

Legal Protection of Intellectual Property Rights for Small Businesses in the Songket Craft Industry in Batu Bara Regency

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ABSTRACT

Batu Bara Songket is a cultural heritage that must be maintained and preserved, not only because of its historical and traditional value, but also its role in the social and economic life of the Batu Bara Malay community. Legal protection for songket craftsmen and business actors is very necessary to prevent unethical practices such as piracy and counterfeiting, which can harm both producers and consumers. With these protection efforts, the sustainability of traditional songket production can be guaranteed, while also making a significant contribution to regional economic development and the preservation of national culture..

Keywords : Legal Protection, Craft Industry, Batu Bara's Songket

INTRODUCTION

Songket is a traditional woven fabric originating from the Malay culture of Indonesia, Malaysia, and Brunei. This fabric is a type of brocade, and is handmade using gold and silver threads. Songket is commonly worn on formal occasions because of its luxurious and shiny appearance, thanks to the use of metallic threads that create a brilliant effect on the background of the fabric. The name "songket" is taken from the Malay and Indonesian word "sungkit", which means to hook or pick. The process of making songket involves eight stages and is carried out traditionally. Because many of the weavers come from rural areas, the motifs used are often inspired by local flora and fauna. The Batu Bara Malay community has been producing songket cloth for generations, with the majority of craftsmen being women. Initially, songket was only worn by the nobility as a symbol of honor and status. However, currently Batu Bara songket can be worn by all levels of Batu Bara Malay society, regardless of position, ethnicity, religion, or age. Batu Bara songket continues to develop along with the changing times, because this cloth is very functional in various Malay traditional ceremonies. Songket is used in traditional events such as Malay weddings, circumcision ceremonies, name fillings, completing the Qur'an, to attending parties and other activities.

Thus, songket needs to be maintained and preserved so that it does not become extinct. In addition, legal protection for every entrepreneur is very important, including for weavers, because in creating quality and durable traditional woven fabric motifs, they must exert a lot of energy, thought, and large costs. Moreover, in the midst of the current economic crisis, these traditional craftsmen must be able to survive in order to meet the needs of their families and employees, as well as contribute to economic development in the regions of Indonesia. The issue of legal protection in the trade or business sector is very important, especially in the present era when counterfeiting, piracy, and unfair competition between business actors are increasingly rampant. In addition, it cannot be denied that these unethical actions have harmed consumers. In the business world, anything can happen, even setting aside social values, with the assumption that one person can bring down another. This kind of problem must be addressed by all elements of the nation, both from the legal side and the actors in the trade sector.

Based on Article 1 paragraph (1) of Law No. 28 of 2014 concerning Copyright, Copyright is

an exclusive right for creators which arises automatically based on the declarative principle after a creation is manifested in its form without reducing restrictions in accordance with the provisions of statutory regulations.

Referring to the Copyright Law above, songket cloth must be protected, this is based on several important reasons, namely:

1. **Protecting Cultural Property**
Songket Batu Bara is part of the local cultural heritage that has historical, aesthetic and ethnic identity value. Copyright protection prevents unauthorized exploitation that could threaten the sustainability of this traditional culture. Protecting the copyright of songket helps ensure that this heritage is respected and preserved.
2. **Prevent Piracy and Exploitation**
Without copyright protection, Batu Bara songket's unique designs and motifs could easily be taken or copied by others, including large producers, without giving any recognition or economic benefit to the local communities that created them. Copyright ensures that the original creators get their due.
3. **Improving the Welfare of Local Craftsmen**
With copyright protection, traditional craftsmen or designers have exclusive rights to produce, trade, or license their songket designs. This opens up opportunities for them to gain better economic benefits through recognition, royalties, and potential collaborations with modern fashion companies or designers.
4. **Encourage Creativity and Innovation**
Legal protection through copyright can encourage local craftsmen and communities to continue to innovate and develop new designs without fear of their work being stolen or used by others. Copyright provides an incentive for the creation of new works that remain based on local cultural identity.
5. **Recognition of Local Identity on the National and International Stage**
Copyright protection can also be a way to increase the recognition of Batu Bara songket, not only locally but also nationally and internationally. This helps promote the cultural heritage beyond the borders of the region and creates a global appreciation of Indonesia's rich culture.

For these reasons, choosing Batubara songket is a form of appreciation for local cultural heritage as well as a strategic step to strengthen Indonesia's cultural identity amidst the diversity of other traditional fabrics.

METHODS

This study uses an empirical legal approach to examine how legal norms, as stated in Law No. 28 of 2014 concerning Copyright, are implemented in society, especially regarding the protection of songket craftsmen in Batu Bara Regency. This study combines primary data obtained through direct interviews with business actors and local governments, as well as secondary data collected through literature studies. With descriptive qualitative data analysis, this study provides an overview of the process of law in protecting songket craftsmen and business actors. In addition, this study also identifies gaps between legal norms and practices in the field, and offers legal prescriptions to address existing problems. The results of this study are expected to contribute to legal protection and preservation of cultural heritage, while supporting local economic development.

RESULTS AND DISCUSSION

Results

Copyright Regulations on Batubara Songket Motifs as Traditional Cultural Expressions

According to Law No. 28 of 2014

Copyright Law aims to protect the creations of Creators who can consist of authors, artists, musicians, playwrights, sculptors, computer programmers and so on. The rights of these Creators need to be protected from the actions of others who without permission announce or reproduce the Creator's creations. Basically, Copyright is a kind of personal ownership of a Creation in the form of a manifestation of an idea of the creator of a book, you only buy the right to store and lend the book as you wish. The book is in the form of a book. However, when you buy this book, you do not buy Copyright. Artistic creation as stipulated in copyright regulations. The current regulation regarding copyright is Law Number 28 of 2014 concerning Copyright. Copyright is the exclusive right of the creator that arises automatically based on the declaratory principle after a creation is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations (Article 1 point 1 of Law Number 28 of 2014). This right provides special protection to the creator for his work (creation) in the fields of science, art, and literature.

Copyright protection arises not because of registration but because of the first announcement. It is also stated that Copyright is an exclusive right for the Creator or Copyright Holder to announce or reproduce his Creation, which arises automatically after a creation is born without reducing restrictions according to applicable laws and regulations (Article 2 paragraph 1). Exclusive rights are rights that are solely intended for the holder so that no other party may utilize these rights without the holder's permission. The term "announce or reproduce" includes the activities of translating, adapting, arranging, transforming, selling, renting, lending, importing, exhibiting, showing to the public, broadcasting, recording, and communicating the Creation to the public through any means. The principles of copyright include: 1) what is protected by copyright is an idea that has materialized and is original, 2) copyright arises automatically, 3) a creation does not always need to be announced to obtain copyright, 4) copyright of a creation is a right recognized by law that must be separated and must be distinguished from physical control of a creation, 5) copyright is not an absolute right.

Creation is every result of creative work in the fields of science, art, and literature that is produced by inspiration, ability, imagination, dexterity, skill, or expertise expressed in real form. (Article 1 point 2 of Law No. 28 of 2014). The protected works include (Article 40);

1. Books, pamphlets, typographical versions of published works, and all other written works;
2. Lectures, talks, speeches and other similar creations;
3. Teaching aids used for educational and scientific purposes;
4. Songs and/or music with or without lyrics;
5. Drama, musical drama, dance, choreography, puppetry, and pantomime;
6. Works of fine art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, statues or collage;
7. Applied arts;
8. Architectural works;
9. Map;
10. Batik artwork or other motif art;
11. Photographic works;
12. Portrait;
13. Cinematographic work.
14. Translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works resulting from transformation;
15. Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;

16. Compilation of creations or data, either in a format that can be read by a computer program or other media;
17. The compilation of traditional cultural expressions during the compilation is an original work;
18. Video games; and
19. Computer programs.

To determine copyright ownership, it is important to understand the creator. A creator is a person or several people who individually or together produce a creation that is unique and personal. This definition is as the first person to create a creation which has author's rights/copyright, as the first creator. The explanation of who was the first creator is as follows:

1. An individual can independently become the first creator of a creation by creating an idea and realizing it materially.
2. An employer can order employees who work full time for him to create a creation based on a work order, in which case the employer is the first creator to whom the employee is instructed.
3. Two or more individuals or legal entities/businesses can be joint creators of a first creation. In the Copyright Law, the description of creators is determined in Articles 31 to 37. Artistic creations can also be seen as part of traditional knowledge. Efforts that need to be made in Indonesia to regulate the protection of traditional knowledge. Indonesia's position on the issue of protection and utilization of Traditional Knowledge is still unclear. Indonesia only regulates it generally in Article 38 of Law No. 28 of 2014 concerning Copyright as follows:
 - a. Copyright for traditional cultural expressions is held by the State.
 - b. The state is obliged to inventory, protect and preserve traditional cultural expressions as referred to in paragraph (1).

In the Explanation of Article 38 paragraph (1) there is no explanation regarding what is meant by international cultural expression. Meanwhile, in the Explanation of Article 38 paragraph (2) it is only stated that the purpose of this provision is to prevent actions by foreign parties that can damage the cultural values in question. By looking at this explanation, it means that Indonesia does not even have a generally accepted definition of Traditional Knowledge, or at least a shared understanding of this type of intellectual property. As is known, in Indonesian law it is impossible to regulate something if the form of the thing itself is not clear. Regardless of who created it, IPR is actually also very much needed by the Indonesian people for several reasons. First, it is logical that a person or group of people who create something useful are rewarded both morally and financially because they may have spent a great deal of effort and money (it is not uncommon for someone to risk their life in the process of inventing something, as the Wright brothers did when testing their invention, namely the world's first powered airplane).

Second, IPR encourages the development of a sporty and creative culture because it respects the work of others. Third, IPR can encourage a sense of pride in a person or a society, even a nation, which will encourage the spirit to improve the quality of the creations they produce. For example, Indonesia would certainly feel proud as an Indonesian nation if, for example, Batu Bara songket cloth was used in various countries. Fourth, related to Traditional Knowledge and Folklore, the IPR system can prevent utilization that is not in accordance with the commercial values of the community that owns the IPR, for example, values of belief or tradition. Fifth, IPR can prevent the occurrence of a welfare gap between the owners of Traditional Knowledge and Folklore and parties who gain huge profits from utilizing the intellectual property in question. In the future, this gap can provoke provocation and social conflict between members of society.

Strengthening the protection of Indonesian batik art through Copyright has begun to be encouraged. This began with the case of piracy by Malaysia. The Indonesian government reacted by recording various typical Indonesian batik patterns and then registering them with the Directorate

General of Intellectual Property Rights in Medan. Now, dozens of batik patterns from Indonesia have been "secured" through Copyright protection, including songket cloth from Batu Bara.

1. Shared property

The national Copyright Law has now made a breakthrough by allowing the government to take over the management of rights for the benefit of unknown creators, the duration of protection is also prone to debate. As a result, songket, if it appears purely as a traditional work without a "new touch" from living individuals, is also a traditional property that has become common property. This is what makes the current Copyright protection able to speak, but not much.

2. Moral Rights

Copyright also includes Moral Rights. Moral Rights are rights that protect the personal interests of the Creator. Moral Rights are contained in the Bern Convention with Malaysia and Indonesia bound by it. Moral rights are not economic rights, but exist to protect the integrity of the creation and the creator's right to remain named, even though he no longer has the right to receive economic benefits from his creation. According to Komen and Verkade, the moral rights of a creator include:

- a. Prohibition of making changes in creation.
- b. Prohibition on changing the title.
- c. Prohibition on changing the creator's determination.
- d. The right to make changes.

3. Right to Indication of Origin

Another potential protection offered by the law is protection of the mark, name or indication of the origin of an item, which is called the protection of the Indication of Origin. This protection is contained in the Paris Convention for the Protection of Industrial Property Rights of 1883. The Paris Convention prohibits any goods from being circulated using a false or misleading Indication of Origin.

In Indonesian national law, Indication of Origin has actually also been regulated. Unfortunately, the regulation is only a small part of Law No. 15 of 2001 concerning Trademarks. This creates a narrow general interpretation among national legal experts, if there is a discussion about Indication of Origin, what is discussed is "only" a type of trademark such as Nike, Channel or Prada. Indication of Origin is interpreted as part of Geographical Indication in a broad sense, only it has not been registered, local history and cultural roots, including the tradition of making it, are actually one of the main requirements for protection, in addition to other natural factors. Traditional property is also a Cultural Right. According to the International Covenant on Economic, Social and Cultural Rights which has been ratified by Indonesia, Cultural Rights are Human Rights. Intellectual Property Rights can be said to be part of Cultural Rights because of the similarity of objects. Moreover, if the object is also clearly related to the Right to Identity, namely as one of the determining factors of cultural identity. Interestingly, the enforcement of Cultural Rights as a collective right requires an active role from the government.

Factors That Influence Small and Medium Enterprises on Understanding Intellectual Property Rights in the Songket Craft Industry

The understanding and application of IPR among SMEs, especially in the Batubara songket craft industry, has great potential to preserve cultural heritage while improving the economic welfare of local communities. However, cross-sector collaboration is needed to overcome existing challenges. The things that influence small and medium business actors in understanding intellectual property rights in the songket craft industry are as follows:

1. The Important Role of SMEs in the Local Economy

SMEs, especially in the craft sector such as songket, play an important role in driving the local economy. In Batubara Regency, North Sumatra, songket crafts are one of the cultural heritages with high economic value. SMEs in this industry not only preserve cultural traditions, but also create jobs and drive product innovation for local and international markets.

2. Challenges in Understanding IPR

Low IPR Awareness: Many SMEs do not yet understand the importance of protecting their innovations and craft designs through IPR registration. This makes their work vulnerable to plagiarism or unauthorized exploitation. **Limited Access to Information:** SMEs often face difficulties in understanding the procedures and benefits of registering IPR, such as patents, trademarks, or copyrights. **Costs and Complicated Procedures:** IPR registration is often considered expensive and complex, which is a major barrier for SMEs to protect their rights.

3. Relation to the Songket Industry

The Uniqueness of Batubara Songket: The songket motifs from Batubara have unique aesthetic and cultural values, which should be protected as a local identity. **Commercialization Opportunities:** By protecting motifs and designs through IPR, SMEs can increase the added value of their products and expand their markets. **Risk of Plagiarism:** Without IPR protection, traditional songket designs can be taken by others for mass production, which is detrimental to local craftsmen.

4. Efforts Required

Education and Mentoring: Training programs involving government agencies and academics are needed to increase SME awareness of IPR. **Simplify the IPR Registration Process:** The government can help by providing assistance services and subsidizing registration fees. **IPR-Based Marketing:** By utilizing IPR, SMEs can strengthen the competitiveness of their products through labels and certifications that are recognized nationally and internationally.

Government Efforts to Protect Intellectual Property Rights in Batubara Songket

Protection of Intellectual Property Rights (IPR) for traditional cultural works such as Batubara songket is very important to ensure that its cultural, economic, and historical values are protected from exploitation or misuse. The following are government efforts to protect IPR for Batubara songket:

1. IPR Registration

The government can help register Batubara songket as Copyright or Geographical Indication (IG) under the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights. Geographical Indication ensures that Batubara songket is recognized as a typical product associated with the Batubara region, North Sumatra, protecting its distinctive characteristics.

2. Regulations and Policies

The local government can issue a Regional Regulation (Perda) that specifically protects and promotes Batubara songket as a cultural heritage. Encourage harmonization of national and international laws related to the protection of traditional cultural heritage.

3. Socialization and Education

The government can raise awareness of local communities, especially songket craftsmen, about the importance of protecting IPR and how to register it. In addition, involve local communities in cultural preservation programs to maintain the originality and authenticity of Batubara songket.

4. Digitization and Documentation

The government supports the documentation of Batubara songket patterns, techniques, and philosophies so that they can become part of the recorded cultural heritage. Digitizing traditional designs helps prevent plagiarism and promotes local culture globally.

5. Economic and Marketing Support

The government provides entrepreneurship training to craftsmen to increase the added value of products. The government also creates a special market for songket through exhibitions, bazaars, and digital platforms. In addition, the government also provides assistance or subsidies to MSMEs who focus on producing Batubara songket.

6. Cooperation with Institutions

The government's efforts in establishing cooperation with international organizations such as UNESCO for cultural recognition, so that Batubara songket can be recognized as part of the Intangible Cultural Heritage. It can also collaborate with universities for research and innovation related to songket development.

7. Law Enforcement

Taking firm action against violations, such as piracy of Batubara songket designs by other parties, both domestic and international, and utilizing technology to monitor IPR violations on online platforms. The steps above reflect the government's commitment to maintaining the authenticity and sustainability of Batubara songket, while empowering local communities so that this cultural product can continue to develop and be widely recognized.

Discussion

Copyright protects tangible works, including traditional cultural expressions. Exclusive rights are granted to the creator, including moral rights (protection of the integrity of the work) and economic rights. However, for traditional cultural expressions, the state holds Copyright to safeguard cultural values and prevent exploitation. Songket Batubara as a cultural heritage has a uniqueness that needs to be protected to prevent plagiarism, increase the added value of products, and promote local identity.

The challenges faced by SMEs in protecting intellectual property rights for Batu Bara songket are:

1. Low awareness of the importance of IPR.
2. The registration procedure is considered complicated and expensive.
3. The risk of design exploitation without legal protection.

Therefore, the government must make efforts, namely:

- a. IPR Registration: Through Copyright and Geographical Indications to protect the distinctive characteristics of songket.
- b. Education and Socialization: Increasing business actors' understanding of IPR.
- c. Economic Support: Registration fee subsidies, entrepreneurship training, and product promotion.
- d. Digitization and Documentation: Preserving songket motifs and techniques digitally.
- e. Legal Enforcement: Protecting against plagiarism through legal oversight.
- f. International Cooperation: Supporting the recognition of songket as UNESCO Intangible Cultural Heritage.

These measures aim to preserve cultural values and improve the welfare of local communities through effective IPR protection.

CONCLUSION

Based on the descriptions and discussions of the research results, the following conclusions can be drawn:

1. Article 38 paragraph (1) of Law No. 28 of 2014 regulates traditional cultural expressions including creative works that are cultural assets that are passed down from generation to generation, including fine arts, motifs, carvings, and other works of art, such as the Batubara songket motif. Copyright for traditional cultural expressions, including songket motifs, is not owned by a particular individual but is held by the state as the protector of the nation's cultural heritage (Article 38 paragraph 2). The state acts for and on behalf of the indigenous people or group that created the work. Article 38 paragraph (3) states that the use of traditional cultural expressions by other parties, such as the Batubara songket motif, must be carried out by considering: the consent of the rights holder (the state or the relevant indigenous people) and fair benefits for the indigenous people or group from which the motif originated. The Batubara songket motif as a traditional cultural expression is protected by the Copyright Law with the state as the rights holder. This protection includes recognition of cultural origins and a prohibition on unauthorized use, which aims to protect Indonesia's cultural heritage from exploitation or misuse.
2. The Batubara songket craft industry, as one of Indonesia's cultural heritages, has high artistic and economic value. Small and Medium Enterprises (SMEs) play a major role in the preservation and development of this product. However, the understanding of SMEs about Intellectual Property Rights (IPR) is often still low. This is due to several factors, such as lack of education, perception of high IPR registration costs, and limited access to information.
3. The Batubara District Government's efforts to protect Batubara songket are through:
 - a. Registration of Geographical Indications (GI) to protect authenticity and reputation.
 - b. Promotion through cultural exhibitions and marketing activities.
 - c. Craftsmen training for design innovation and IPR registration.
 - d. Development of Songket Center as a production and preservation center.
 - e. Digitization and Documentation of songket motifs.
 - f. MSME support in the form of capital assistance and market access.
 - g. Partnership with Other Parties for research and promotion.

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