

# Perlindungan hukum ekspresi budaya tradisional (Folklore) dalam rangka pemanfaatan potensi ekonomi masyarakat adat Jepara = Legal protection for traditional cultural expression (folklore) in the exploitation of economic potentials by the traditional community of Jepara

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## Abstrak

Konsep masyarakat Barat yang individualistik dan kapitalistik tidak memungkinkan (preclude) untuk melindungi hak-hak dari masyarakat lokal atau suku bangsa asli (traditional communities and indigenous people) atas kekayaan intelektual (traditional knowledge/folklore) mereka yang pada umumnya tidak dimiliki secara individual oleh anggota masyarakat yang bersangkutan (kolektif). Akibatnya, banyak terjadi peristiwa penyalahgunaan hak (misappropriation) atas karya-karya folklore Indonesia, dan potensi ekonominya lebih banyak dinikmati oleh orang asing daripada masyarakat adat Indonesia sendiri, seperti pada kasus misappropriation ukiran Jepara. Bertujuan untuk mengkaji konsep perlindungan HKI dalam rangka pemanfaatan potensi ekonomi folklore ukiran Jepara yang optimal bagi keuntungan masyarakat lokal/adat Jepara, tesis ini mengangkat pokok permasalahan tentang implementasi UU Hak Cipta sehubungan dengan Hak Terkait (Neighbouring Rights) pengrajin ukiran dan masyarakat lokal/adat Jepara, apa yang menjadi kendalanya dan bagaimanakah mekanisme perlindungan yang telah diterapkan. Penelitian ini menggunakan metode penelitian yuridis normatif, yang dilakukan dengan cara wawancara, dan menggunakan pendekatan perundang-undangan (statute approach) dan pendekatan kasus (case approach). Hasil penelitian menunjukkan bahwa UU Hak Cipta belum cukup merepresentasi Hak Terkait yang dimiliki oleh para pengrajin ukiran dan masyarakat lokal/adat Jepara sebagai komunitas pemangku asli folklore Jepara. Hal ini disebabkan pengaturan folklore yang masih abstrak dalam UU Hak Cipta, ciri masyarakatnya sendiri yang komunalistik dan religius serta tidak paham HKI dan mudahnya orang asing memperoleh perlindungan Hak Cipta atas karya folklore ukiran Jepara, sehingga masyarakat Jepara belum dapat menikmati potensi ekonomi ukiran Jepara dengan semaksimal mungkin. Walaupun demikian ada beberapa mekanisme perlindungan yang dapat diterapkan, yakni upaya hukum pidana, hukum perdata, tindakan dokumentasi sebagai sarana defensive protection, serta perlindungan Indikasi Geografis (IG). Oleh karena itu, Pemerintah perlu melakukan sosialisasi mengenai pentingnya perlindungan hukum atas folklore serta mengkaji ulang pengaturan folklore di dalam UU Hak Cipta.

<hr>The individualistic and capitalistic concept of the western communities precludes protection to traditional communities and indigenous people over their traditional knowledge/folklores which are generally owned collectively by members of the communities. This has resulted in misappropriation of the Indonesian folklores by foreigners who have enjoyed more benefits from the economic potentials of such folklores than the Indonesian traditional communities themselves, such as, in the case of the Jepara carvings. With a view to analyzing the concept of Intellectual Property Rights protection in the framework of exploiting economic potentials of the Jepara folkloric carvings for the optimum benefits of the local/traditional community in Jepara, this thesis brings forward the issues of implementation of the Copyright Law in relation to the neighboring rights of the carvers and the local/traditional community in

Jepara, the obstacles thereof and the protection mechanism having been applied. The method of this study is juridical normative which is done by interviews, statutory approach and case approach.

The study shows that the Copyright Law has not sufficiently represented the neighboring rights of the carvers and the local/traditional community in Jepara as the original owners of the Jepara folklore. This is due to the still abstract stipulation of folklore in the Copyright Law, the characteristic of the community itself which is communalistic and religious and unfamiliar with the Intellectual Property Rights and the easy way in which foreigners may obtain copyrights protection over the Jepara folkloric carvings, all of which has prevented the Jepara community from enjoying the economic potentials of the Jepara folkloric carvings in the most beneficial way. However, some protection mechanisms are available, i.e. criminal law and civil law remedies, defensive protection by means of documentation, and geographical indication protection. In line with this, it would be necessary for the Government to socialize the importance of legal protection over folklores and to review the folklore provisions in the Copyright Law.