



ISSN : 2350-0743

www.ijramr.com



International Journal of Recent Advances in Multidisciplinary Research

Vol. 05, Issue 12, pp.4357-4362, December, 2018

RESEARCH ARTICLE

LEGAL PLURALISM AND TRADITIONAL CULTURAL EXPRESSION COMPREHENSIVE COPYRIGHT PROTECTION FOR INDIGENOUS PEOPLE IN INDONESIA

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ARTICLE INFO

Article History:

Received 14th September, 2018

Received in revised form

17th October, 2018

Accepted 20th November, 2018

Published online 26th December, 2018

Keywords:

Indigenous people,
Copyright of Traditional
Cultural Expression,
Legal pluralism.

ABSTRACT

Copyright of Traditional Cultural Expression that belong to indigenous people is the reflection of diversity in traditional wealth also showed the identity of Indonesian people. The occurrence of *missappropriation* by foreign people, it might be due to inappropriate protection by the state as the central protector. The state in its regulation was transplanting more values of Western law thus the valid legal system was no longer appropriate with the character of Indonesian people. In this condition, other legal involvement through legal pluralism would be necessary, given that Indonesia acknowledges the existence of society law and religious law (Islamic law) as the law prevails in the society. This study is a normative study with legal pluralism concept approach, thus infers that the correct protection by the state toward copyright of indigenous people over Traditional Cultural expression was by integrating the existing legal values which reflected through society law and religious law into the national law to form a national law in accordance with the character of Indonesian people.

INTRODUCTION

Copyright in Traditional Cultural Expression is one part of the Intellectual Property right that should be protected. Various tribes in Indonesia have created a wealthy Traditional Cultural Expression. The existence of this cultural expression was becoming the inseparable part of indigenous people as its actors. Indonesia is the country that consist of various tribe, ethnic groups and religions.¹ This diversity gave birth to the concept of unity in differences which was stated in the ideology of Pancasila as the ideology of the state. Pancasila warranty that within law enforcement there shouldn't be discrimination, that law should protect the weak and that law should be democratic. Therefore, in solving dispute based on diversity, legal pluralism would be highly necessary. The concept of diversity was also seen in state's acknowledgement over legal pluralism as the instrument in formation of state law to create a just and welfare society. Legal pluralism in Indonesia was dominated by the role of society law and religious law (Islamic law). Though position of these laws was weak but it was still quite alive and acknowledged by the state.

This showed that legal pluralism can be a valuable thing because this would force people to pay attention toward the structural feature the social region as the context of people behavior subjected to those laws.² This condition can be an opportunity for legal regulation as the comprehensive protection for the existence of copyright of Traditional Cultural Expression and also toward other communal wealth. Current condition showed that the existence of Traditional Cultural Expression (TCE), either in its original form or its reproduced form, has become the object of commercialization in industrial and trade sector, there was concern regarding its *missappropriation*, impairment in cultural values, and exploitation by other parties whether from internal or external parties. In reality, this concern do occurs, one of the Traditional Cultural Expression of Indonesian people that has been exploited by foreign parties was: the action of British citizen Christopher Harrison through his company Harrison & Gil which claimed the copyright for Jepara carvings.³ Other issues occurs in Indonesia was the claiming of Traditional Knowledge and Traditional Cultural Expression of Indonesia by the Malaysian, in a commercial ad *Discovery Channel Dalam Enigmatic Malaysia*, airing Pendet dance, wayang, and Reog Ponorogo which were claimed to be the traditional wealth of Malaysia.⁴ Although eventually Malaysian authority

¹ Data BPS tahun 2010 menyebutkan jumlah suku bangsa di Indonesia mencapai 1340, dari jumlah tersebut terdapat 15 etnik yang memiliki anggota lebih dari 1 jiwa, selebihnya merupakan kelompok etnik dengan jumlah anggota kurang dari 1 juta jiwa yang tersebar diseluruh wilayah kepulauan Indonesia, lihat Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional Direktorat Perlindungan dan Kesejahteraan Masyarakat, *Masyarakat Adat di Indonesia Menuju Perlindungan Sosial Yang Inklusif*, (Jakarta: Direktorat Perlindungan dan Kesejahteraan Masyarakat Kementerian PPN/BAPPENAS, 2013), hal. 15

² Ibid hal. 39

³ Yusna Melianti dkk, *Pengaturan folklor Secara Sui Generis Dalam Undang-undang Tersendiri* jurnal *masalah-masalah Hukum*, jilid 45 No.1, hal. 75

⁴ Badan Penelitian dan Pengembangan HAM Kementerian Hukum dan HAM RI, *Perlindungan Kekayaan Intelektual Atas Pengetahuan Tradisional & Ekspresi Budaya Tradisional*, (Bandung, PT. Alumni, 2013)

has apologized to Indonesia, this experience can be used as a valuable lesson so that Indonesia pay more attention toward its traditional cultural wealth. Protection toward the right of Indonesian indigenous people concerning Cultural Expression copyright was currently insufficient. Therefore, infringement such as *missappropriation* by foreign parties frequently occurs. Subsequently, the right of indigenous people over Traditional Cultural Expression copyright was an intangible wealth that was acknowledged and protected by society law, and the state also acknowledges it constitutionally in 1945 Constitution of the Republic of Indonesia in article 18b. Islamic law as one of the law that contributes in legal pluralism, can strengthened the acknowledgment by society law and state law toward the right of indigenous people over their traditional wealth. Cultural characteristic of Indonesian people with wealth from communal right in the form of Traditional Cultural Expression shows typical character as the nation's character, thus the existence of legal pluralism has give opportunity to create fairer law in the future.

MATERIALS AND METHODS

This research type is a normative legal research namely doctrinal method or research. The research approaches used were statute approach, case approach, historical approach, comparative approach, and conceptual approach. The type of legal material in this study consists of primary, secondary, and tertiary legal materials. Primary, secondary and tertiary legal materials are obtained in libraries and related agencies. The collection of legal materials was conducted through a documentation study in the form of primary, secondary, and tertiary laws through inventory, selection, and systematization, to explore the documents and literature according to the research problem. The technique of obtaining legal material is by searching the literature through libraries, both libraries of various universities and public libraries and through the internet. Legal materials that have been collected were analyzed qualitatively using inductive and deductive thinking processes so that they can be interpreted in the form of statements. The analysis technique used was grammatical interpretation or interpretation according to a language, and comparative interpretation is an interpretation by comparing, looking at the clarity of a constitution, in this case, is the view of Islamic law, through *Maqasid al Syari'ah* method, in giving legal protection toward the right of indigenous people over their Traditional Cultural Expression and refer it to National law as the contribution of Islamic law to develop a fair, beneficial and certain national law.

RESULTS AND DISCUSSION

Protection of Traditional Cultural Expression Copyright in Indonesia

The Definition and Scope of Traditional Cultural Expression: Previously, Traditional Cultural Expression was known with the term *folklore*, in which this term was stated in *Recommendation on Safeguard of Traditional Culture and Folklore* 1989. In this recommendation, it is stated that *folklore* is the tradition-based creation of a cultural community, can be expressed by group or individual and acknowledge also assumed to be the reflection of social cultural identity. Standard and value in this *folklore* was delivered orally from generation to generation. *Folklore* in this recommendation

would include language, literature, music, dance, game, myth, ritual, habit, architecture and other art branch (point A of recommendation).⁵ The term *folklore* was then changed into "Traditional Cultural Expression" which was influenced by the use of "Traditional Culture Expression" term during international negotiation in WIPO forum. The term Traditional Cultural Expression was since then has become legal term in Copyright Statute no 28 of 2014 and in bill or draft of Traditional Knowledge-Traditional Cultural Expression Statute. In WIPO document, Traditional Cultural Expression (TCE) contain meaning as all form of expression, either material (tangible) or combination of both, which shows the existence of a culture and traditional knowledge conveyed from generation to generation include: phonetic expression or verbal expression such as babad stories, legend, poetry, puzzle and other narrated form; sound or music expression such as song, rhythm, instrumental music and sounds as ritual expression, movement or act expression such as dances, games, ritual ceremony, traditional sport, wayang performance and others; material (tangible) expression such as arts object, handicraft object, mask, architecture, spiritual objects and sacred places.

An expression can be included in *Traditional Cultural Expression* (TCE) if it shows the intellectual activity of individual or collective involved, it was typical character of the identity and inheritance in a community, and has been maintain, used or developed "by the related community, or by individual who has the right or responsibility to do it in accordance with the law and custom practice in the related community".⁶ Indigenous society as one of the community that create an invention has also maintain the continuity of this Cultural Expression inherited from their ancestors. However, they were always marginalized and their existence was commonly ignored, even regarding their own wealth. High number on *missappropriation* by foreign party external to the indigenous community has threatened the existence of Traditional Cultural Expression carrying these indigenous values. The great irony is that indigenous people did not gain economy profit from this utilization. After looking at this condition, it should be the obligation and responsibility of the state to give sufficient protection toward indigenous people, with legal tools in accordance with the character of Indonesia. Protecting the right of indigenous people over their traditional wealth in cultural expression has brought consequence in maintaining this traditional wealth' objects, which were also, part of the state's wealth. If protection was able to be given in sufficient manner, the purpose of welfare and fairness in the formation of state law would be automatically obtained because all citizens were able to enjoy it. This should become the future hope, that is, by realizing justice by the state in the form of protection toward its indigenous people's traditional rights so that their existence would always appreciate and respected.

Traditional Cultural Expression Copyright Protection in National and International Legal Framework: There were several international legal instruments related with the protection of Traditional Cultural Expression, such as: 1)

⁵ Recommendation on the Safeguarding of Traditional and Folklore 15 Nopember 1989, http://portal.unesco.org/en/ev.phpURL_ID=13141&URL_DO=DO_TOPIC&URL_SECTION=201.html, diakses tanggal 2 Nopember 2018

⁶ Peter Jaszi dkk, *Kebudayaan Tradisional Suatu Langkah Maju Untuk Perlindungan di Indonesia* (Jakarta; LSPP, 2009), hal.51

Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Forms of Prejudicial Action 1982, 2) *Recommendation on the safeguarding of traditional culture and folklore* 1989, 3) *The Matatua Declaration on Cultural and Intellectual Property Rights of Indigenous People* 1993, 4) *UNESCO Convention for the Safeguard of the Intangible Cultural Heritage* 2003, ratified through PP No 78 of 2007, 5) *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression* 2005, 6) *Beijing Treaty on Audiovisual Performance* 2012, 7) TCE protection through copyright provision in *The Bern Convention for the Protection of the Literary and Artistic Works* (Bern Convention) 1967, 8) *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expression/Folklore*. International protection toward Traditional Cultural Expression was also published in *WIPO Performance and Pongrams Treaty* (WPPT), which is the international agreement signed by member states of World Intellectual Property Organization (WIPO) in Geneva, December 20th, 1996. This treaty aimed to developed and maintain the protection of voice recording actor's and producer's rights in a uniform and effective manner, including Traditional Cultural Expression, as part of the *live performance*,⁷ therefore the protection toward the right of performers over the performance works can also be used in the context of Traditional Cultural Expression protection. Regulation of Traditional Cultural Expression currently lies in article 38 of Copyright Statute, whereas in this article it is stated that copyright in the form of Traditional Cultural Expression was hold by the state, and of course this rule was very general and vague. It means, further explanation and regulation was necessary in the enforcement rules. Material formulation that should be formulated were:⁸ a) personification as the right holder should be Ministry of Education and Culture, Ministry of Legal Affairs and Human Right, Ministry of Domestic Affairs or others, b) Copyright of Traditional Cultural Expression was hold by the state, what was the meaning of 'hold', the legal construction of the phrase 'hold by the state' carry what kind of meaning, more clarity in its understanding was needed, c) concerning the state was required to inventory, to maintain and nurture the traditional cultural expression, it needs further arrangement such as by what effort and what is the form to maintain and nurture the traditional cultural expression should be fully described. Other than Copyright Statute, there was Statute no 11 of 2010 concerning Natural Conservation and Statute no 5 of 2017 concerning Cultural Advancement. These statutes, in its meaning regarding protection, were only to maintain and preserve, and thus not yet arrange the kind of protection that directed toward economy justice for indigenous people.

Protection of Traditional Cultural Expression Copyright in Society Law: If seen from the cultural aspect, society law is also part of the culture of Indonesian people. Society law is the reflection of mindset and spiritual structure of Indonesian people which convey certain pattern in the mindset and

eventually create a certain legal pattern. It means that spiritual structure and the mindset of Indonesian people would reflect through the society law itself. Society law as the *living law* was conceptualized as a legal system formed and originated from empirical experience of past people, which was assumed to be fair or proper and has obtain legitimate permission from the society leader and thus it was binding in nature and must be obeyed (normative).⁹ This compliance toward society law has gone through a very long process. Society law was born far before the influence of Hindu, Islam and even Netherland colonialism in Indonesia. Up to date, this society law (custom law) was able to survive and still become part of Indonesian culture and also become the unifying factor of Indonesian people.¹⁰

The existence of norms within the society was born simultaneously with the interaction of social community which form societal communities full with moral values within. These norms were maintain and also becoming tools to access and to regulate natural resources,¹¹ based on the existing values to obtain welfare. Protection given toward traditional wealth in Cultural Expression copyright was different than state law. The state was currently arranging the Traditional Cultural Expression copyright protection by referring to conventional copyright law which refers to TRIPs-WTO treaty. This treaty demand modern/novel trait as its protection requirement while Cultural Expression is indigenous people's property inherited from the past generation and cannot possibly be modern or novel. Other requirement was the protection by conventional copyright law which demands individual ownership while Cultural Expression belongs to communal ownership. Clearly, according to society law, "*property right*" over tangible object means "*belonging right*" or "*possessing right*" and was not absolute in nature.¹² Meanwhile, in Western law there was something known as "*eigendom right*" (own right) as regulated in civil code of article 570. There was clear difference between both, property right in western law would approve the utilization of object by its owner in free manner, however, property right in society law has social function and thus cannot be use or utilized freely. It means that communal norms in Indonesia was highly different than those of Western philosophy, who think of individual as the center of law protection and thus the life, the property and the freedom of an individual should become the focus of their legal protection.¹³

Protection of Traditional Cultural Expression Copyright in Islamic Law: Islamic law is one of the acknowledged law in Indonesia and one that still exist as integral part of the national law in Indonesia. The existence of Islamic law has become an opportunity to contribute in thinking about state law formation. Islam has seen the copyright as the 'right' under the assumption that every right should be protected. Concept of right in Islam was very clear whereas right is part of wealth (*maal*) and must be protected in accordance to the principle *hifzul maal* (wealth/property protection) in *maqasid al syari'ah* (legal determination objective) approach. The general

⁹ H.R. Otje Salman Soemadiningrat, S.H., "*Rekonseptualisasi Hukum Adat Kontemporeri* ", (Bandung: PT. Alumni, 2011), hal. 27

¹⁰ Grante, Brunce, *Indonesia* (Australia: Melbourne University Press, 1996) 3rd ed. hal 4

¹¹ Ade Saptomo, S.H., M.H., *Hukum Dan Kearifan Lokal Revitalisasi Hukum Adat Nusantara*(Jakarta: PT. Grasindo, 2010), hal. 25

¹² Hilman Hadikusuma, S.H., *Hukum Perekonomian Adat Indonesia*, (Bandung: PT. Aditya Bakti, 2001), hal. 25

¹³ Afifah Kusumadara, *Konflik Hukum HAKI Dengan Adat Di Indonesiaxy 4dvc* (Jurnal Arena Hukum, No 12, November, 2000), hal. 4

⁷ Kholis Roisah, *Perlindungan Ekspresi Budaya Tradisional dalam Sisitem Hukum Kekayaan Inteletual* <https://www.scribd.com/document/369092267/4678-ID-Perlindungan-Ekspresi-Budaya-Tradisional-Dalam-Sistem-Hukum-Kekayaan>, hal. 376 di akses tanggal 15 Oktober 2018

⁸ I Wayan Suparta, *Perlindungan Hukum Pengetahuan Tradisional dan Ekspresi Budaya Tradisional*, dalam Bibin Rubini, et.al. *Meneroka Relasi Hukum, Negera, dan Budaya*(Jakarta: Yayasan Pustaka Obor Indonesia Berjasama Dengan Fakultas Hukum Universitas Pakuan, Bogor, 2017), hal. 232

definition of the right is a provision used by scholars to determine power or legal burden.¹⁴ Some people would define right as the power about something or something obligatory from one to another.¹⁵ If one was given the authority thus this authority would become the “right” of one to rule something that was becoming his right. However, according to Islamic law this authority should be acknowledged in *syara'*, if it wasn't acknowledged, then it cannot be called “right”. For example, if someone stolen or taking the object of others, then *de facto* speaking, the object belong to the thief however in *syara'* stealing was not justified and thus the authority of the object was not called “right”.

Therefore, right in its implementation was always related with the maintenance of other *masalah* (welfare) and should not inflict damage toward common interest. It means that every individual has no absolute freedom to use their right, because he/she is not the absolute owner and was restricted by other's welfare in using their right so that they cannot use their right arbitrarily and inflict harm to others. Therefore, “right” according to Fauzi is the authority related to power and determined by *syara'*.¹⁶ In this context, Islamic law has the similarity with society law in which “right” as the property/wealth carries social function and thus should be used to consider other's welfare. If we were looking at the definition of copyright as part of the intellectual property right, according to Oran *the dictionary of the law intellectual property* was define as follow “*intellectual property or similar intangible right in an original tangible or perceivable work. The rights obtain a copyright, patent etc*”.¹⁷ The point is that copyright as part of intellectual property (IP) is the wealth/property produced by economy value-laden creation.

Therefore, right can be categorized into *haqq adami* (human), which means the right intended to maintain human *masalah*/welfare that is the right to create. To maintain the continuity of this *masalah* thus legal protection was needed to maintain it from bad deeds.¹⁸ Toward all kind of *missappropriation*, either piracy or stealing, Islam has clearly forbid it.¹⁹ In line with this, fatwa from Majelis Ulama Indonesia (MUI) as one of the self-support institution that acts as guiding entity for Moslem and as the advisor also as the bridging entity between the scholars and the government in supporting national development has determine its decision regarding intellectual property right and copyright in fatwa MUI No. 1 of 2005 which suggested that Islamic law view copyright as the intellectual property right that should be protected, can be given away and inherited, also forbid (haram) all kind of infringement particularly piracy.²⁰ Though fatwa were mostly only act as opinion but it can give strong influence if this fatwa was positivized into national law.

Legal Pluralism as Comprehensive Protection Instrument for Traditional Cultural Expression Copyright in the Future: Legal pluralism phrase was translated into legal diversity or rules diversity.²¹ Legal pluralism concept was a concept whereas there was two or more valid legal system in a country.²² This also means that legal pluralism is the existence of more than one legal order in force within a community.²³ However, there were still opinion differences in giving meaning toward this pluralism, whereas in one hand, pluralism was perceived as the acknowledgment of one legal system by another legal system, which commonly the state law; on the other hand, the existed legal pluralism did not consider acknowledgment between one legal system by other legal system.²⁴ The first type was called weak legal pluralism by J. Griffith or Woodman would called it legal pluralism as “state law”, refers to legal construction whereas the dominant legal rules would give some space either explicitly or implicitly, for other law type such as society law or religious law. It means that state law would legitimate and acknowledge the existence of other law and putting it into state law system. While the second type was called “strong” pluralism, which refers to a situation that contain two or more legal system works hand in hand, with its own legitimation basis.²⁵

Indonesia uses three legal systems which are society law, Islamic law and Western law. However, in the reality, the state as the central regulator has adopt more western law in its enforcement, thus the legal pluralism tend to be weak. This can be seen from several cases of legal disharmony between law prevail among community (society and religious law) with state law. Conflict between state law with society and religious law emerge due to national law development policy which transplant the ‘foreign’ law. The word foreign in this matter might have two meaning, in one hand ‘foreign’ was originated from colonialism law implemented in colonial region, and on the other hand, ‘foreign’ might refers to national law that become the product of unification and legal modernization, in which both were directly or indirectly eliminate the diversity of people's law or element of legal system outside of state/national law system.²⁶ The existence of Traditional Cultural Expression copyright among indigenouse people was one of the examples of this transplantation whereas copyright statute currently refers to Intellectual Property Rights (HaKI) from western law which was not in line with the character of Indonesia. Traditional Cultural Expression copyright is a communal right while western's Intellectual Property Rights was protecting somewhat individual right. If we stick to the current positive rules then legal conflict would occurs and resulting disharmony in its enforcement. Therefore, we need a solution as the compromising way in solving these issues. In the case of Traditional Cultural Expression, other effort was needed concerning its regulation, such as making *sui generis*

¹⁴ H. Hendi Suhendi, *Fiqih Muamalah*, (Jakarta: RajaGrafindo Persada, 2016), hal.32

¹⁵ *Ibid.* hal 33

¹⁶ Wahbah Al Zuhaili, *Fiqih Islam Wa Adillatuhu*, jilid IV (Jakarta: Gema Insani, 2011), hal. 364

¹⁷ Daniel Oran J.D, et all, *Dictionary of The Law*, Third Edition, west legal studies, 2000. Hal 253

¹⁸ Q. S. As Syuara': 183; “*dan janganlah kamu merugikan manusia pada hak-haknya dan janganlah kamu merajalela dimuka bumi dengan membuat kerusakan*”

¹⁹ Q.S. Al Baqarah 188: “*dan janganlah sebagian kamu memakan harta sebagian harta yang lain diantara kamu dengan jalan yang bathil*”

²⁰ Fatwa MUI No 1 tahun 2005 tentang Hak Cipta

²¹ Ricardo Simarmata, *Mencari Karakter Aksional Dalam Pluralisme Hukum*, dalam Dzimar Kusliandi, *Pluralisme Hukum: Sebuah Pendekatan Interdisiplin*, (Jakarta: HUMA, 2005), hal. 6

²² Sally Angel Merry, *Legal Pluralism*, in *Law and Society Review*, 22 (1998) hal. 870

²³ John Griffiths, *Whatis Legal Pluralism*, in *Journal of Legal Pluralism and Unofficial Law*, 24 (1986), hal. 1

²⁴ Keebet von Benda-Beckman, *Pluralisme Hukum, Sebuah Sketsa Genealogis dan Perdebatan Teoritis*, dalam Dzimar Kusliannadi, *Pluralisme Hukum: Sebuah Pendekatan Interdisiplin*, (Jakarta: HUMA, 2005), hal. 29

²⁵ *ibid*

²⁶ Della Sri Wahyuni, *Pluralisme Hukum Dalam Pembangunan Hukum Indonesia: Masalah Dan Tantangan Ke Depan* <http://leip.or.id/pluralisme-hukum-dalam-pembangunan-hukum-indonesia-masalah-dan-tantangan-ke-depan-2/>.di akses tanggal 20okteber2018

type of specific rules that was more in line with the state's character so that it can be readily accepted by the people. Actually, the emergence of legal pluralism has answered the social fact that *there is* other power than state law which rules the order in the community. Up to date, most people seen legal pluralism as one that inflict many conflict and did not solve problems, moreover with the state condition that adopt centralistic law and adopting more western regulation which is not in line with the character of Indonesian people. However, according to the author, the existence of legal pluralism brought its own positive side, whereas the existence of not so strong but still acknowledged society law and religious law can be used as legal material in each state law formulation. Thus, common legal aspiration for justice can be obtain.

The enforcement of society and religious law in state law can be done by integrating society law and religious law values into state law to be complied as national law. This can be done by taking its positive values that did not in conflict between one legal system and other legal system. This might be done given that these three systems (society law, religious law and western law) has similar vision and mission which is to obtain a good, just and welfare life. Society system has its own way to protect their intellectual property by using moral value to encourage their spirit and religious law system (Islamic law) also govern the protection of intellectual property either for individual or group in which this law forbid bad deeds toward other people's rights. Thus, protection toward Traditional Cultural Expression can be done by adopting values from each existed legal system to be positivized as legal umbrella under common approval. Therefore, the state has indirectly involved the people through their living legal system (society and religious) in governing their life. This way might make the existed law feels more comfortable by the people because it was in line with their characteristic and identity.

Conclusion

Community member basically has their own legal regulation in their life (*living law*). These regulations would grow within the community along with its own characteristic, which contain culture and custom element, also beliefs in religious matter. These regulations would have binding power and inherent in their heart to be believed to and to be complied to. Legal conflict would occur when this inherent legal regulation was collided with contradictive regulation. In this sort of condition, the law has normally did not function well. Therefore, if we want the law to work along with its function, the law should be formulated in accordance with the living values among the community. Legal pluralism in Indonesia admits that other than national law there were other legal system that adheres to the life of the people which are *society law* and *religious/natural law*. Though legal pluralism would commonly inflict problems but legal pluralism could also become solution in solving several legal conflicts, including legal protection issues regarding traditional property copyright of indigenous people in the form of Traditional Cultural Expression. Offers using legal pluralism approach in this matter is important given that state law as the central law currently did not succeed in answering the problem because the valid law was transplanted from Western law which definitely not in line with the character of Indonesian people. Indigenous people as the copyright owner regarding Traditional Cultural Expression (TCE) still not yet have their justice, particularly in enjoying the economy value of

utilization of this Cultural Expression. Enjoyment by foreign parties over Traditional Cultural Expression through *missappropriation* has harms the rights of indigenous people and indirectly threatened the value of the nation contain in Traditional Cultural Expression. This condition cannot be ignored, given that the diversity reflected through Cultural Expression was not only a cultural wealth but also the reflection of identity and known to be typical character and differentiated our nation from other nation in this world. The proper protection by the state was highly needed. The state in this matter, through legal pluralism, could conduct legal protection through approach toward *society law* as the law that has strong influence within the community, and religious approach (*natural/religious law*) which also contain moral values supporting the harmonious law. Integration of the existed values within society law and natural/religious law into state law was expected to give the proper protection for Traditional Cultural Expression copyright of indigenous people for future to come.

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