

## Implementation inside Safeguarding Principles UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003 in Indonesia

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### Abstract

*The personality of a nation will be reflected through its culture. Culture is a form of intangible wealth owned by a country. Intangible Cultural Heritage is the cultural heritage of the ancestors that is passed down to the next generation. Intangible Cultural Heritage has cultural, political and economic values. Intangible Property Inheritance has been regulated in the 2003 UNESCO Convention which "Protection" referred to the word "safeguarding". The purpose of this is to discuss the concept of "Safeguarding" according to the 2003 UNESCO Convention for The Safeguarding of the Intangible Cultural Heritage and examine its application in Indonesia. The method of the study is a normative juridical legal research with a statute and a case approach. Meanwhile, the efforts made by the government include making intellectual property rights, making catalog with a list of Indonesia's intangible heritage and create communities that are interested in various forms of heritage and Indonesia's culture itself, including intangible heritage. In addition, Another effort that can be done is to hold an art exhibition or exhibition. The results of this study indicate that the concept of "safeguarding" in the 2003 UNESCO Convention is interpreted as protection, safeguarding, preservation of an open intangible heritage. This means that a country which is not the owner of such intangible wealth is still allowed to use, display or create an object which is an inheritance of the Intangible Cultural Heritage of another country as long as the beneficiary country does not claim to be the culture of its country.*

### Keywords

safeguarding; convention of UNESCO 2003; intellectual property right; intangible cultural heritage



### I. Introduction

The discussion on legal protection of intangible culture has become a very important issue to be discussed. Indonesia as a large country is rich in natural resources, culture, traditions, and traditional knowledge that must be preserved and maintained in order to maintain the sovereignty of the nation as a whole. There are thousands of cultures stored in the motherland that include works of art, whether local music, folk songs, choreography, performing arts, to cloth motifs and various types of Indonesian cuisine and specialties.

The personality of a nation will be reflected through its culture. At this time, culture has often been forgotten and its preservation neglected, and lack of efforts to protect this culture, especially for intangible cultures, can have bad consequences for the State of Indonesia, namely the existence of claims against Indonesian culture made by other countries. This

claim, of course, has a very detrimental impact on Indonesia, both in terms of economy, tourism, social and culture.

The cultural wealth of the Indonesian people is indeed diverse in form and has their own characteristics, this can be seen from the presence in each area which certainly has a local culture that tends to have ethnic nuances, some are material and intangible. The diversity of tribes, languages, customs and beliefs that exist in Indonesia, makes Indonesia a country rich in traditional culture. Indonesia has 1,128 ethnic groups spread throughout Indonesia with more than 300 (three hundred) regional language dialects, more than 3000 (three thousand) indigenous Indonesian dances, and there are various other arts such as traditional songs, traditional musical instruments, traditional arts, and so on. so on.

Intangible Cultural Heritage is a cultural heritage from ancestors passed down from generation to generation that has high value and usability, therefore it is very important to be protected by the country that owns it. Intangible cultural heritage is the intellectual property of a country that must be strengthened with a legal basis so that no other country can claim it. In the International Journal of Intangible Heritage, the definition of intangible is redefined as local customs or customs. One way to understand tangible as an object or place or area and intangible as the universe of civilization that includes the object or place or area.

Related to the Intangible Heritage which is the heritage of a country, there is a convention, namely According to the Convention For The Safeguarding of The Intangible Cultural Heritage Article 2 paragraph (3), which means that the 2003 UNESCO convention has a non-economic protection nature, uses the term Safeguarding and not protection. The meaning of this protection is more inclusive and not exclusive protection or negates other parties who are not the holder to freely enjoy it. "Safeguarding" is more about keeping protected objects sustainable for the benefit of human generations, both present and future generations. In the Intellectual Property system, the protection of the 2003 UNESCO Convention still recognizes that all protected objects are in the public domain.

Culture is a form of intellectual property. As explained that the meaning of culture is an intellectual work that needs to be protected. Culture is the identity and identity of the nation that can be used economically for the progress and welfare of society. Culture is the whole idea and work of humans, which must be familiarized with the learning process, along with the whole of the results of the mind and his work". In essence the culture itself consists of several elements including; language, people belonging to a group, religion, beliefs, and religious system. (Martozet and Nurwani, 2019)

This intellectual property law includes communal rights and personal rights. The protection carried out on these two rights is still experiencing many obstacles. This requires serious attention from the government and stakeholders and there must be a real solution that must be done. The diversity of intangible cultures in Indonesia, such as wayang, batik, keris, Reog Ponorogo, Rasa Sayange songs and other intangible cultures need to be protected both at the national and international levels. The protection of this intangible culture really needs to be done in order to find out the cultural wealth that exists today, especially to prevent any recognition from other parties. Therefore, this research was conducted to answer problems related to the protection of intangible heritage and intellectual property rights.

Indonesia has ratified the "UNESCO Convention for the Safeguarding of The Intangible Cultural Heritage 2003" through Presidential Regulation Number 78 of 2007 concerning Ratification of the Convention for The Safeguarding of The Intangible Cultural Heritage. "Safeguarding" means measures at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

However, it is still necessary to find the ideal format for the implementation of the convention in Indonesia. Therefore, this study will seek answers to the question of how the mechanism for the use of the "UNESCO Convention For The Safeguarding Of The Intangible Cultural Heritage 2003" as an instrument of protection in Indonesia and how efforts can be made by Indonesia.

## **II. Review of Literature**

### **2.1 Intangible Heritage**

Article 2 paragraph (1) of the 2003 UNESCO Convention states that "Intangible cultural heritage" is a variety of practices, representations, expressions, knowledge, skills: as well as instruments, objects, artifacts and related cultural environments covering various communities, groups, and in certain things, individuals who are recognized as their cultural heritage." The special properties of the ICH object. "Intangible cultural heritage" must contain character

"...transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and provides them with a sense of identity and consistency, thus promoting respect for cultural diversity and human creativity"

From this definition, it can be concluded that the nature of the object of preservation of intangible cultural heritage is transmitted or passed on from generation to generation and becomes an interesting thing to be studied and constantly updated by the community or group as their response to their environment, their interaction with nature and the environment. history. In addition, it provides awareness of identity and sustainability, so that promoting is a form of respect for cultural diversity and human creativity.

According to the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, protection is actions aimed at ensuring the preservation of intangible cultural heritage, including identification, documentation, research, preservation, protection, promotion, enhancement, dissemination, in particular through education, both formal and non-formal. , as well as the revitalization of various aspects of the cultural heritage. Hafstein's description in Howell of intangible inheritance is as follows:

"a mechanism of selection and display. It is a tool for challenging attention and resources to certain cultural practices and not to others. Intangible heritage is both a dance-band and a hospital: a serious enterprise concerned with life and death of traditions and communities and a fund-raising dinner dance party with colorful costumes, glaring spotlights, and rhythmic tune".

## **III. Result and Discussion**

### **3.1. "Safeguarding" Protection Mechanism according to the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage**

In connection with the Intellectual Property system, the UNESCO Convention 2003 still recognizes that all objects that are included as intangible assets are in the public domain or public domain. This is regulated more clearly in Article 19 (2) of the 2003 UNESCO Convention related to such cooperation, namely:

“Without prejudice to the provisions of their national legislation and customary law and practices, the states parties recognize that the safeguarding of intangible cultural heritage is of general interest to humanity, and to that end undertakes to cooperate at the bilateral, subregional, and international levels”.

In summary, based on article 19 paragraph 2 of the 2003 UNESCO Convention that protection is given for the public interest and humanity. In order to produce such “safeguarding”, cooperation at various levels is needed, namely bilateral, sub-regional, regional and international. Thus it is clear that the 2003 UNESCO Convention which regulates the Safeguarding of Intangible Wealth is not intended to make a culture inclusive and also commodified, but instead aims to make the objects that become intangible assets can be enjoyed and used freely by humans in all parts of the world. .

Furthermore, in Article 2 paragraph 3 of the 2003 UNESCO Convention regarding the protection of intangible wealth, namely the term "protection" in the meaning of "safeguarding". However, it is not explained that this protection also includes protection on the economic value or economic value of the objects of intangible wealth which are commercialized by other countries who are not the owners. However, "safeguarding" emphasizes more on ensuring the existence of this intangible wealth so that it can continue to be utilized by future generations with various legal means.

Regarding the issue of safeguarding the intangible wealth owned by Indonesia and claimed by Malaysia from a historical perspective, the relationship between Indonesia and Malaysia is very long and has resulted in various cultural similarities between the two. Indonesia itself must realize that in terms of cultural claims, it must be recognized that Indonesian culture and language have long spread to many regions and regions. But on the other hand, Malaysia must not deny its country's culture which is rooted in Indonesian culture. Therefore, as a form of responsibility and good faith and respect for the Indonesian state as the owner of the intangible wealth used by Malaysia,

Indonesia as a country that is very rich in culture, of course, has abundant intangible wealth. Not infrequently this culture is "claimed" by other countries. One example is the Wayang Kulit culture which was once recognized by a neighboring country, namely Malaysia. According to the research, the background of the cultural claim by the Malaysian state is because the cultural relationship between Malaysia and Indonesia is very strong and reinforced by the concept of cognate countries. Even though in the "group" there are many differences between the cultures created in Indonesia and Malaysia such as cloth motifs, musical instruments, ornaments, dances, food, performing arts, and others.

Safeguarding the intangible cultural heritage at the national level according to Article 11 of the 2003 UNESCO Convention that each State Party is obliged to take the necessary steps to ensure the protection of the intangible cultural heritage that exists in its territory. Where the security measures as referred to in Article 2, paragraph 3, identify and stipulate various elements of intangible cultural heritage that exist in their territory, with the participation of the community, groups and relevant non-governmental organizations.

In order to protect the intangible heritage, article 12 of the 2003 UNESCO Convention explains that each State Party is obliged to compile, in a manner adapted to its own situation, one or more inventories of the intangible cultural heritage that exist in its territory. This inventory should be updated regularly. This is reinforced by Article 29 of the 2003 UNESCO Convention where the country must provide relevant information about the inventory.

Based on Article 13 several other actions that can be taken for security are by:

- a) adopt general policies aimed at promoting the function of the intangible cultural heritage in society, and to integrate the protection of such heritage into planning programs;
- b) appoint or establish one or more bodies authorized to maintain the intangible cultural heritage in its territory;
- c) encourage scientific, technical and artistic studies, as well as research methodologies, with a view to the effective protection of the intangible cultural heritage, in particular the intangible cultural heritage in jeopardy;
- d) adopt appropriate legal, technical, administrative and financial measures aimed at encouraging the establishment or strengthening of institutions for training in the management of the intangible cultural heritage and the transmission of such heritage through forums and spaces intended for its performance or expression;
- e) ensuring access to intangible cultural heritage while respecting customary practices governing access to certain aspects of that heritage;
- f) establish an intangible cultural heritage documentation institution and facilitate access to it.

In order to protect and maintain the intangible cultural heritage, a country must also pay attention to the aspects of education, awareness raising, and capacity building as described in Article 14 which aims to ensure the recognition, respect and enhancement of the intangible cultural heritage in society, in particular through programs education, awareness-raising and information, aimed at the general public, in particular youth; special education and training programs in the communities and groups concerned; capacity building activities for the protection of intangible cultural heritage, in particular management and scientific research; and non-formal means for transmitting knowledge; informing the public of the dangers that threaten the heritage, and activities carried out in accordance with this Convention; promote education for the protection of natural spaces and places of memory whose existence is necessary to express intangible cultural heritage.

Within the framework of activities for the protection of the intangible cultural heritage, each State Party shall endeavor to ensure the widest possible participation of the communities, groups and, where appropriate, the individuals who create, maintain and transmit such heritage, and to involve them actively in its management as described in article 15.

To ensure better visibility of the intangible cultural heritage and awareness of its meaning, and to encourage dialogue that respects cultural diversity, the Committee, at the suggestion of the States Parties concerned, should establish, update and publish a Representative List of the Intangible Cultural Heritage of Humanity.

For the purposes of this Convention, international cooperation includes, inter alia, the exchange of information and experiences, joint initiatives, and the establishment of assistance mechanisms to States Parties in their efforts to protect the intangible cultural heritage as described in article 19.

Without prejudice to the provisions of national legislation and customary law and practice, States Parties recognize that the protection of the intangible cultural heritage is in the public interest of mankind, and undertakes to cooperate at the bilateral, subregional, regional and international levels.

According to Article 20, international assistance may be provided for the following purposes:

- a) preservation of heritage listed in the List of Intangible Cultural Heritage that Needs to be Protected Urgently;
- b) preparation of inventory within the meaning of Articles 11 and 12;

- c) support for programs, projects and activities carried out at the national, subregional and regional levels aimed at safeguarding the intangible cultural heritage;
- d) any other purposes the Committee deems necessary.

While the form of assistance provided by the Committee to a State party will be governed by the operational guidelines specified in Article 7 and by the agreement referred to in Article 24 of the 2003 UNESCO Convention with a study of various aspects of security which can be interpreted as the ability to defend oneself (survival). in the face of an existential threat. Its main purpose is to eliminate mutual suspicion of the other party's intentions to prevent conflict between countries. In addition, the provision of experts and practitioners as well as training of all necessary staff are included in the form of assistance provided. Other forms of assistance can be financial and technical, including the provision of low-interest loans and donations.

### **3.2. Efforts to Protect Intangible Assets that can be done by Indonesia.**

Lawrence M. Friedman in his book entitled *The Legal System A Social Science Perspective* (1975) states that the legal system consists of legal structures (in the form of legal institutions), legal substance (statutory regulations) and legal culture or legal culture. The three components of the legal system can be a reference for the success or failure of law enforcement, as well as in law enforcement related to intellectual property rights violations.

In the context of legal culture, legal culture is a very important element. Legal culture is to protect the views, habits and behavior of the community regarding the thoughts, values and expectations of the applicable legal system. Legal culture is a climate of social thinking about how the law is applied, violated or implemented. Every society, state and community has its own legal culture which is influenced by cultural values that live in society.

Seeing this reality, law enforcers should not only prioritize formal aspects. Law enforcement which is only contrary to the substance of formal legal norms contained in the law, will tend to injure people's sense of justice. The emphasis should be on the opposite of living law. Furthermore, law enforcers must pay attention to legal culture to understand attitudes, beliefs, values and expectations as well as people's thoughts on the law in the applicable legal system.

Law as a tool to change society or social engineering is nothing but ideas embodied by the law. To achieve the legal function as an engineering society towards a better direction, it is not only necessary to have the availability of law in the sense of rules or regulations, but also to guarantee the realization of the law into good legal practice. So the operation of the law is not only a mere function of legislation, but also bureaucratic activities in its implementation.

In the context of implementing safeguarding based on conventions, various efforts and related subjects can be made as follows:

#### **a. Government efforts**

##### **1. IPR Registration**

In the Anglo Saxon literature there is known as Intellectual Property Rights. This word is then translated into Indonesian as "Intellectual Property Rights, which is actually more correct if translated into intellectual property rights. The reason is that the word "property rights" is actually a standard term in the legal literature. Even though not all intellectual property rights are property rights in the true sense. It could be a right to reproduce only, or to use it in certain products.

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Before discussing further about some examples of cases regarding unilateral claims of Indonesia's intangible assets by other countries, it is necessary to recall the principles of the 2003 UNESCO Convention. Where "Safeguarding" is to protect, preserve, safeguard, and maintain the intangible assets owned by a group, community or country. However, this safeguarding concept does not prohibit other groups, communities or countries from participating in enjoying this form of intangible wealth.

One example of the application of the 2003 UNESCO Convention is in the country of Brunei Darussalam. Brunei Darussalam is a country that has a significant cultural heritage, both tangible and intangible. Since independence and the increasing affirmation of national cultural and religious values, the King of Brunei has made efforts to preserve traditional culture and practices that are in harmony with the country's concept of the Malay Islamic Monarchy (MIB). The Malay Kingdom of Islam Beraja underlined the institutionalization of Islam as the state religion, the preservation of Malay cultural values, and the acceptance of monarchical leadership. On 12 August 2011 Brunei Darussalam ratified the 1972 UNESCO Convention on the Protection of the World Cultural and Natural Heritage, and on 11 November 2011 signed the 2003 UNESCO Convention for the Protection of Intangible Cultural Heritage.

If you look at the case of claiming Wayang Kulit culture by the Malaysian state, it is certain that Indonesia as the country that owns it can rely on the 2003 UNESCO Convention to ensure that the wayang kulit can still be enjoyed by future generations and does not become extinct. Where according to Article 3 of the 2003 UNESCO Convention that specifically "safeguarding" in objects of intangible property does not have exclusive rights and does not discuss intellectual property rights because until now, there is still no international convention that discusses traditional culture such as wayang kulit specifically in intellectual property rights framework.

## **b. Catalog Creation**

Another effort that can be done, for example, is cataloging.

Intangible heritage consists of various objects and arts and in various formats. The purpose of making a catalog of intangible heritage is so that a country in this case Indonesia can record and document anything that is an intangible heritage belonging to the state. An index tells readers of the page where information on a particular subject can be found. Intangible heritage catalogs have the same benefits. The catalog will tell the user or the public the exact origin and form of Indonesia's intangible heritage with a number, reference or index that will make it easier.

The information contained in the catalog provides many access points needed by the public or anyone looking for information on the intangible heritage of Indonesia. In general, the catalog contains the name of the object/type, origin, development history, photographs and other matters relating to an intangible heritage.

### c. Community Effort

In addition to the efforts of the government, the community can also help protect the intangible heritage owned by Indonesia, for example by forming special communities and also through the implementation of expos (exhibitions). The purpose of forming a community is so that more and more people understand the importance of protecting the intangible heritage of their country. Through the community, it is hoped that more information can be obtained and disseminated so that people who were previously unfamiliar with the term intangible heritage understand and are willing to protect it together.

The expo or exhibition aims to introduce to the public the various forms of intangible heritage owned by Indonesia. Expos can feature dance works, dramas, performances and more. With the more active people in spreading about intangible heritage, the more people who know and are willing to protect it. So that there are no unilateral claims by foreign countries. For example, the claim of Reog art by Malaysia.

Before discussing further about some examples of cases regarding unilateral claims of Indonesian intangible assets by other countries, it is necessary to recall the principles of the 2003 UNESCO Convention. "Safeguarding" is to protect, preserve, safeguard, and maintain the intangible wealth owned by a group, community or state. However, this safeguarding concept does not prohibit other groups, communities or countries from participating in enjoying this form of intangible wealth.

According to Articles 11-15 of The Convention for the Safeguarding of the Intangible Cultural Heritage of UNESCO of 2003 the purpose of this Convention is to raise awareness of the importance of intangible cultural heritage, ensure the vitality of its local and national elements, and thereby indirectly affect the protection of cultural diversity and human creativity, namely dialogue and respect between cultures. The responsibility for protecting and safeguarding (though loosely defined) rests primarily with States Parties, which therefore identify and define intangible cultural elements, create and update Lists, and take the necessary steps to create and implement them. appropriate public policies and actions.

A form of guarding, protecting - in other words, saving. Furthermore, this type of salvation is often initiated, promised, performed, monitored and sometimes (if only for promotional purposes) adopted by political, state, international or party agendas and administrations.

Article 2 paragraph (3) of the ICH defines the term "safeguarding" as:

"Safeguarding means to ensure the viability of the Intangible Cultural Heritage, including the identification, documentation, research, preservation, protection promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage"

The article can be translated as follows, namely Safeguarding is a means of effort intended to ensure the capability of an intangible cultural heritage, including identification, documentation, research, preservation, protection, promotion, empowerment, transmission, especially through formal and non-formal education, as well as revitalization of various aspects of the intangible cultural heritage.

In the regulation regarding the "safeguarding" of intangible wealth based on the 2003 UNESCO Convention, it is "a practice, expression, representation, skill, knowledge: various instruments, objects, works of art and artifacts as well as the cultural environment related to a group, community or society. and in some special cases individually recognized as cultural heritage".

Furthermore, the object of Inheritance of Intangible Property must have the following characteristics:



- 1) That the inheritance of intangible wealth is passed on or transferred from one generation to the next.
- 2) That the inheritance of intangible wealth is simultaneously renewed by the group or community that owns it as control over what is owned by them and in the environment they run, how this group or community interacts with nature and history.
- 3) Provide awareness about personal and identity on an ongoing basis, so as to represent respect for the very diverse culture and human creativity.

Based on the UNESCO Convention 2003, namely Article 2 (3) that the concept of "safeguarding" can also be interpreted as the protection of intangible wealth, where actions that fall into the category of "safeguarding" are ensuring the preservation of intangible wealth, including documentation, identification, preservation, protection, improvement, research, study, distribution, especially through aspects of formal or non-formal education.

Article 11 of the 2003 UNESCO Convention also stipulates the obligations of countries that recognize or have an inheritance of intangible assets as follows:

- 1) That the state concerned can take necessary actions to protect and secure an object of inheritance of intangible wealth in its country.
- 2) Whereas according to Article 3 paragraph 3, safeguarding is meant to identify or recognize and ensure that existing intangible assets are supported by protective measures from other parties, namely groups or communities, government and non-government organizations to participate actively.

The 2013 UNESCO Convention has the characteristics of non-economic protection, using the term "safeguarding" instead of "Protecting". Safeguarding can be interpreted that objects that become the inheritance of intangible wealth must be maintained and protected in order to survive and be preserved so that the next generation of humans can still enjoy them. The meaning of this protection is more inclusive and not exclusive. Exclusive is defined here as a limitation on other parties who are not the owner to be able to also enjoy the intangible wealth.

#### **IV. Conclusion**

The conclusion that can be drawn from the results of this study is that the concept of "safeguarding" in the 2003 UNESCO Convention is defined as the protection, safeguarding, preservation of an intangible wealth heritage that is open. This means that a country that is not the owner of the intangible wealth is still allowed to use, display or create an object that becomes the inheritance of the intangible wealth of another country as long as the beneficiary country does not claim to be the culture of its country.

For implementation in Indonesia, it is under the supervision of the government and also involves legal entities that already have the authority based on law number 28 of 2014. Likewise, the Indonesian people can help protect the intangible assets owned by Indonesia by reporting violations found in accordance with the regulations contained in the 2003 UNESCO Convention. Meanwhile, the efforts made by the government include making intellectual property rights, creating a catalog containing a list of Indonesia's intangible heritage. Then also create communities that are interested in various forms of heritage and culture of the Indonesian state, including intangible heritage. holding an art exhibition or exhibition.

The recommendation for further research is that a more in-depth study is needed on other rules that can be used by the country that owns the inheritance of intangible assets that can be applied to protect the inheritance of their intangible assets from abuse by other parties or countries.

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