

Protection of Traditional Culture and Customary Expressions from the Perspective of Customary Law

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ABSTRACT

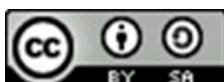
This study aims to analyze the protection mechanisms for traditional culture and customary expressions from a customary law perspective and to evaluate the extent to which these systems can be integrated into the national legal framework. The method used is qualitative legal research with a normative juridical and anthropological juridical approach. Data were collected through literature studies, interviews with customary leaders, and analysis of national and international legal documents. The research findings indicate that indigenous communities have a cultural protection system based on collective values, spirituality, and social control. However, the national legal system still does not fully accommodate the collective and intergenerational nature of indigenous cultural expressions, resulting in communities often losing legal control over their cultural heritage. The discussion reveals that existing regulations tend to use an administrative and individualistic approach, which is less in keeping with the character of customary law. In conclusion, a legal pluralism approach is needed to constructively integrate customary law into the national legal system. Strengthening the capacity of customary institutions and formal recognition of the collective rights of indigenous communities are key to maintaining the sustainability of traditional cultures amid the challenges of globalization.

Keywords: Law Customs ; Culture Traditional ; Expression Customs

INTRODUCTION

Traditional culture and traditional expressions are the primary foundation of Indonesian cultural identity. Their existence not only serves as a legacy from our ancestors, but also serves as a social instrument for maintaining order, community solidarity, and local wisdom that lives on in everyday practices. (Rahmah et al., 2020) . These cultural expressions encompass various forms such as language, dance, religious rituals, traditional architecture, weaving, carved motifs, and oral narratives, which are passed down from generation to generation and integrated into customary legal structures in various regions. (Widianingsih, 2023) . However, in the era of modernization, globalization, and the commercialization of cultural wealth, the existence of traditional cultures faces significant pressure. Many cultural expressions are exploited without the consent of their communities, whether by creative industry players, business institutions, or by other countries in the context of cultural diplomacy. When batik motifs, regional dances, and craft products are appropriated or claimed as commercial property without adequate legal protection, indigenous communities often lose control over their cultural identities. (Piliang & Nugraha, 2021; Zahara et al., 2022) .

Legal protection for traditional culture in Indonesia has been formally pursued through Law No. 5 of 2017 concerning the Advancement of Culture, as well as a number



of other regulations, such as Law No. 28 of 2014 concerning Copyright, which provides protection for cultural expressions as communal intellectual property. At the global level, the ratification of the 2003 UNESCO Convention demonstrates Indonesia's commitment to preserving intangible cultural heritage. However, fundamental problems remain because the positive legal approach often uses an individualistic and administrative framework, which does not always align with the collective and spiritual character of customary legal systems. (Priyanto & Saragih, 2023; Siregar, 2020) . Customary laws in various Indonesian communities have their own mechanisms for protecting cultural heritage. These mechanisms are not only normative but also encompass social and spiritual arrangements implemented through customary consensus, rituals, and supervision by traditional elders. For example, in the Dayak and Bali Aga communities, violations of the unauthorized use of certain cultural symbols are subject to social and ritual sanctions, not just formal legal sanctions. This protection is integrative because it unites legal, spiritual, and ecological dimensions within a single value system. (Nuraini & Kurniawan, 2023) .

Traditional culture and customary expressions are the primary foundation of Indonesian cultural identity. Their existence not only serves as an ancestral heritage but also serves as a social instrument in maintaining order, community solidarity, and local wisdom that is embodied in daily practices (Mulyani & Sahid, 2021; Rahmah et al., 2020) . These cultural expressions encompass various forms such as language, dance, religious rituals, traditional architecture, weaving, carvings, and oral narratives, which are passed down from generation to generation and integrated into customary legal structures. (Nasrullah, 2022; Widianingsih, 2023) . However, in the era of globalization and cultural commodification, indigenous expressions face serious challenges, such as exploitation by outsiders, unilateral claims by other countries, and commercial use without the consent of indigenous communities. (Irawan & Nurwati, 2023; Piliang & Nugraha, 2021) . For example, batik motifs, regional dances, and craft products are often used without acknowledging the original cultural owners. This creates structural problems in legal protection, where indigenous communities often lose legal control over their own cultural identity. (Firmansyah & Lestari, 2023; Zahara et al., 2022) .

Formal legal protection efforts for traditional culture have been implemented through Law No. 5 of 2017 concerning the Advancement of Culture and Law No. 28 of 2014 concerning Copyright, which accommodate communal intellectual property. Internationally, Indonesia ratified the 2003 UNESCO Convention, which serves as an umbrella for the preservation of intangible cultural heritage. However, the implementation of positive law in Indonesia tends to be based on an individualistic and administrative approach, which is at odds with the communal, spiritual, and holistic character of customary law. (Priyanto & Saragih, 2023; Siregar, 2020) . On the other hand, customary law in various Indonesian communities such as the Dayak, Minangkabau, and Bali Aga has strong internal mechanisms to protect cultural expressions, through customary consensus, social sanctions, and the integration of spiritual and ecological values in cultural oversight. (Nuraini & Kurniawan, 2023; Sudibyo & Hardiman, 2022) . However, the absence of formal recognition of customary law systems has rendered this protection informal and vulnerable to neglect in state legal forums.

Although a number of studies have addressed the inventory of cultural expressions or formal legal protection of communal intellectual property (Faridah et al., 2021; Kartikasari & Sunarno, 2020) , few studies have explored in depth how customary legal systems substantively form sustainable cultural protection mechanisms rooted in local norms . Furthermore, studies on the systemic integration of customary law and national law within a pluralistic legal framework are still very limited. Most studies focus

solely on regulations or administrative aspects without examining the internal legitimacy and institutional capacity of indigenous communities themselves. The novelty of this research lies in its dualistic approach, which combines normative legal analysis with a legal-anthropological perspective. This research not only examines formal regulations but also explores the social, spiritual, and ecological dynamics within the customary protection system as a form of legal autonomy. Furthermore, this article offers an integrative framework based on legal pluralism that allows for the official recognition of the collective rights of indigenous communities through inclusive and contextual policy mechanisms. (Syahputra & Wahyuni, 2024) . Based on the above explanation, this study aims to analyze the protection mechanisms of traditional culture and customary expressions from the perspective of customary law, and to evaluate the potential for their integration into the national legal system through a legal pluralism approach, in order to create a more just, participatory, and sustainable cultural protection model for indigenous communities in Indonesia

METHODS

This study uses a qualitative approach with two main methods, namely normative juridical and anthropological juridical, to analyze the protection mechanisms for traditional culture and customary expressions in customary law and to evaluate their integration within the national legal framework.

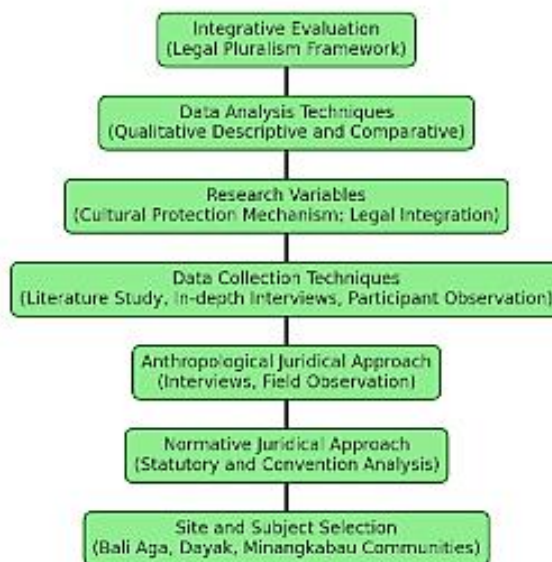
1. The Normative Juridical Approach is used to examine written legal norms such as:
 - Law Number 5 of 2017 concerning the Advancement of Culture,
 - Law Number 28 of 2014 concerning Copyright,
 - UNESCO Convention 2003, as well as other implementing regulations.
2. The Anthropological Juridical Approach is applied to explore the dynamics of customary law in indigenous communities through direct observation, interviews, and documentation of traditional cultural protection practices.

The data collection techniques in this study were conducted through two main approaches. First, primary data collection was conducted through in-depth interviews with traditional leaders, cultural figures, and cultural service officials in the Bali Aga, Dayak, and Minangkabau traditional communities. These interviews aimed to explore cultural protection practices directly from authoritative customary law practitioners. In addition, participant observation was conducted of traditional ceremonies, the use of cultural symbols, and the application of social or spiritual sanctions within the communities. Second, secondary data collection was conducted through a library study of academic literature, laws, regional regulations, international convention documents (such as the 2003 UNESCO Convention), and the digital archives of the Indonesian government's Cultural Heritage Information System (SIWaBUD). This research focuses on two main variables. The first is the traditional cultural protection mechanisms practiced by indigenous communities, encompassing customary norms, social sanctions, and the spiritual-ecological dimensions inherent in local legal practices. The second is the potential for integration between customary legal systems and the national legal system, particularly in the context of recognizing collective rights and protecting communal cultural expressions through a legal pluralism approach. These two variables are analyzed within the context of three representative indigenous communities with active and complex customary legal systems. The data analysis technique used is descriptive qualitative, interpreting interview results, customary documentation, and legal documents to comprehensively understand the structure of cultural protection. The analysis is conducted interpretively to capture the symbolic meaning and spiritual value of customary cultural expressions, and comparatively to assess the suitability and

potential harmonization between customary norms and formal state legal norms. This approach allows for an in-depth description of the forms of customary legal autonomy and the challenges and opportunities for their integration into national policy.

Following image of the research model carried out :

Figure 1. Research Method Flow
Research Method Flow: Cultural Protection and Legal Pluralism



RESULTS AND DISCUSSION

1. Practice Protection Culture Traditional by Community Customs

Results findings in the field show that public customs own internal mechanisms for protect expression culture traditional . In the community Bali Aga customs (in Tenganan Pegringsingan), protection against the " geringsing " woven motif is done with very strict through inheritance limited , prohibited duplication in a way free , and involvement elders customs in supervision production . Likewise in the community customs Kajang in South Sulawesi, the system " pair " value ri kajang " become base ethics in guard expression culture like language , clothing black , and order ceremony customs (Mustafa, 2022) .

Protection culture No only interpreted in aspect economy , but Also as spiritual form and ecological . Society customs consider violation to mark culture as violation to cosmos And ancestors . By Because that , violation to rule customs can subject to moral, social and legal sanctions even rituals. This show that law customs own capacity law substantive capable guard sustainability culture local Far before presence law positive country (Adityawarman, 2021) .

2. Limitations Protection by Law Positive to Culture Collective

Although has There is regulations national such as Law No. 5 of 2017 and Law No. 28 of 2014 concerning Right Creation , regulation This Still based on draft individual protection , not communal . This is cause difficulty in register expression culture that is not own creator single , such as batik motifs, traditional rituals , or poetry verbally . As a result , many element vulnerable culture claimed by party outside , including corporation or country foreign , without involvement community the owner (Kartikasari & Sunarno, 2020) .

Study by Amri & Mahyuni, (2023) show that until now Not yet There is formal legal system that is capable confess And protect right collective public customs in a way effective in framework riches intellectual . Even in the application process indication

geographical or expression culture communal , required facilitation from party third such as NGOs or government area . This show existence dependence administrative the high one , which is precisely weaken position community customs in mastery its culture Alone .

3. Studies Case : Inequality Right Collective on Expression Culture . A number of community even must depends on party third such as NGOs or government area in the registration process indication geographical , showing weakness internal legal capacity of society custom (Wahyuni & Manurung , 2021). This show existence gap between substance formal law and need law collective public customs , as criticized in study Hidayat & Roesli, (2023) , which highlights mismatch system registration riches culture with structure social communal .

One of example concrete is conflict ownership top woven motif tie Sikka in NTT, which is registered by perpetrator industry private without consultation with community maker the original . This is cause tension between interest economy And right culture community custom . Study from Faridah et al., (2021) show that labeling expression culture as a " product local " no ensure existence protection law customs on its use , especially in chain industry tourist And fashion .

Similar things Also happen on use Tor-Tor dance and tool music Gordang A side job that I had time for claimed other countries . Case This describe weakness system law in respond claim culture And importance documentation as well as formal recognition from country to expression culture that still life And developing in local communities (Manurung & Sibarani, 2020) . Inequality This prove that absence confession law to norm customs precisely open room exploitation culture by actor external , good local and international , without mechanism adequate protection (Kusuma & Harsono, 2022)

4. Effort Harmonization : Towards Synergy Law Customs And National Law

Although law customs Not yet fully get place as source formal law , some step harmonization start looks through collaboration between government area , community customs , and institution culture . Regional regulations in the region such as Bali, Yogyakarta, and Central Kalimantan are starting to adopt values law customs in policy preservation culture (Putri & Hartati, 2023) . Besides that , expression data integration culture to in System Information Inheritance Culture (SIWaBUD) that is developed Ministry Education And Culture become step strategic For documenting riches culture traditional in a way national (Sari & Santosa , 2022). However , efforts This Still nature partial And Not yet touch aspect confession right management And protection collective in a way full . By Because that , it is necessary legal pluralism approach that does not only confess existence law custom , but Also give room institutional for public customs For manage And protect expression culture in a way autonomous .

In the middle limitations mentioned , some government area start integrate mark law customs to in regulations local , such as in Regional Regulation Culture in Yogyakarta, Central Kalimantan, and Bali (Anggraini & Fitriani , 2024). In addition that , the Ministry Education And Culture through the SIWaBUD platform start documenting expression culture as step beginning going to formal legal recognition . However , the steps This Not yet touch aspect management culture based right collective that allows community customs become subject law . By Because that , the legal pluralism approach becomes important , because allows confession simultaneous to various system law , including law custom , in framework country Law (Marzuki , 2021). Integration law customs to in system law national must based on on principle autonomy community , equality law , and

strengthening institutional custom . Concept This in line with the idea of community-based legal capacity being developed in studies Elvrida & Nusa (2024), which emphasizes that protection expression culture intangible No Can effective without strengthen position law community the owner .

CONCLUSIONS

Based on results research , concluded that community customs such as Bali Aga, Dayak , and Minangkabau own mechanism protection strong culture based norm collective , spirituality , and supervision social , but Not yet fully accommodated in system law national which is still nature individualistic And administrative . Inequality This cause weakness protection law to expression culture collective And open opportunity exploitation by party outside . Although there is initiative local And documentation national , protection the Not yet ensure management culture in a way fair And sustainable . By Because Therefore , a legal pluralism approach is needed For integrate law customs in a way equivalent in framework law national , with strengthen capacity institutional customs And give formal recognition of right collective public customs as subject valid law ..

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