss not only to the craftsmen of various traditional crafts, but harms and robs the cultural heritage of the Indonesian people widely. If left unchecked, over time, many of the Indonesian nation's cultural heritage will change ownership to become the cultural heritage of other nations.¹⁷ The case of traditional silver craftsmen in Bali being sued by foreign giant businessmen or also silversmiths being sued in the American State courts by American businessmen not to mention the fact that most traditional silver designs are registered with copyrights by most foreign businessmen.¹⁸

No less sinister is the attempt to claim the cultural heritage of the Indonesian nation which is also carried out by Malaysia, which incidentally is a neighboring country to Indonesia. A big controversy occurred when the Malaysian state claimed the song "Rasa Sayang e" which is a traditional song from Maluku Province. It is clear that Malaysia has even included the song in one of the Visit to Malaysia tourism advertisements.¹⁹ Not only that, the State of Malaysia has again provoked the wrath of the Indonesian people by claiming Reog Ponorogo, Angklung Traditional Music,

¹⁶ Nita Triana, 'Menggagas Hak Kekayaan Intelektual Perspektif Hukum Islam Ke Dalam Hukum Nasional' (2018) 12 Al-Manahij: Jurnal Kajian Hukum Islam.[177].

¹⁷ Roisah, 'Perlindungan Ekspresi Budaya Tradisional Dalam Sistem Hukum Kekayaan Intelektual' (n 3).

¹⁸ Afifah Kusumadara, 'Pemeliharaan Dan Pelestarian Pengetahuan Tradisional Dan Ekspresi Budaya Tradisional Indonesia: Perlindungan Hak Kekayaan Intelektual Dan Non-Hak Kekayaan Intelektual' (2011) 18 Ius Quia Iustum.

¹⁹ Mohammad Ryan Hernandi, 'Aransemen Kontemporer Musik Tradisional Sebagai Inovasi Pemajuan Kebudayaan Dalam Lingkup Hak Kekayaan Intelektual' (2022) 2 " Dharmasisya" Jurnal Program Magister Hukum FHUI.[19].

Pendhet Dance, and Parang Batik. Indonesian people think that this is an insult to the Indonesian nation's cultural heritage that has existed since ancient times and has been passed down from generation to generation.²⁰

These cases show that violations against the intellectual property of the nation's cultural expressions are still unresolved and cause harm to the disintegration of the nation's culture. If not handled properly, clear and effective legal arrangements are needed in providing legal certainty and protection of the nation's cultural intellectual property. It is unlikely that the various cases that have occurred will also occur with various cultural assets of other nations in Indonesia which are rich in innovation, creativity and cultural patterns of the people, including in the Province of Maluku.

Maluku Province is one of 38 provinces in Indonesia which is rich in arts and culture including dance. one of the famous traditional arts from Maluku is the Crazy Bamboo Dance. Apart from being rich in artistic value, the *Bambu Gila* Dance is very thick with a mystical impression by using bamboo as its medium. *Bambu Gila* is one of the traditional arts that is quite famous in the Maluku region and is often displayed in various events, both traditional, entertainment and cultural events. The traditional cultural expression in the form of the *Bambu Gila* dance is explicitly protected by the Indonesian intellectual property rights system in the copyright law. However, protection for *Bambu Gila* Dance is still very weak so that it can be used by other parties illegally.

The type of research used in this paper is normative juridical research through literature studies using a conceptual approach and statutory approach. Conceptual approach through legal concepts and theories, especially those related to the problems studied. Meanwhile, the statutory approach is based on legal provisions in the field of intellectual property rights. The legal materials used are primary and secondary legal materials which are analyzed qualitatively in order to answer the problems studied related to the protection of traditional cultural expressions of the

²⁰ Eva Juliana Purba and Akbar Kurnia Putra, 'Perlindungan Hukum Warisan Budaya Tak Beda Berdasarkan Convention for The Safeguarding Of The Intangible Cultural Heritage 2003 Dan Penerapannya Di Indonesia' (2020) 1 Uti Possidetis: Journal of International Law.[90].

Bambu Gila Dance from Maluku Province. Therefore, this study will examine and analyze the importance of legal protection for the *Bambu Gila* dance as a traditional cultural expression originating from Maluku, which is cultural heritage, to prevent it from being claimed by others, as highlighted in some previously discussed cases.

Theoretical Framework

1. Natural Law Theory

Copyright proponents basically start to base their thoughts on copyright protection starting from the theory of natural law. Stainforth Ricketson,²¹ says:

“It has been popular to argue, particularly in Continental jurisdictions, that a person has a natural property right in the creation of his mind. Thus, it is said, a person has a natural right to the product of his labor and this should be recognised as his property, Whether tangible or intangible”.

Humans have natural rights over the products of human thought, both material and immaterial, which originate from their intellectual work and their ownership must be acknowledged. The views above can be the basis for everyone who is able to innovate and be creative in producing intellectual works including those relating to traditional community cultural expressions to be recognized and protected.

Natural Law Theory actually bases its teachings on the principles of natural law which originate from the intellectual nature of humans who want a peaceful society. According to the Natural Law Theory, there is a set of ideal and perfect laws, in which natural orders or natural tendencies are expressed for all of nature. This commandment mainly contains a set of rules of justice, or even morality in general which all humans know with the help of their reason or moral sense. As a natural commandment, this law expresses ethical principles that are natural to humans and are naturally sourced from human nature.²² Konsep-konsep kealaman merupakan pusat perhatian aliran ini. The mind meant here is the mind that pervades the entire universe. However, according to Khuzafah Dimiyati, this principle of natural law

²¹ Bernard Nainggolan, *Pemberdayaan Hukum Hak Cipta Dan Lembaga Manajemen Kolektif* (Alumni 2023).[64].

²² A Sonny Keraf, ‘Hukum Kodrat & Teori Hak Milik Pribadi’ (Kanisius Yogyakarta 1997).[10].

has been absorbed into international law such as *pacta sunt servanda*, respecting (the people's) property and returning the benefits derived from it, repairing damage caused by someone's mistakes, and recognizing certain things as punishment. which is what it should be. This absorption into international law so that it is no longer called natural law.²³

2. Theory of Rights

According to the theory of rights, an action or action is considered good if the action or action is in accordance with human rights. The theory of rights is an aspect of the theory of deontology (obligations) because rights cannot be separated from obligations like a two-sided coin. The theory of rights is actually based on the assumption that humans have dignity and all humans have the same dignity. Human rights are based on several sources of authority, namely:²⁴

- a. Legal rights are rights based on the legal system/jurisdiction of a country, where the highest source of law in a country is the constitution of the country concerned..
- b. Moral or human rights are associated with the human person individually, or in some cases associated with groups, not with society in a broad sense. Moral rights are related to individual interests as long as individual interests do not violate the rights of others.
- c. Contractual rights Binding individuals who make agreements or contracts together in the form of rights and obligations of each party.

3. Theory of Legal Protection

To examine theoretically the study of legal protection for traditional cultural expressions, the authors use the theory of legal protection as an analytical tool put forward by several experts, namely Fitzgerald, Satjipto Raharjo, Phillipus M Hadjon. According to Fitzgerald, as quoted from Salmond's view that law exists to be a limitation of behavior for all problems and problems that occur within the community, and to maintain that the rights and obligations of community members

²³ Khudzaifah Dimiyati, 'Teorisasi Hukum Studi Tentang Perkembangan Pemikiran Hukum Di Indonesia, 1945-1990' (Genta Publishing 2014).[63].

²⁴ Kees Bertens, *Etika K. Bertens*, vol 21 (Gramedia Pustaka Utama 1993).

can be fulfilled and not taken away by other parties.²⁵ Meanwhile, according to Satjipto Rahardjo, legal protection is an effort to provide direction for the interests, rights and obligations of members of the public who have been usurped by other parties, so that the community is able to enjoy the rights that actually belong to the community.²⁶

Furthermore, the opinion of Phillipus M. Hadjon stated that legal protection can be in the form of preventive legal protection (before the loss occurs) or repressive (after the rights have been violated and cause losses). Preventive legal protection can be found in various applicable statutory provisions as well as policies made to limit violations of community rights, while repressive legal protection includes efforts to handle, law enforcement and legal settlement both litigation and non-litigation.²⁷ Based on the definitions of some of these legal experts, legal protection is a very important part as an effort to maintain, protect, preserve and more than that empower the rights and obligations of the community to realize the welfare and benefits of the law itself. Through efforts to protect the law, the purpose of law in order to provide public order, justice, legal certainty and legal benefits can be realized.

***Bambu Gila* Dance as a Traditional Cultural Expression from Maluku**

Bambu Gila Dance is also known as *Bulu Gila* Dance. The word “Bulu” is a general term used by the people of Central Maluku and its surroundings to refer to bamboo.²⁸ This dance is originally from Maluku and has been a game since the Portuguese colonial era in the past. This dance has mystical nuances involving the presence of a spirit that will move a long bamboo stick carried by seven adults. The *bambu gila* dance has become increasingly rare due to various factors including, the handler of the *bambu gila* dance has died so there is no replacement, the process of inheriting spells and rituals by the handler is very closed to others so that the

²⁵ Raharjo Satjipto, ‘Ilmu Hukum’ (Bandung PT. Citra Aditya Bakti 2000).[46].

²⁶ *ibid.*[69].

²⁷ *ibid.*[54].

²⁸ Anatasija Limba and others, ‘Identification Of Science-Physics Concepts In The Traditional Game Of *Bambu Gila* And Its Implementation In Learning’ (2023) 4 *Edu Sciences Journal*. [1].

performance is very dependent on the handler who understands the spell and ritual, interest the younger generation and society towards traditional culture began to be replaced with modern culture. This shows that society as the creator of culture and the inheritor of culture itself is no longer able to maintain it. Various efforts can be made as an effort to maintain the *bambu gila* dance in Maluku.

The *bambu gila* Dance is actually a high-risk dance. That is why in every performance, a shaman/charmer reads spells to invite spirits while keeping the spirits under the control of the dancers. The shaman will usually bring a container filled with burnt incense which is a medium for presenting the Spirit. In fact, not infrequently in the show there are several *bambu gila* dancers who are possessed and unconscious. In this condition, the role of the dukun is needed again.²⁹

Bambu gila is a dance that was originally played only during traditional events in countries in Maluku, especially in Central Maluku and Ambon City, such as in Liang Village and Passo Village. *bambu gila* dance is a dance that can be performed anywhere without being bound by rules of place and time. The location that is generally used is the location of the sandy beach. This is because the *bambu gila* dance requires an easy place for players to fall down if they are unable to play again.³⁰ The process of preparing for the game until the end of the dance performance is under the control of a handler. This procession begins with the taking of bamboo by the handler which consists of seven barriers or segments that must be based on the provision of money. Giving this money is a sign of the handler's appreciation for the bamboo because it is considered to have value and a price that must be paid. The bamboo taken is cleaned and cut according to size, which consists of 7 (seven) boundaries or segments. The size of the cut bamboo is about 8cm in diameter with a length of about 2.5 meters. After the bamboo has been prepared by the handler, the next step is to prepare 7 (seven) players who stand on each bamboo barrier or segment. Players in this dance do not need to be trained first because what is

²⁹ Indonesiakaya.com, 'Makna Dari Kegilaan Sebilah Bambu Dalam Tari Bambu Gila'.

³⁰ Eris Kuswara, 'Makna Mendalam Dibalik Kemistisan Tari Bambu Gila Dari Maluku' (Koropak.co.id, 2022).

important is that players must be healthy and strong. Both boys and girls. Players can also change people. Players in this dance are not based on generation or age, what matters is people who are physically strong and healthy.³¹

Figure 1. Bamboo sticks (or *bulu* sticks in the Moluccan dialect) used in the *Bambu Gila* Dance



Source: beritasatu.com

After the players are ready to play, the next process is for the handler to prepare the incense, ginger and torches. Frankincense is considered to have value as something that is very liked or favored by ancestors and genies. The incense is burned in a small container so that the incense smoke will be approached on each barrier or bamboo segment which is believed to be the location of the jinn.³²

Figure 2. The handler burns frankincense in a small container



Source: <http://satupedang.blogspot.com>

The ginger in this dance is really needed by the handler to be chewed and sprayed on every barrier or bamboo segment because it is considered very liked by the genie as food.³³

³¹ Helmina Kastanya, 'Pemertahanan Tarian Bambu Gila: Peran Pawang Dan Mantra' (2015) 18 Jurnal. Kantor Bahasa Provinsi Maluku.[215].

³² *ibid.*

³³ *ibid.*

Figure 3. Ginger or Halia (in the dialect of the Maluku people)



Source: <https://www.halodoc.com>

Meanwhile, the torch in this dance functions as a command tool or command from the leader of the game. Wherever the torch is headed, the bamboo and players will also go there.³⁴

Figure 4. Traditional Torch In *Bambu Gila* Dance



Source: <https://ambon.tribunnews.com>

After the participants are ready to play, the handler recites a mantra silently to summon the spirits of the ancestors. It is believed that the spirits of the ancestors will not enter and control the players and bamboo if they don't burn incense and eat ginger. The handler summons the ancestral spirits using a mantra, so the next step is to recite the mantra on the incense once and then bring the incense closer to each barrier or bamboo segment. This is done three times. Then the ginger is eaten while reciting a mantra and then the pieces of ginger eaten are sprayed onto each bamboo segment. This is also done three times. The final step is for the handler to order the bamboo to go crazy and be able to control the player. What is able to direct the players and the bamboo to follow the direction we want is the way the handler

³⁴ *ibid.*

brings a burning torch and gives directions in the direction we want. After that the game is ready to be carried out led by a torch bearer. The game will end when the handler releases the bamboo from the player's hand.³⁵

Figure 5. *Bambu Gila* Dance Attraction Played by Maluku Youth



Source: <http://www.alambudaya.com>

From the ritual procession above, it can be said that the *bambu gila* dance is not a dance that has a pattern like other dances.³⁶ The players do not need to be trained to be able to play the dance. Players can also change people with the audience watching. So that the audience can be involved as a player without having to go through the training process.³⁷ In the *bambu gila* dance, the charmers and spells play an important role. The mantra in the *bambu gila* dance cannot be separated from the role of the handler who performs the ritual, starting from the process of taking the bamboo to the process of staging the dance. Mantras cannot become words that contain power or strength in the *bambu gila* dance if they are not accompanied by rituals performed by the handler. On the other hand, without a charmer to perform the ritual, the *bambu gila* dance cannot be performed.³⁸ Thus the importance of charmers and spells is the main thing that must be considered to maintain the *bambu gila* dance in Maluku. Being a handler in the *bambu gila* dance

³⁵ Martia Soa Mole, Mursalim Mursalim and Alfian Rokhmansyah, 'Analisis Tutaran Tarian Bambu Gila Di Maluku Tengah Ditinjau Dari Bentuk Dan Fungsi' (2018) 2 Ilmu Budaya: Jurnal Bahasa, Sastra, Seni dan Budaya.[196].

³⁶ Rally Vuja S Nurlala, 'Upaya Pelestarian Tarian Bambu Gila Sebagai Tarian Adat Ambon' (Sekolah Tinggi Pariwisata Ambarrukmo Yogyakarta (STIPRAM), 2018).

³⁷ Ismu Wahyudi, 'Eksplanasi Ilmiah Gerak Bambu Pada Atraksi Sulap Bambu Gila' (2023) 8 PSEJ (Pancasakti Science Education Journal).

³⁸ Kastanya (n 31).

is not an easy thing. There needs to be sincerity and big intentions. Becoming a handler is not just mastering the spell but truly believing in the power of the spell itself through the ritual procession is a part that must be considered.

The form of the spell used by the handler consists of two parts: the first part is a spell to summon the ancestral spirits, and the second part is a spell for the ancestral spirits that are summoned to control the players and the bamboo in the dance. The spell used to summon ancestral spirits is:³⁹

*“Au Upu Mateane, Au Wupu Tuhinane
Imoi lou Imoi Laha
Imi Apa Jin-Jin 150 Malaikat
Ale Imi Bantu You
Berkat La Ila Hailala
Berkat Muhammad Razul Allah
Berkat Upu Acan Bisa Mustajab”*

Each line in this mantra stanza has a certain meaning which can be described in the following explanation:⁴⁰

Au Upu Mateane, Au Wupu Tuhinane.

The meaning of the sentence is “you are male and female ancestors”. The male and female ancestors are considered as spirits that are able to help the handler and can comply with the handler’s requests. They are believed to be the parents (ancestors) of the handlers who have affection for their children and grandchildren so that they are considered sure to fulfill the requests conveyed to them.

Imoi Lou Imoi Laha

The meaning of the sentence is “go towards the sea and towards the land”. This sentence is a charmer’s request to the spirits of his ancestors. People in Maluku generally mention the term “sea” for the area or area that is located at the bottom while the term “land” for the area or area that is located at the top. Hence the request of the handler to order the ancestors to go to sea and to land with the intention that they can go and occupy and control the lower and upper parts of the area or area where the *bambu gila* game will take place. The ancestors were asked to go and summon the jinn to come to the aid of the handler.

Imi Apa Jin-Jin 150 Malaikat

The meaning of the sentence is “call the jinn 150 angels”. The meaning of this sentence is that the handler asks the ancestors to call the jinn both in the upper

³⁹ *ibid.*

⁴⁰ *ibid.*

region and the jinn in the lower region so they can come to help the handler. Jin-150 angels are believed to be genies consisting of 150 angels who are considered capable of helping handlers make bamboo and players go crazy or hypnotized in the game. The mention of the number 150 is not known for certain philosophically.

Ale Imi Bantu You

The meaning of the sentence is “you guys come help me”. This sentence is a sentence of request or statement of the charmer to the ancestors to ask the jinn of 150 angels to come help him.

Berkat La Ila Hailala

The meaning of the sentence is “Blessings of God”. This sentence contains the meaning of a handler’s belief that God as the ruler of the earth and heaven has more powerful powers than the ancestors or the jinn he summons. This statement is an expectation of blessings from God. Because the power of ancestral spirits and jinn cannot compete with the power of God who is very powerful. This sentence can be changed by the handler if he adheres to other beliefs. If Christians, Hindus, Buddhists and so on can adjust to their God.

Berkat Muhammad Razul Allah

The meaning of the sentence is “Thanks to Muhammad Razul Allah”. Muhammad as Razul Allah is believed to be able to help the handler in the *bambu gila* game. His power is considered to exceed the power of the jinn. This description shows the attitude of human recognition of the blessing of Muhammad Razul Allah in everything that is done by mankind. This sentence applies to handlers who are Muslim. If there are handlers who are Christians, Hindus, Buddhists and so on, they can adapt to their God.

Berkat Upu Acan Bisa Mustajab

The meaning of the sentence “Blessing of the *bambu gila* Lord”. The statement of this sentence is a form of acknowledgment that in this world other than God has power over humans. There are other things that have powers that can overwhelm humans and nature. Upu Acan is a term for the master of bamboo or the person who created the *bambu gila* dance who also has very powerful abilities in the *bambu gila* dance.

Meanwhile, the incantation used to make the summoned ancestral spirits control the players and the bamboo in the dance is:⁴¹

“Ute Mamanu Imi Mamanu
Ute Mamanu Imi Mamanu
Ute Mamanu Imi Mamanu”

The meaning of the sentence “*Ute Mamanu Imi Mamanu*” is “*bambu gila* madman”. So that the chanted spell can control the players and the bamboo in the

⁴¹ *ibid.*

dance, the handler will pronounce the spell sentence. Then after pronouncing it in front of the incense that has been burned, the handler approaches the incense on each of the seven bamboo segments. This process is carried out three times in a row. After the mantra is recited on the incense, the next process is for the handler to repeat the mantra sentence while chewing the ginger afterwards. After the ginger is chewed, the handler immediately sprinkles the ginger on each of the bamboo dividers. This statement is believed to be able to make bamboo and players go crazy or be hypnotized so that they can obey or follow the instructions of the game leader who brings torches and directs bamboo and players.⁴²

Typographically, the mantra in the *bambu gila* dance used to summon ancestral spirits is in the form of an old poem consisting of two stanzas with different numbers of words and lines. The mantra in the *bambu gila* dance is used to make the ancestral spirit that is summoned to overwhelm the players and the bamboo in the dance consists of one stanza which has three lines with the same number and form of words. In this section there is repetition of words and lines in one stanza. The function of the spell in this dance is to make bamboo and players can be hypnotized to follow the instructions of the game leader. In this game spells play a very important role. A charmer will not be able to make the bamboo and the player go crazy if he doesn't master the spell.⁴³

The above clearly shows that the *bambu gila* dance is very different from other dances. This dance does not require players to be trained before performing because this dance does not have a specific pattern. The success of this dance is highly dependent on the ability of the handler to cast a spell on the bamboo. Not to the player's ability to dance. The bamboo that the handler chants will be controlled by the spirit until the bamboo becomes heavy and cannot even be tamed easily. The bamboo felt very heavy because it was filled with spirit. The louder the accompaniment of the tifa makes the bamboo's strength increase. Only the handler is able to tame the bamboo when the player is tired and unable to hold the bamboo.

⁴² Mole, Mursalim and Rokhmansyah (n 35).

⁴³ Kastanya (n 31).

In the current development, along with the development of the era, this dance has begun to be modified and no longer uses the spirits in the bamboo as the core of the dance. Usually, in modified dances, shorter bamboo sticks are used, and even the dancers are mostly women. In the modified *bambu gila* dance, you will no longer find this mysticism. Even though the presence of the Spirit is a very interesting thing about this dance, the meaning of this dance is not the supernatural things in the dance. In fact, the movements of the dancers holding back the magical movements of the bamboo are a symbol of the value of togetherness which must be maintained. Leg movements that are in unison and full of strength show the spirit of mutual cooperation in the life of the Maluku people who are called *Masohi*. This meaning should be emphasized more in the *bambu gila* dance, and these values are still carried over in the modified *bambu gila* dance.

Bambu gila dance is a form of traditional cultural expression or partly oral folklore (partly, namely folklore whose form is a mixture of oral and non-verbal elements of folklore). Partly oral folklore in Indonesia, often called superstition, consists of verbal statements coupled with gestures that are considered to have magical meanings, such as traditional dances.

Legal Protection of *Bambu Gila* Dance as a Traditional Cultural Expression from Maluku in the Intellectual Property Rights System

Indonesia as an archipelagic country that has a variety of traditional arts and culture created by indigenous peoples as a sign of social and cultural identity based on standards and values that grow and develop in society needs to get legal protection, given how important traditional cultural expressions are for the State of Indonesia. especially for indigenous peoples as a pointer to the identity of the State, where there are traditional community rights within which it is necessary to obtain legal protection as a form of respect and a form of respect for the rights of traditional communities over their works. Protection of the people's rights to traditional cultural assets is one of the government's obligations, one of which is a constitutional obligation of the State based on the Amendments to the 1945

Constitution of the Republic of Indonesia, whereby the State respects the traditional culture of indigenous peoples as part of the national culture of the Republic of Indonesia in the midst of world civilization by guaranteeing people's rights in developing their cultural values, as stipulated in Article 18 B paragraph (2), Article 28 I paragraph (3), and Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Intellectual Property Rights are rights to property originating from human intellectual work, namely rights originating from the creativity of human thought expressed in various forms of works that are useful and useful for supporting life.⁴⁴ Through this perspective, legal instruments that protect traditional cultural expressions are under the auspices of the copyright regime. This can be seen by the inclusion of traditional cultural expressions in the Copyright Law, because copyright is a branch of intellectual property rights that incorporates traditional cultural expressions into the realms of art, literature and science.⁴⁵

Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions. (Article 1 point 1 of the Copyright Act). The Copyright Law also regulates traditional cultural expressions contained in the provisions of Article 38 paragraphs (1), (2), (3), and (4). traditional cultural expressions according to the elucidation of article 38 paragraph (1) of the Copyright Law are those that include one or a combination of forms of expression as described in the introductory section above.

Talking about the ownership of Traditional Cultural Expressions, the state is the fulcrum, and local governments as part of the state are to preserve, maintain and protect ownership of these Traditional Cultural Expressions. Article 60 paragraph (1) of the Copyright Law states that "copyrights for traditional cultural expressions held by the state as referred to in Article 38 paragraph (1) are valid indefinitely".

⁴⁴ Ni Ketut Supasti, 'Relevansi Hak Kekayaan Intelektual Dengan Hak Asasi Manusia Generasi Kedua' (2014) 14 Jurnal Dinamika Hukum.[518].

⁴⁵ Arif Lutviansory, *Hak Cipta dan Perlindungan Folklor di Indonesia* (Graha Ilmu 2010).[99].

This article clearly aims to protect traditional works. Even though the purpose of Article 60 paragraph (1) is to protect intellectual works in the form of culture, customs and cultural values contained in indigenous peoples, it will be difficult for traditional peoples to use them in protecting their works. This is caused by the difference in character between Intellectual Property Rights and traditional cultural expressions which makes the Intellectual Property legal system unable to protect traditional cultural expressions as a whole.

In the legal regime of intellectual property rights, traditional cultural expressions are characterized by the identification of the original creator who is unknown because its emergence is a culture that emerged from an oral tradition that was passed down from generation to generation.⁴⁶ For this reason, traditional cultural expressions as part of intellectual property rights need to receive effective legal protection in order to protect cultural heritage that has existed for generations.

Efforts to protect all interests and rights of the community through protection, even legal remedies, both psychological and physical in order to provide a sense of security and comfort from various forms of threats and harassment from other parties, are a form of legal protection.⁴⁷ Efforts to protect this law can also be carried out as protecting the rights and interests of the nation, especially traditional communities for their various cultural expressions.

Phillipus M. Hadjon said that, "legal protection for the people is a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in the judiciary".⁴⁸ From Hadjon's point of view, the emphasis is on preventive and repressive legal efforts that can be carried out in the

⁴⁶ Asri (n 15).

⁴⁷ Satjipto Rahardjo, 'Penyelenggaraan Keadilan Dalam Masyarakat Yang Sedang Berubah' (Masalah-Masalah Hukum 1989) Kompas, Jakarta.[17].

⁴⁸ M Hadjon Philipus, 'Perlindungan Hukum Bagi Rakyat Indonesia' (1987) 25 Bina Ilmu, Surabaya.[29].

law enforcement process, including those related to protecting the nation's cultural expressions that have been seized by other countries.

Legal protection has become global system, particularly since the making of Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPs agreement.⁴⁹ Traditional Cultural Expressions is a term used by WIPO in various forums around the world. The use of the term EBT put forward by WIPO is intended to provide an outline of a cultural work that is traditional in nature and owned by traditional communities as an intellectual work originating from traditional culture belonging to traditional community groups. The giving of this meaning will become a reference for determining an intellectual work from traditional culture and linking it to a society as its bearer.⁵⁰ This idea was carried out as an effort to acknowledge the existence of culture owned by traditional communities which leads to the protection of various cultural expressions.

Regulations regarding traditional cultural expressions in Indonesia are also related to the government's efforts to provide legal protection to parties who have an interest/ownership of traditional cultural expressions. Protection of traditional cultural expressions is regulated in Article 38 of the Copyright Act. Even though in the past a draft legal policy was drafted to regulate traditional cultural expressions in Indonesia in the form of a Draft Law Concerning Traditional Knowledge and Traditional Cultural Expressions, it has not been promulgated until now.

By paying close attention to the provisions of Article 38 Paragraph (1) that "the copyright on traditional cultural expressions belongs to the state", it can be argued that in a narrower scope, it is not excessive if the regional government can be interpreted as the embodiment of the country where the work of traditional cultural expressions grows and develops. Thus, the existence and role of the government is

⁴⁹ Kholis Roisah, 'Understanding Trade-Related Aspects of Intellectual Property Rights Agreement: From Hard and Soft Law Perspective' (2017) 3 Hasanuddin Law Review.[277].

⁵⁰ Julinda Idriaty, 'Perlindungan Hukum Ekspresi Budaya Tradisional Oleh Negara Sebagai Pemegang Hak Cipta Kekayaan Intelektual Komunal Masyarakat Sulawesi Tenggara Dikaitkan Dengan Hak Ekonomi Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta' (Thesis, Magister Hukum Universitas Padjajaran Bandung, 2015).

very important and decisive as bearers of traditional cultural expressions in order to realize the protection and preservation of works of traditional cultural expressions, including traditional cultural expressions in the field of traditional dance. In this context, local governments, both provincial and district/city, hold important duties and functions in protecting and utilizing them.

Traditional cultural expressions in the legal system of Intellectual Property Rights are included in the category of rights that are communal, not individual. This means that the ownership of these traditional cultural expressions is jointly owned by the local (traditional) community through the state.⁵¹ For this reason, comprehensive conservation and protection efforts are urgently needed to prevent or minimize violations or claims of ownership of traditional cultural expressions by other countries or other parties in an irresponsible manner.

Nevertheless, this legal instrument has not been able to provide optimal legal protection for the existence of traditional cultural expressions. This is because this Copyright Law is still experiencing problems in its implementation, as is the case in the provisions of Article 28 paragraph (4) of the Copyright Law which states that “further provisions regarding Copyright held by the State for traditional cultural expressions will be regulated more continue with Government Regulations”, however, until now there has been no government regulation that specifically regulates the existence of traditional cultural expressions.⁵²

This shows that the legal protection for the intellectual property of traditional indigenous peoples has not been maximized, thus causing the potential that should be fully owned by the State of Indonesia, to be exploited by foreign parties illegally. Like the State of Malaysia which claims the Reog Ponorogo dance as their cultural heritage to the case of registering the tor-tor dance which the State of Malaysia intends to do. With these cases, the government should be able to use this as a lesson to protect the existence of traditional cultural expressions and immediately improve the sustainability of legal protection.

⁵¹ Asri (n 15).

⁵² Philipus (n 48).

Maluku Province is one of the provinces in Indonesia which is very rich in traditional dance performing arts as an expression of traditional culture. One of them is *Bambu Gila* Dance. This *Bambu Gila* Dance is actually quite rare, even in Maluku itself. There are only a few villages that are able to perform this dance authentically, such as in Liang Village and Mamala Village, Central Maluku Regency. However, many dance studios in Maluku have studied it and taken the essence of this dance to present it in a more modern form. Usually, this dance is performed as a guest welcoming dance or entertainment in various formal events. *Bambu Gila* is an identity for the Maluku people that will not be found in other parts of the archipelago.

The reality is that there are outsiders who take advantage of traditional performing arts for commercial use, generally carried out by irresponsible parties by photographing traditional dance performances, making videos and so on, can be reproduced on CD or DVD, then commercialized outside Maluku without having to ask permission. This action is of course detrimental to the people of Maluku.

According to Endang Purwaningsih, assistance, motivation and government incentives are needed, in order to foster community participation in efforts to protect the law for intellectual property inherited from the nation. Empowerment with a participatory approach needs to be supported by appreciation, legal awareness, and concern and cooperation of various parties. All parties, be it the government, NGOs, the public, the private sector and even educational institutions (universities) need to unite in efforts to preserve and protect the culture and traditions of the Indonesian people.⁵³

In the context of preventing and minimizing such actions and increasing protection of *Bambu Gila* Dance as a Traditional Cultural Expression, the role of the Regional Government of Maluku Province, especially in documenting activities as a form of proof of ownership and existence of works of Traditional Cultural Expressions plays a very important role. Socialization about the existence of Article

⁵³ Endang Purwaningsih, 'Partisipasi Masyarakat Dalam Perlindungan Hukum Terhadap Kekayaan Intelektual Warisan Bangsa' (2012) 41 Masalah-Masalah Hukum.[42].

38 of the Copyright Law is also relevant to be carried out on an ongoing basis, so that apart from the government carrying out the documentation obligation, the public also understands and is aware of the importance of protecting the high-value traditional heritage works that they carry so that they remain sustainable and are not exploited by other irresponsible parties.

Retention of national sovereignty is necessary to protect traditional cultural expressions in proper quality, including economic values that can be used by citizens. In the context of preserving and developing culture in Indonesia, one of the institutions that plays a role and has a function in managing this culture is the Ministry of Education and Culture of the Republic of Indonesia. The authority of the Ministry of Education and Culture is regulated in the Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 11 of 2015 concerning the Organization and Work Procedure of the Ministry of Education and Culture. In Article 2 of the Regulation of the Minister of Education and Culture mentioned above, it is stated that the task of the Ministry of Education and Culture is to carry out government affairs in the fields of early childhood education, basic education, secondary education, and community education, as well as cultural management to assist the President in administering state government.

The management of local culture which is the authority of this Ministry is the duty and responsibility of the Directorate of Belief in One Almighty God and Traditions. The Directorate General of Culture is an agency implementing elements of some of the main tasks and functions of the department which are under and responsible to the Minister of Education and Culture. The task of the Directorate General and Culture is to carry out the formulation and implementation of policies in the fields of culture, arts, traditions, history, cultural heritage, museums, cultural heritage and other cultures.

Regarding management in the context of protecting Traditional Cultural Expressions which is the task of the Sub Directorate of Knowledge and Traditional Cultural Expressions in this case the Traditional Cultural Expressions Section, has the task of preparing materials for the formulation, coordination and implementation of

policies, norms, standards, procedures, criteria, technical guidance and supervision, development and preservation, evaluation, and reports regarding Traditional Cultural Expressions listed in Article 561 Paragraph (2) of the Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 11 of 2015 concerning the Organization and Working Procedures of the Ministry of Education and Culture.

In the provisions concerning the duties and functions of managing culture, especially intangible culture which in this regulation is called Intangible Cultural Heritage, it is managed by the Sub-Directorate of Intangible Cultural Heritage which has the task of carrying out the preparation of material for the formulation, coordination and implementation of policies, norms, standards, procedures, criteria, technical guidance and supervision, and protection of communal Intellectual Property Rights in the field of determination, proposal and management of intangible cultural heritage. The proposal was submitted to UNESCO as a world cultural heritage originating from Indonesia. The importance of recording cultural heritage, both material and intangible, is to avoid unwanted things such as cultural claims from other parties.

One way to protect Traditional Cultural Expressions is through the establishment of national archives and documentation in each country so that everyone can find Traditional Cultural Expressions found in their respective countries.⁵⁴ Recording of intangible cultural heritage is considered important because several elements of intangible cultural heritage are threatened with extinction. The extinction was caused by several factors both from outside (external) and from within the culture itself (internal).⁵⁵

In order to avoid the extinction of intangible cultural heritage in Indonesian territory, the government is now being responsive and establishing the protection of intangible cultural heritage since 2007 through Presidential Regulation Number 78 of 2007 concerning Ratification of the Convention for The Safeguarding of the

⁵⁴ Asri (n 15).

⁵⁵ Purba and Kurnia Putra (n 20).

Intangible Cultural Heritage, namely the Convention for the protection of cultural heritage. nothing. Until the end of November 2022, 11,622 intangible cultural works have been registered as Intangible Cultural Heritage of Indonesia managed by the Directorate General of Culture, Ministry of Education and Culture and 1,728 of them have been designated.⁵⁶ This indicates that the performance of the Ministry of Education and Culture in the context of participating in managing and protecting cultural traditions in Indonesia is increasingly evident. Meanwhile in Maluku Province through the Maluku Cultural Preservation Center in 2021 as many as 500 intangible cultural heritage from Maluku were recorded, and 22 of them have been registered with the Ministry of Education and Culture as intangible cultural heritage from Maluku Province.⁵⁷

Efforts to carry out inventory and documentation of various cultures in Maluku, are actually activities in the context of protecting various types of culture in Maluku, from extinction or threats of ownership of these cultures by other regions and countries. This effort also simultaneously implements the provisions in Intellectual Property Rights law in protecting Traditional Cultural Expressions, namely Preventive protection. With this inventory and documentation activity, it is hoped that claims of ownership of cultures in Indonesia, especially in Maluku, by other countries will be avoided. Therefore, to maintain and preserve the traditional cultural expressions of the Indonesian nation, it is not only necessary to have a *sui generis* law. Documentation and databases that support the preservation of traditional cultural expressions as a form of legal protection are also needed to support the implementation of the *Sui Generis* Law, the aim of which is to protect Indonesian culture from extinction.⁵⁸

Efforts to protect the law against *bambu gila* Dance as a Traditional Cultural Expression can be carried out by taking an inventory of the Maluku Traditional

⁵⁶ Id.wikipedia.org, 'Daftar Warisan Budaya Tak Benda Indonesia'.

⁵⁷ Antara News.Com, 'Teregistrasi, Sudah Diakui Dan Ditetapkan Harus Dijaga'.

⁵⁸ Andika Putra Herzani, 'Peran Pemerintah Dalam Menginventarisasi Ekspresi Budaya Tradisional Di Indonesia' (2021) 50 Jurnal Hukum dan Pembangunan.[956].

and Historical Values Preservation Center, then submitting legal protection to the Ministry of Law and Human Rights of the Maluku Regional Office to obtain a certificate of Traditional Cultural Expressions. The Copyright Law has not yet focused on the concept of protecting traditional cultural expressions. This was also disclosed by P.V Valsala G. Kutty in his research on Indonesia published by WIPO, that:

“In the absence of detailed regulations, as provided for under the Copyright act, there is a vacuum in the legal framework for the implementation of copyright protection for cultural products representing communal properties. It is not clear as to what mechanism will be developed for the commercial or other use of cultural products by foreigners, and whether any fair uses will be contemplated, and in addition, if any royalty will be prescribed to be paid for use of such cultural products. If such a mechanism is developed, to which agency would payment be made?”

The weakness of the Copyright Law in protecting Indonesian traditional culture contributes to the weak protection of traditional culture in Indonesia. The Central Government, Regional Government, and the community must be committed to making efforts to protect traditional cultural expressions. In this case, the Maluku Provincial Government, Regency/City Governments in Maluku, and the Maluku people, should pay more attention to seeking legal protection for cultural heritage in Maluku, including the *bambu gila* dance.

In the current era of regional autonomy, the role of the regional government of Maluku Province and Regency/City in managing traditional culture as a regional intellectual asset has become open along with the enactment of Law Number 23 of 2014 concerning Regional Government, the state gives authority to regional governments to carry out management relating to concurrent affairs to improve the welfare of the people in their respective regions as a form of regional autonomy. As stipulated in Article 12 Paragraph (2) and Paragraph (3) of the Regional Government Law, cultural and tourism matters are the affairs of the local government and of course this is closely related to the problem of protecting traditional cultural expressions. In Article 12 Paragraph (3), tourism affairs which are the affairs of the selected government are also left to the regions. Starting from this legal basis, the

Regional Government of Maluku Province and Regency/City in Maluku should play an important role in trying to protect EBT for traditional dances such as crazy bamboo. The efforts made are not only limited to introducing this dance in various regional events even at the national and international levels, but more than that, reflecting on the large part of the nation's cultural heritage claimed by other countries or other parties, efforts to protect the law are very important.

The regional government of the Maluku Province has affairs in terms of implementing national policies and establishing provincial policies regarding the protection of IPR in the cultural sector. Meanwhile, district/city regional governments in Maluku have affairs in terms of implementing national/provincial policies and establishing district/city policies regarding the protection of IPR in the cultural sector. Therefore, the regional government of Maluku Province needs to seek legal protection, especially with regard to efforts to preserve traditional dances as traditional cultural expressions that must be maintained and preserved in order to continue to foster the existence of cultural heritage in Maluku. Efforts that must be made are through the establishment of regional regulations in the field of protection of traditional cultural expressions.

With regard to ownership and cultural claims by foreign parties, the Regional Government, in this case the Province of Maluku, as the person in charge of administering regional government, in implementing regional autonomy has an obligation to preserve and protect the socio-cultural values of its people and can form and implement laws and regulations. according to their authority. Legislation regarding regional autonomy does not directly provide an explanation regarding the relationship between regional government and the Intellectual Property Rights system. However, in this case, the initiative and creativity of the Regional Government is needed to protect the Traditional Cultural Expressions of its people which are associated with Intellectual Property Rights, especially Copyrights.

Currently in Maluku there is no regulation that technically and concretely regulates the protection of various cultures in Maluku. So far, the role of the

Maluku Provincial Tourism Office as an institution in the area that manages various traditional cultures has not shown an effective role regarding obligations as stipulated in Article 38 paragraph (2) of the Copyright Law. This is caused by several factors including the absence of provisions regarding technical implementation to carry out identification, data collection and recording of the local culture. This is an urgent need, so that each region can publish related to local culture that has been properly inventoried and systematically documented.

Even though violations against the cultures that exist in Maluku are not yet visible, such as claims from other countries against culture in Maluku, this does not mean that in the future Maluku culture is safe from cultural claims by other countries. The potential for violations of cultural claims in Maluku will always exist, because Maluku's attraction is in its cultural tourism, so that it will raise the potential for claims against various kinds of culture which are regional assets. This is the reason for the importance of maintaining cultural values in Maluku in preserving and protecting culture in Maluku from various forms of violations. A protective and preventive attitude towards cultural preservation in Maluku will certainly be better for the sake of preserving the culture belonging to indigenous peoples in Maluku, one of which is the traditional *bambu gila* dance.

Efforts to realize the preservation of the existence of the *bambu gila* traditional dance as a cultural treasure inherited from the ancestors of the Maluku people are important to be carried out in order to maintain the existence of protecting this dance. This effort is not only limited to identifying, collecting data or displaying the dance in various national and international events, but more than that, efforts to protect the law are needed through recognition Through legal arrangements that provide legal certainty both at the provincial level through regional regulations and national level laws and regulations as well as firm efforts to fight for national cultural expressions with effective legal settlements in order to protect the cultural heritage owned by the Indonesian nation such as the *bambu gila* dance.

Conclusion

Legal protection for the *Bambu Gila* traditional dance from Maluku Province has not been effectively implemented, both based on Article 38 of the Copyright Law, as well as in terms of the actions of government officials who have not been able to inventory traditional dance performing arts as expressions of traditional culture in Maluku, including *Bambu Gila* Dance. Legal understanding of both government officials, performers of the arts and the people of Maluku, environmental factors, facilities and facilities, such as human and financial resources as supports, and cultural factors that adhere to a communal legal culture also contribute to the ineffectiveness of legal protection for the *Bambu Gila* dance in the Moluccas. Therefore, the provincial and district/city governments in Maluku need to establish local regulations on the protection of traditional cultural expressions as a preventive legal measure in the empowerment of the cultural heritage of the local community, including the *bambu gila* dance.

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