

# Arrangements as a Legal Protection Against Traditional Cultural Expression of Malay Traditional Communities In Kepulauan Riau Province

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**Abstract.** The Kepulauan Riau Province is famous for its diverse cultural wealth, including literature, music, and dance. One of the most well-known literary works born in this land of peppercorns is Raja Ali Haji's Gurindam 12, which is very valuable. Not only that, but the Kepulauan Riau also has various forms of traditional cultural expressions (TCEs). They are still alive and developing in multiple forms of intangible heritage in the Kepulauan Riau Malay community, such as Gurindam Dua Belas, Gazal, Makyong, Malay Pantun, Gendang Siantan, Gubang, Mendu Bersama. West Kalimantan, Tudung Manto, Joged Dangkung, Noble Play, Gasing, Lang Lang Buana, Bejenjang, Henna Dance, and many more. As mentioned above, various forms of TCEs of the Kepulauan Riau have been by the Ministry of Education and Culture as intangible cultural heritage originating from the Kepulauan Riau. The question is whether the recording by the State can be a form of legal protection against various TCEs, resulting in the prohibition of other countries from claiming these various TCEs as cultural heritage originating from their land. Different TCEs, apart from dealing with the issue of legal protection, are also concerned with economic preservation for the community's survival. By developing TCEs, the community can use these as land to increase livelihoods that are useful for the family. Legal protection and utilization of various TCEs have not been well structured and coordinated in a legal system.

**Keywords:** Communal intellectual property; traditional cultural expressions

## 1 Introduction

The diversity of ethnic groups in Indonesia makes this country rich in cultural diversity. Expressions of Indonesian traditional culture in various forms, such as literary works, music, movement, performing, fine arts, two-dimensional and three-dimensional carvings, and even traditional ceremonies from multiple tribes.

Music, dance This huge cultural potential must be protected by the State because it has a very high economic value. However, the protection and utilization of this cultural diversity have not been structured and coordinated with processes and mechanisms that put forward the importance of Intellectual Property Rights (IPR) as a legal system TCEs.

The Kepulauan Riau Province is rich in arts, literature, and cultural diversity. Kepulauan Riau Province is very prominent, with Raja Ali Haji's Gurindam 12, a literary work of very high value. Not only that, the Archipelago has various forms of traditional expression known to the

Malay community since immemorial. A monumental literary work that is phenomenal is Gurindam 12 Raja Ali Haji. In addition to Gurindam 12 Raja Ali Haji as a Malay academic work of very high value, the Riau Archipelago also has various forms of traditional cultural expressions. They are still alive and well, in the form of Performing Arts, in the form of Oral Traditions and Expressions, Traditional Skills and Crafts. The Ministry of Education and Culture has recorded the various forms of art, literature, and culture mentioned above. The record is an Intangible Cultural Heritage originating from the Riau Archipelago.

The Ministry in Culture Aspect has registered and determined various intangible cultural heritages. The intangible cultural heritage is content Gurindam Twelve as Oral Traditions, Making, and Gazal as Performing Arts, designated as intangible cultural heritages in 2013 [1]. Kids Dance, Gendang Siantan, Gubang Mendu with West Kalimantan as Performing Arts, and Malay Pantun as Tradition and Oral Expression was designated an Intangible Cultural Heritage in 2014 [2]. The Noble Act and Dangkong Dance as Performing Arts; Tudung Manto as Traditional Skills and Crafts were established as an Intangible Cultural Heritage in 2015 [3].

Keprri Gasing, a Traditional Skill and Craft, Langlang Buana as Tradition and Oral Expression, was designated an Intangible Cultural Heritage in 2016 [4]. Bejenjang as Community Customs, Rites, and Celebrations; Henna Dance as a Performing Art is designated an Intangible Cultural Heritage of 2017 [5].

Tepuk Tepung Tawar, Mandi Syafar Kepulauan Riau, Ratib Saman Lingga, Syariful Anam Karimun, as Community Customs, Rites, and Celebrations; Bubur Lambok Lingga as Traditional Crafts and Skills; Silat Pengantin Kepulauan Riau as a Performing Art, designated an Intangible Cultural Heritage of 2018 [6]. Tradisi Basuh Lant ai, Tujuh Likur dan Pintu Gerbang Lingga, Berkhatam Al-Qur'an Lingga, Sunat Mudim, Bersih Tembuni Lingga, Bela Kampong as Community Customs, Rites and Feasts; Kue Mueh Pengantin Lingga, Kepurun Lingga, Tudung Saji Pandan Lingga, Layang-Layang Lingga, Kain Lipat 44, as Traditional Crafts and Crafts; Gasing Lingga, Pearmainan Tangkap Ayam, Tam-Tam Buku Lingga, Tuturan Asal Mula Nama Kampung Nerekeh, as Tradition and Oral Expression [7]

Lingga Malay Traditional Marriage, Linga Trade Cloth, Nasi Sekone, Eating Sehidang Five, as Community Customs, Rites, and Celebrations; Reading the Hikayat Isra' Mi'raj Lingga, Legend of the Broken Mount Daik, as Tradition and Oral Expression; Cancang Boil Lingga Lingga Medicine as Knowledge and behavioral habits regarding nature and the universe; Traditional Malay Wedding Accessories Linga, Folding Kajang, Tudung Hiding Fabric, Telepuk Linga Fabric, Kurung Teluk Belange Lingga, as Traditional Craft Skills and Skills; Merawai Dance, Barodat Lingga, as a Performing Art [8].

**Table 1.** Riau Islands Cultural Heritage

No	Intangible Cultural Heritage	Registration Number	Domain	Year
1	Gurindam Dua Belas	201300015	Oral Tradition	2013
2	Makyong	201300014	Performing Art	
3	Gazal	201300016		
4	Gendang Siantan	201400112	Performing Art	2014
5	Gubang	201400112		

No	Intangible Cultural Heritage	Registration Number	Domain	Year
6	Mendu Bersama Kalbar	201400113		
7	Pantun Melayu	201400111	Tradition and dan Oral Expression	
8	Teater atau Sandiwara Bangsawan	201500180	Performing Art	2015
9	Joget Dangkong	201500181		
10	Tudung Manto	201500182	Traditional Craft Skills and Skills	
11	Gasing Kepri	201600307	Kemahiran dan Kerajinan Tradisional	2016
12	Langlang Buana	201600308	Tradition and Oral Expression	
13	Bejenjang	201700484	Community Customs, Rites, and Celebrations	2017
14	Tari Inai	201700485	Performing Art	2017
15	Tepung-tepung Tawar	201800647	Community Customs, Rites, and Celebrations	2018
16	Mandi Syafar Kepulauan Riau	201800649		
17	Ratib Saman Lingga	201800650		
18	Syariful Anam Karimun	201800652		
19	Bubur Lambok Lingga	201800648	Traditional Craft Skills and Skills	
20	Silat Pengantin Kepulauan Riau	201800651	Performing Art	
21	Tradisi Basuh Lantai	201900844	Community Customs, Rites, and Celebrations	2019
22	Tujuh Likur dan Pintu Gerbang Lingga	201900845		
23	Berkhatam Al-Qur'an Lingga	201900846		
24	Sunat Mudim	201900847		
25	Bersih Tembuni Lingga	201900848		
26	Bela Kampong	201900849		
27	Kue Mueh Pengantin Lingga	201900850	Traditional Craft Skills and Skills	
28	Kepurun Lingga	201900851		
29	Tudung Saji Pandan Lingga	201900852		
30	Layang-Layang Lingga	201900857		
31	Kain Lipat 44	201900858		
32	Permainan Ambong Gile	201900853	Tradition and dan Oral Expression	
33	Gasing Lingga	201900854		

No	Intangible Cultural Heritage	Registration Number	Domain	Year
34	Permainan Tangkap Ayam	201900855		
35	Tam-Tam Buku Lingga	201900856		
36	Tuturan Asal Mula Nama Kampung Nerekeh	201900858		
37	Perkawinan Adat Melayu Lingga	202001120	Community Customs, Rites, and Celebrations	2020
38	Kain Dagang Lingga	202001143		
39	Nasi Sekone (Nasi Besar)	202001145		
40	Makan Sehidang Berlima	202001147		
41	Pembacaan Hikayat Isra' Mi'raj Lingga	202001138	Tradition and Oral Expression	
42	Legenda Patahnya Gunung Daik	202001150		
43	Obat Cencang Rebus Lingga	202001139	Knowledge and behavioral habits regarding nature and the universe	
44	Aksesoris Adat Pernikahan Melayu Lingga	202001140	Traditional Craft Skills and Skills	
45	Kajang Lipat	202001141		
46	Kain Tudung Hidang	202001146		
47	Kain Telepuk Lingga	202001148		
48	Baju Kurung Teluk Belange Lingga	202001149		
49	Tari Merawai	202001142	Performing Art	
50	Barodat Lingga	202001144		
51	Nasi Sekone	202001145	Community Customs, Rites, and Celebrations	
52	Kain Tudung Hidang	202001146		
53	Betingkah Alu Selesung	202101460	Tradition and Oral Expression	2021
54	Legenda Gunung Daik	202101508		
55	Permainan Anak-Anak Lingga	202101510		
56	Zapin Kote	202101474	Performing Art	
57	Gendang Berarak	202101509		
58	Air Laksemane Mengamuk Lingga	202101475	Traditional Craft Skills and Skills	
59	Kue Bangkit	202101476		
60	Kue Gelam	202101506		
61	Kue Batang Buruk	202101507		

No	Intangible Cultural Heritage	Registration Number	Domain	Year
62	Tradisi Ketupat Lepas	202101511	Community Customs, Rites, and Celebrations	

Source: <https://warisanbudaya.kemdikbud.go.id/?penetapan>

As described above, various Arts, Literature, and cultures have as the Kepulauan Riau Intangible Cultural Heritage. This heritage recording or stipulation is a form of preserving cultural values. It is also legal protection for various TCEs included in the Protection of Communal Intellectual Property. It means that other countries stipulate different TCEs as the cultural heritage of their country, in addition to legal protection and various TCEs for the economical use of indigenous peoples who own TCEs. By developing TCEs, people can use these it as a basis to improve livelihoods that are beneficial for the family.

Based on this description, the author conducts an assessment that focuses on the rationale of the importance of regulating TCEs in the Kepulauan Riau Province and the efforts of the Kepulauan Riau Province Government in providing legal Protection for the TCEs of the Malay Indigenous Peoples in the Kepulauan Riau Province.

## 2 Literature Review

### 2.1. State Art

Agus Sardjono stated that the Copyright protection system for Folklore (including TCEs) in Indonesia could be from China. China involved most of the Folklore supporting the community with significant initiatives from the government [9].

Kholis Roisah stated that the protection of (TCEs) through the Intellectual Property Rights regime could not fully protect it because of the different characteristics of IPR with TCEs. IPR tend to be realized in tangible expressions (in material form), while TCEs is not always in real expressions, it can be in the form of verbal, motion, or sound. IPR are more of a novelty and originality, while TCEs are rooted in a hereditary tradition whose creators are generally unknown [10].

The regulation of Tces in Indonesia, contained in Article 38 Copyright Law 2014, does not regulate the party authorized to represent the State in managing traditional cultural expressions. No government regulations further regulate TCEs held by the State. There is no database of documentation and inventory of TCEs by governments is a weakness in realizing the TCEs in Copyright Law 2014 [11].

### 2.2. Intellectual Property Rights

IPR result from the process of thinking ability into a form of Creation or Invention. Humans use these rights to improve the welfare/happiness of life. The creation or invention is the property to which a request comes from reason (intellect). The more advanced and high the level of thinking ability of a person or a nation, the more advanced and high the knowledge and technology they master. As a result, the more productive a person or a country will produce new inventions [12].

A person's ability to produce a work of Copyright or Invention is proof of mastery of science and technology. Knowledge deserves an award and creations it produces. This guarantees legal

certainty for someone so that other parties cannot economically take advantage of the work that is not theirs. A person's ability to produce a work of Copyright or Invention is proof of mastery of science and technology. They deserve an award on the work and creations it produces. This guarantees legal certainty for someone so that other parties cannot economically take advantage of the work that is not theirs [13].

The main principle of IPR is that the creation of work by using intellectual abilities, then the person who produces it gets ownership in the form of natural rights. However, to balance personal and public interests, there are several principles in IPR, namely [14]:

- a. The principle of Justice, there is a reasonable reward, both material and immaterial, for the Creator or Inventor that results from their intellectual abilities.
- b. Economic Principles, from ownership of a work, the Creator or Inventor gets a profit, for example, in the form of royalties from the user of the Work or Invention.
- c. The principle of culture is that every creation of copyrighted works or inventions is expected to benefit the community, nation, and State.
- d. The Social Principle that giving someone the right to protect work also means protecting the community's interests.

TCEs are communal, and then that terms are considered free to be used and reproduced by anyone, within the limits of use and reproduction that does not conflict with the rules of the community that owns TCEs. Thus, although that terms have been considered the common property of the community that owns them. The regulation of TCEs in various countries is generally divided into two models, namely the first separate regulation known as a sui generis arrangement, Second including the regulation of intellectual property rights as regulated in the Copyright law as it is today.

### **2.3. TCEs as Communal Intellectual Property**

The regulation of TCEs in various countries is generally divided into two models, namely the first separate regulation known as a sui generis arrangement, Second including the regulation of as regulated in the Copyright law as it is today.

Countries such as Thailand and the Philippines regulate TCEs into their own rules. Meanwhile, the countries that incorporate practices on conventional artistic expressions into Intellectual Property Rights law are Australia, India, and China [14].

TCEs is used in various international negotiation forums, especially IGC-GRTKF WIPO forums. The 1980 WIPO Glossary discusses the term folklore as. In essence it determines that, the work belongs to the a nation in indigenous peoples by unknown people from generation to generation. Examples of such works are folklore, and various traditional rites. According to some opinions, works of folk art that are expressed in real form are not included in the definition of folklore which compromises all literary and artistic works which are mostly made by authors whose identities are not known but are considered as citizens of a country, developing from the characteristics of traditional forms in groups. national ethnicity."

TCEs in the WIPO Document Number WO/GA/43/14 Geneva, September to October 2013. It is intergenerational and inter-early. The Minister of Law and Human Rights Regulation 2017 mention that traditional cultural expressions indicate the existence of a common and transgenerational traditional culture.

For an expression to qualify as a TCES, it must demonstrate the collective intellectual activity and heritage and has been preserved by individuals with rights or responsibilities. Responsible for following the Law and customary/customary practices in the community [15].

The characteristics of TCE are mainly characteristic of TCEs or folklore, i.e. transmitted orally or through imitation from one generation to generation; reflection of cultural.

### **2.3. Types of Traditional Cultural Expression**

The regulation of TCEs continues to develop; Copyright Law 2002, previously determined the types of folklore and folk cultures that were covered [16]. The enactment of Copyright Law 2014 which has revoked Copyright Law 2002, then determines that TCEs include Verbal textual, Music, dance; Theatre; Fine arts; and Traditional ceremonies [17].

## **3 Research Method**

This research is classified as normative-empirical/applied law research [18]. I was using primary and secondary data. Data collection techniques were carried out by studying literature and interviews with Malay Indigenous Leaders and the Provincial Government of the Riau Islands. Data analysis was carried out quantitatively and qualitatively based on the results of secondary legal materials and interviews supporting secondary legal materials.

## **4 Result and Discussion**

### **4.1. Rationale for the Need Regulation of TCEs in the Kepulauan Riau Province**

The intellectual property rights legal regime, particularly copyright, has placed TCEs within the scope of copyright (Copyright Law No. 28 of 2014), as it is based on the Berne Convention 1979 Article 15(4) stipulates that in the case of that they are a citizen of a Union country; this country's laws design something.

The Berne Convention stipulates that unpublished works with the author's identity are unknown, but it can be assumed that the author is a citizen of that State. The competent authority of a State may represent the anonymous author to protect and enforce the author's rights.

Traditional cultural expressions (TCEs) are considered anonymous works, referred to in Article 15, Paragraph 4. People only identify TCEs as coming from specific ethnic communities [19]. Based on the provisions of the Berne Convention, the Indonesian Copyright Law, both in Article 11 Copyright Law 2002 and then revoked and replaced by Copyright Law 2014, adopts provisions concerning Anonymous Works so that the State holds Rights Copyright.

Article 11 Copyright Law 2002 stipulates that:

- "a. The country that holds the Copyright for anonymous copyrighted works (the author is not known) that has not been published;
- b. The publisher is the copyright holder of an anonymous copyrighted work that has already been published; and
- c. The country holds the Copyright for anonymous copyrighted works that have been published and whose publisher is not known."

Copyright Law 2002 law revoked Copyright Law 2014; the new Copyright Act 38, an executive order that declares that the right to express various traditional words, relate to community ownership. Other provisions regarding less authority held by the state over the wording of customs aimed at subsection (1) the right to privacy."

The regulation of TCEs in the copyright regime extends beyond the cultural heritage TCEs that should be protected. Copyright Law 2014 article 38, Legal protection are not structured and well coordinated in the Indonesian legal system, especially in the Riau Islands region. Provisions of laws and regulations that provide legal protection to traditional cultural expressions as common intellectual property in Indonesia Copyright Law no. 28 2014. There is, of course, an essential distinction because copyright protection is subjective, while traditional cultural expressions are general. Traditional cultural words are included in the regulation of Copyright Law because they are considered the most relevant, although there will be obstacles to implementing its protection. After all, it collides with Copyright requirements such as the form of fixation work, originality, identification of the author, and term-limited time [10].

This kind of intellectual property regulates in The Minister of Law and Human Rights Regulation Number 13 of 2017 concerning Communal Intellectual Property Data. Likewise, the Traditional Cultural Expressions of the Riau Archipelago Malay Indigenous Peoples have valuable assets of Intangible Cultural Heritage. The Riau Archipelago Malay Indigenous Peoples can register their Traditional Cultural Expressions so that their use can be enjoyed by indigenous peoples who still preserve a wide variety of arts, literature, and culture. in the Riau Archipelago.

Based on this description, the author conducts on the e importance of regulating traditional cultural expressions in the Riau Islands Province and the efforts of the Riau Islands Province government in providing legal Protection for the Traditional Cultural Expressions of the Malay Indigenous Peoples in the Riau Islands Province.

The course included discussions on issues related t. Recognized and protected by law and national legislation [20]. TK and TCE have existed in the community and everyday life but are not used for commercial purposes. It has been around for years and can last forever. So it is different from IPR in general, which has a period limited by Law. The IPR system protects intellectual property ownership rights against 'private' or 'individual' rights.

The concept of 'protection' in indigenous peoples means that TK and TCE can be maintained for their continuity and development in the community, was contrary to the idea of Protection for TK and TCEs, which are fundamentally the inheritance of certain indigenous peoples that one person cannot ow, and that certainly cannot be bought or sold.

Genetic resources, traditional knowledge, and traditional cultural expressions are included in the intellectual property rights legal regime. Traditional artistic expressions are contained in the Copyright Law regime in Indonesia. Kholis Roisah argues that the legal regime of the individual and monopolistic intellectual property rights is very different from traditional cultural expressions based on communal and spiritual values. So that the placement of conventional artistic expressions in the copyright law regime becomes a problem when the terms of copyright protection in the Copyright Law are applied to traditional creative expressions, which are communal intellectual property [10].

Copyright protection has a condition of originality Copyright protects only 'original' works, and many traditional literary works are not 'original' because sometimes it is not known precisely who the author is—ownership as (identification of author). Copyright protection requires the creator's title to identify who can benefit from these rights, especially the Economic Rights of the Works. However, to recognize the Creator of TCE that is created and owned communally because it is not known and can no longer be found, the concept of 'ownership' is also foreign to many indigenous peoples.

Fixation work, The fixation requirements in many Copyright Laws in many countries. Intangible and oral cultural expressions, such as fairy tales, dances, or songs, from being protected unless and until they are posted in some form or medium-term Protection (period of



protection). Law limits the time of Copyright. Hile TCEs are protected as long as the community exists, and the TCE is still preserved.

Formalities, no formalities or registration forms in Copyright, Exceptions, and Limitations (exceptions and restrictions on use by the general public), while TCE sometimes does not require it because indigenous peoples are generally free to use their TCE. In defensive protection, indigenous peoples are concerned about specific companies or parties imitating or copying their TCE or using it as a source of inspiration and obtaining IP protection as a derivative work [21].

TK and TCE exist primarily through community and traditional practices, not for profit. Unlike intellectual property rights, which are usually of limited duration, intellectual property rights can live for many years and last forever.

The concept of "protection" among indigenous peoples implies the continuation and development of CC in its cultural, social, and spiritual context. The intellectual property system protects not only "property" but also "private property," which is fundamentally contrary to the way of thinking of indigenous peoples. TK and TCE are pieces of community property that cannot be owned or sold by individuals.

The IPR Legal Regime, has placed TCEs within the scope of Copyright Law because it is based on provisions of The Berne Convention for the Protection of Literary and Artistic Works (Konvensi Berne 1979) Article 15 Paragraph 4.

The Berne Convention stipulates that in unpublished works where the author's identity is unknown, it can be assumed that the author is a citizen of that State. The competent authority of a State may represent the anonymous author to protect and enforce the author's rights.

Traditional cultural expressions are considered anonymous works, as referred to in Article 15, Paragraph 4, because TCEs have been passed down from generation to generation, where the creator's identity is generally unknown. People only identify TCEs as coming from specific ethnic communities [19].

Based on the provisions of the Berne Convention, Indonesian Copyright Law and Article 11 of Copyright Law 2002. This Act states, The country that holds the Copyright for anonymous copyrighted works (the author is not known) that has not been published; The publisher is the copyright holder of an anonymous copyrighted work that has already been published; and. The country holds the Copyright for anonymous copyrighted works published and whose publisher is unknown." Copyright Law 2002 is revoked and replaced by Copyright Law 2014. The new Copyright Law 2014 stipulates in Article.

The regulation of traditional cultural expressions in the Copyright Law regime makes traditional artistic expressions apart from being a cultural heritage that must be preserved but must also be protected. As a rule of implementing Article 38 of Law Number 28 of 2014 concerning Copyright. Legal protection and the use of traditional cultural expressions have not been structured and well-coordinated in the Indonesian legal system, especially in the Riau Islands area. The provisions of laws and regulations that provide legal protection for traditional cultural expressions as Communal Intellectual Property in Indonesia are regulated in Law Number 28 of 2014 concerning Copyright. Of course, there is a fundamental difference because Copyright protection is individual, while traditional cultural expressions are communal. Traditional cultural words are included in the regulation of Copyright Law because they are the most relevant, although there will be obstacles to implementing its protection. After all, it collides with Copyright requirements such as the form of fixation work, originality, identification of the author, and term-limited time [10].

The Minister of Law and Human Rights 2017 and Copyright Law Number 2014 which has regulated TCEs as part of IPR. Likewise, with the Traditional Cultural Expressions of the

Kepulauan Riau Malay Indigenous Peoples. As an asset of Intangible Cultural Heritage, the Riau Archipelago Malay Indigenous Peoples can register their Traditional Cultural Expressions. They can use indigenous peoples who still preserve various arts, literature, and culture. in the Riau Archipelago.

Convention on the Protection and Promotion of the Diversity of Cultural Expressions UNESCO 2005 essentially provides that, to protect and promote the diversity of cultural expressions. This Convention regulates preserving, safeguarding, and promoting diversity of cultural expressions [22].

Barita Ayu Theressa [22] stated that the Convention Paris 2015 regulates not only the preservation but also safeguards and promotes the diversity of cultural expressions. These safeguards include providing an opportunity for Member States TCE extinction. The Convention also mandates that member states manufacture, produce, and distribute TCE from their communities [22].

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