

Legal protection for copyright of Indonesian cultural heritage claimed by other countries from an International law perspective

¹Reva Alya Maulidina, ²Rina Arum Prastyanti

Faculty of Law and Business, University Duta Bangsa, Surakarta, Indonesia,
raleyamm@gmail.com¹, Rina_arum@udb.ac.id²

ABSTRACT

Legal protection of copyright on Indonesian cultural heritage claimed by other countries has become an important issue in the context of globalization and intercultural interactions between nations. From the perspective of international law, the protection of intangible cultural heritage is regulated through conventions such as the UNESCO *Convention for the Safeguarding of the Intangible Cultural Heritage* (2003). However, the implementation of this convention often encounters obstacles due to differences in interpretation and application at the national level. In Indonesia, although Law No. 28 of 2014 on Copyright and Law No. 5 of 2017 on the Advancement of Culture are in place, the protection of intangible cultural heritage still faces challenges in terms of documentation, international recognition, and law enforcement. Therefore, synergy between national regulations and international mechanisms is needed to strengthen copyright protection of Indonesia's cultural heritage against claims from other countries.

Keywords:

Protection; Culture; Country.

INTRODUCTION

As a vast nation endowed with a wealth of traditions, diverse cultures, abundant natural resources, and profound traditional knowledge, Indonesia bears the imperative responsibility of preserving and safeguarding these invaluable assets to uphold its national sovereignty. Thousands of distinct cultural elements are meticulously preserved throughout Indonesia, encompassing a broad spectrum including performing arts, intricate choreographies, evocative folk songs, traditional musical forms, diverse artworks, and an extensive variety of traditional Indonesian foods and cuisines. The Ministry of Education and Culture (Kemdikbud) formally defines intangible cultural heritage as the culmination of skills, knowledge, expressions, representations, and practices embedded within a specific cultural context, transmitted across generations. These elements are continuously perpetuated and re-created, manifesting as intangible cultural expressions subsequent to their official recognition as intangible cultural heritage.

Cultural manifestations inherently reflect the distinct identity of a nation. Regrettably, contemporary society often witnesses the neglect or oversight of cultural preservation efforts, particularly concerning intangible cultural forms. This pervasive indifference can engender detrimental repercussions for Indonesia, notably in the form of cultural appropriation claims originating from other nations. Such claims inflict substantial losses upon Indonesia, impacting not only its cultural integrity and social cohesion but also its tourism sector and economic stability. Furthermore, the accelerating influx of foreign cultures into Indonesia, largely propelled by globalization, has demonstrably influenced the younger generation. Consequently, a discernible trend indicates that many young individuals exhibit greater interest in foreign cultures

than in their indigenous heritage. Therefore, the robust protection of cultural heritage, both at the national and international levels, is of paramount importance.

Beyond serving as a medium for entertainment and communication, cultural heritage is frequently susceptible to disputes regarding its origins. A salient illustration of this phenomenon is the traditional musical instrument, "Angklung," which has been subjected to claims of ownership by another country. UNESCO officially recognized Angklung as an integral component of Indonesia's cultural heritage, specifically identifying it as a unique musical instrument originating from Sundanese culture. Despite this official recognition, instances have arisen where Angklung has erroneously been attributed to Malaysian heritage.

From the perspective of international law, the comprehensive protection and unequivocal recognition of cultural heritage constitute a fundamental commitment for any nation that has ratified the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted in 2003. Indonesia formally ratified this pivotal convention through Presidential Regulation No. 78 of 2007, titled "Ratification of the Convention for the Safeguarding of the Intangible Cultural Heritage." Consequently, all provisions encapsulated within the 2003 UNESCO agreement serve as the authoritative legal framework for the robust protection of Indonesia's invaluable cultural heritage.

METHOD

In exploring the importance of safeguarding Indonesia's local cultural heritage from external appropriation, it becomes clear that qualitative methodologies provide profound insights into the nature of cultural heritage as a dynamic representation of a society's identity and values. The qualitative approach allows for a descriptive analysis of the nuances inherent in cultural heritage, underscoring the significance of both tangible and intangible elements. Understanding that cultural heritage is not merely a static collection of artifacts but a living tradition shaped by socio-political contexts is crucial. Research has demonstrated the impact of cultural heritage on community identity, emphasizing collective memory as a critical component in heritage preservation efforts (Tamimi et al., 2023; Sajid & Kirdsiri, 2024; Xu et al., 2021; . Furthermore, the application of digital tools not only facilitates the documentation and promotion of heritage but also aids in the educational discourse surrounding it, enhancing community engagement (Zhang et al., 2022; Brilliant et al., 2023; Harisanty et al., 2024).

The defense against cultural appropriation involves strategic frameworks that integrate local narratives and identity into broader cultural tourism initiatives. Studies indicate that fostering local participation through community engagement can effectively bolster cultural heritage initiatives and enhance tourism strategies (Tamimi et al., 2023; Sajid & Kirdsiri, 2024; Hiswara et al., 2023). Moreover, adopting a participatory approach where local voices are amplified ensures that the representation and interpretation of cultural heritage align with the community's intrinsic values and needs (Tamimi et al., 2023; (Sunarti & Fadeli, 2021). This is particularly relevant in the context of Indonesia, where cultural heritage is at risk due to both globalization and the pressures exerted by neighboring nations seeking to claim shared heritage narratives (Sunarti & Fadeli, 2021). Hence, the intertwining of cultural heritage and local governance not only enhances collaboration among

stakeholders but also contributes to sustainable development, ensuring that heritage conservation remains a priority for future generations (Xu et al., 2021; Omar, 2022).

RESULTS AND DISCUSSION

Indonesia is a country with a rich cultural heritage, with approximately 742 languages spread across various ethnic groups and sub-ethnic groups, totaling no less than 478 ethnicities. However, this diversity does not hinder unity, as reflected in Indonesia's national motto, "Bhinneka Tunggal Ika" (Unity in Diversity).

This cultural diversity is supported by the country's archipelagic geography, where each region is separated and thus has its own distinct culture. Therefore, Indonesia's cultural diversity serves as evidence of the nation's vast cultural wealth.

Indonesia's diversity is also evident in the arts, which are a product of regional cultures. Each region has its own unique artistic creations that serve as its cultural identity. Almost every region has its own distinctive characteristics, whether in songs or dances. Every dance performance has its own uniqueness and traits that distinguish it from those of other regions.

A. Intangible Cultural Heritage of Indonesia Claimed by Other Countries

The background behind the recognition of similar intangible cultural heritage between Malaysia and Indonesia lies in the shared cultural ties that cannot be separated due to common historical and cultural concepts.

Intangible cultural heritage was initially considered to have little economic value, but today it has become highly valuable. This change has led to efforts to patent, appropriate, or claim Indonesian culture by other countries. A significant inventory of Indonesian intangible cultural heritage items has reportedly been subject to claims by Malaysia. These encompass diverse cultural expressions, including performing arts such as the Pendet Dance from Bali, Plate Dance (Tari Piring) from West Sumatra, Kuda Lumping Dance from East Java, and Reog Ponorogo Dance from East Java. Musical traditions are also prominent, with claims extending to regional songs like Jali-jali, "Anak Kambing Saya" from East Nusa Tenggara, "Kakak Tua" from Maluku, "Injit-injit Semut" from Jambi, "Soleram" from Riau, and "Rasa Sayang Sayange" from Maluku, as well as Indang Sungai Garingging Music from Sumatra. Furthermore, traditional musical instruments, including Angklung from the Sundanese ethnic group and Gamelan from Java, have been identified. Claims also pertain to textile arts, such as Ulos cloth and the Parang Batik motif from Yogyakarta. Other documented items include the traditional weapon Badik Tumbuk Lada, the culinary specialty Rendang from West Sumatra (reportedly claimed by an individual Malaysian citizen), and notably, ancient manuscripts from Southeast Sulawesi, South Sulawesi, West Sumatra, and Riau.

Apart from identity crises, Indonesia also faces internal issues that contribute to its cultural heritage being claimed by other countries. The vast diversity of Indonesian culture has attracted the attention of many other nations, making them more interested in studying Indonesian culture. The wide distribution of culture throughout the archipelago has resulted in many Indonesians being unaware of the full extent of their cultural heritage. Additionally, Indonesia lacks a clear authority to regulate and protect its cultural assets. Even the younger generation in Indonesia may not be familiar with the nation's cultural diversity, which makes it unsurprising that much of Indonesia's culture has been claimed by other countries.

B. The Role of Indonesian Society in the Protection of Indonesia's Cultural Heritage

Indonesia's cultural heritage, both *tangible* and *intangible*, is a valuable national asset that reflects the history, identity, and noble values of its people. In preserving it, the role of society is crucial to ensure the continuity of this heritage for future generations.

As a nation with a long historical journey, Indonesia is rich in local cultural diversity that must be preserved. Preservation does not merely mean preventing extinction, but also caring for and maintaining it over a long period of time. In other words, preserving local culture means sustained efforts to protect and maintain cultural heritage over time.

Globalization brings foreign cultural influences that can divert public attention from local heritage. Furthermore, technological developments have made younger generations more interested in digital media than in Indonesia's cultural heritage. This has led to the erosion of local culture, which is an integral part of Indonesia's cultural richness.

Below are some ways to protect cultural heritage in Indonesia:

1. Active Participation in Preserving Local Sites and Traditions Local communities often serve as the first guardians of cultural heritage. They are involved in conservation activities at historical sites such as temples, graves, and traditional houses. These activities include:
 - a. Community clean-up efforts at heritage sites.
 - b. Holding traditional ceremonies or cultural celebrations regularly.
 - c. Preserving stories and oral traditions related to the cultural heritage.
2. Community Empowerment through Culture-Based Creative Economy. Communities also preserve culture by integrating it into the local economy. Activities such as batik making, traditional crafts, and cultural tourism help protect heritage while also improving local welfare.
3. Education and Cultural Awareness for the Younger Generation. Cultural preservation is also carried out through education, both formal and informal. Communities play a role in teaching culture to children through folktales, local languages, and traditional skills.
4. Collaboration with Government and Cultural Preservation Institutions. Communities also collaborate with local governments, cultural departments, or NGOs in cultural preservation activities. Such collaboration strengthens the legitimacy and effectiveness of preservation efforts.

C. Legal Protection of Cultural Heritage from an International Law Perspective

According to Mangku (2021), there are two forms of international law that can be referred to for the protection of cultural heritage:

1. Soft Law.

Soft law refers to forms of law whose binding power is voluntary (*voluntary codes*), also known as *Code of Conduct*. The binding power of this form of law is not as strong as other legal instruments, such as international treaties (Mauna, 2008: 45).

 - a. Universal Declaration of Human Rights (UDHR) 1948 and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966. There are several fundamental rights stipulated in the *UDHR* (1948) and the

ICESCR (1966). That are relevant to the protection of traditional knowledge. These include the right to food, the right to health, the right to culture, and the protection of intellectual property.

- b. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007. This is the only international human rights legal instrument that explicitly and specifically regulates the protection of traditional knowledge. These rights stem from indigenous peoples' political, economic, and social structures, as well as from their spiritual traditions, histories, philosophies, and cultures. This recognition forms the basis for drafting protective regulations, typically stated in the preamble of the declaration.
2. Hard Law.
- Many soft law principles eventually evolve into hard law, which carries binding legal force and includes legal sanctions if violated. Traditional knowledge is considered intangible cultural heritage that must be protected. The protection of such knowledge is governed under UNESCO frameworks through various conventions developed to safeguard cultural heritage (Dewi, 2018: 37).
- a. *Convention on the Protection of Cultural Property in the Event of Armed Conflict* (1954). The 1954 Hague Convention lays down fundamental principles that form the ideological basis for the protection of cultural property. Protection under this convention includes *General Protection* and *Special Protection*. *General Protection* applies to all cultural property located in areas of armed conflict. *Special Protection* is granted to cultural property listed in the *International Register of Cultural Property under Special Protection*, and military use is only permitted in cases of "unavoidable military necessity."
 - b. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970). The 1970 UNESCO Convention protects cultural property by regulating trade and enabling governments to cooperate in locating and returning cultural items that have been illegally moved or stolen across national borders. The Paris 1970 Convention serves as a diplomatic instrument and does not provide for sanctions.
 - c. *Convention for the Safeguarding of the Intangible Cultural Heritage* (2003). On October 17, 2003, the *United Nations Educational, Scientific and Cultural Organization* (UNESCO) adopted the *Convention for the Safeguarding of the Intangible Cultural Heritage*. According to Article 1 of this Convention, its main objectives are to (Mangku, 2021):
 1. Provide international cooperation and assistance.
 2. Raise awareness at local, national, and international levels about the importance of intangible cultural heritage and ensure it is respected.
 3. Ensure respect for the intangible cultural heritage of the various communities, groups, and individuals involved.
 4. Safeguard intangible cultural heritage.

Discussion

Legal Dispute Resolution

Efforts to resolve cultural heritage claims can be conducted through non-litigation and litigation processes (Mangku, 2021):

1. **Non-litigation** refers to legal dispute resolution outside of formal judicial proceedings, typically employed in civil cases due to its more private nature.
2. **Negotiation** involves a bargaining or compromise process undertaken by two or more disputing parties with the objective of reaching a mutual agreement without the involvement of a third party. The primary goal of negotiation is the achievement of a mutually beneficial solution (win-win solution). Article 33(1) of the UN Charter designates negotiation as the primary method for dispute resolution. By way of illustration, in the case of the claim concerning Indonesia's traditional dance, the Minister of Culture and Tourism dispatched a protest letter to the Malaysian government regarding its assertion of ownership over the Pendet Dance from Bali.
3. **Mediation** constitutes a form of dispute resolution that also incorporates negotiation, but with the facilitation of a third party known as a mediator. The mediator functions as a neutral facilitator and provides objective suggestions to facilitate the mediation process. Mediators are required to operate professionally and possess specific certification.
4. **Litigation** refers to the resolution of legal disputes through judicial processes, applicable to both civil and criminal cases.

In accordance with regional procedures, participating nations are obligated to establish a subsidiary body designated as the High Council, comprising ministerial-level representatives from each member state. In the event that a dispute cannot be resolved through negotiation, the High Council assumes responsibility for recommending appropriate means of dispute resolution, such as conciliation, fact-finding, mediation, or good offices.

CONCLUSION

Indonesia represents a nation characterized by a high degree of cultural heterogeneity, encompassing hundreds of ethnic groups, languages, and traditions distributed across its archipelago. This diversity serves as both the national identity and strength, manifested in various forms of local arts and culture. However, this cultural richness also presents challenges, particularly in instances of cultural claims by other nations, such as Malaysia. Deficiencies in documentation, legal protection, and public awareness constitute significant factors that weaken Indonesia's position in defending its cultural heritage rights.

Consequently, the role of civil society holds crucial significance in cultural preservation through active participation, education, culture-based economic empowerment, and collaboration with the government and cultural institutions. Conversely, the legal protection of cultural heritage is governed by international mechanisms, encompassing both soft law (such as declarations and covenants) and hard law (such as UNESCO conventions). Cultural disputes can be resolved through non-litigation methods (negotiation, mediation) and litigation (judicial proceedings), with the ultimate objective of safeguarding Indonesia's cultural sovereignty on the global stage.

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