

## Conference Paper

# Challenges in Protecting Architecture of Traditional Houses in Indonesia

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**Abstract.**

This paper aims to analyze the regulations related to protecting the architecture of the traditional house in Indonesia and the challenges in related regulations. To achieve these goals, the research uses a normative legal writing method with descriptive-analytical specifications. Firstly, the findings reveal that traditional houses are part of traditional cultural expressions (TCE). Indonesia protects architectural works and TCE in the same intellectual property regime, namely copyright. Therefore, this paper examines the protection of traditional house architecture from the perspective of Copyright law, the Law on the Advancement of Culture, and the TCE Bill. The abovementioned regulations state that the architecture is a protected object unless the TCE Bill is. Second, there are some challenges, such as 1) the priority of the TCE Bill after the change of president; 2) song and music get more benefit from copyright protection rather than the other objects in the copyright regime and no implementing regulation on architecture; and 3) the TCE data collection/inventory is still not optimal yet. Therefore, Indonesia needs to think more seriously about adequate and applicable legal protection for traditional house architecture and other TCEs. The central government should encourage regional governments and related parties to continue data collection and registration of various TCEs in each region to increase the number of registered TCEs. The central government should provide a target number of registered TCEs for the local government. If the target is met, the central government will give a reward so that the local government and related parties will be more enthusiastic about collecting data and registering the TCE with DJKI.

**Keywords:** architecture, traditional house, legal protection, Indonesia

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## 1. INTRODUCTION

The diversity of tribes and cultures in Indonesia is why Indonesia has various forms of traditional houses.[1] Each province in Indonesia has a unique design for its respective traditional houses, which can be seen from the architectural style of the building, materials for making the house, ornaments, and the history of the traditional house.[2]

A traditional house cannot only be interpreted as an ordinary residential building but shall be more than that. It is due to the characteristics and culturally rich and historical elements in a traditional house, passed down from generation to generation.

Unfortunately, in legal literature, especially from the side of Intellectual Property Law and Traditional Cultural Expression, the discussion related to the legal protection of traditional house architecture is still in minimum amount.[3] The traditional house is one of the essential elements in traditional cultural life and ideally be counted as a Traditional Cultural Expression protected by the State.

Indonesia protects architectural works and Traditional Cultural Expressions in the same Intellectual Property Rights regime, namely Copyright. However, are the protection arrangements provided by the Copyright regime sufficient to safeguard Indonesian traditional houses' architectural diversity from foreign misappropriation or misuse?

Based on those mentioned earlier, the raising problems are, first, how is the regulation of the protection of traditional house architecture in Indonesia? Second, what are the challenges faced in protecting the architecture of traditional houses?

## 2. METHODOLOGY/ MATERIALS

Legal research in this article is normative legal research. This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations.[4] The statute approach is the approach to the problem used in this written research. The statutory approach is used to examine statutory regulations which, on their norms, still lack or even foster deviant practices.[5]

## 3. RESULTS AND DISCUSSIONS

### 3.1. Legal Basis of Traditional Houses' Architecture in Indonesia

The Encyclopedia Britannica defines architecture as “the art and technique of designing and building, as distinguished from the skills associated with construction. The practice of architecture is employed to fulfill both practical and expressive requirements, and thus it serves both utilitarian and aesthetic ends”.[6] Architecture can also be defined as the science and art of designing buildings and structures of the built environment, from the macro to the micro level.[7]

Regarding the definition of a traditional house, Said revealed that a traditional house is a building with a structure, method of manufacture, shape, and function as well as

decoration that has its characteristics passed down from generation to generation and used as a place to carry out activities by the surrounding population.[8] Meanwhile, Rahmatia stated that a traditional house is a behavior of the local community in building activities, from generation to generation, and has its uniqueness or characteristics that have been maintained for a long time; traditional houses generally use local materials.[8]

Based on the above understanding, traditional house architecture is an art and technique of designing buildings with distinctive structures, ways of making, shapes, functions, and ornaments. The art of building is passed down from generation to generation. Certain tribes communally own the majority of traditional houses in Indonesia. An example of a jointly owned traditional house is the *Rumah Gadang* from West Sumatera. Until now, the indigenous people in West Sumatera still believe that *Rumah Gadang* is the main house owned by a group of Minangnese people from a particular tribe. Due to being communally owned, it still adheres to the principle that selling customary land in West Sumatra is only permissible if there is a precarious situation.[9] *Rumah Gadang*, which is tied to customary land, is also something that is not justified for sale according to the Minangnese people.

Besides *Rumah Gadang*, the *Tongkonan* traditional house of the Toraja people in South Sulawesi is also a traditional house that cannot be owned individually but is owned communally and for generations by the Tana Toraja clan.[10] The two traditional houses above are examples of traditional Indonesian houses that still embody solidarity.

Furthermore, the human intellectual element and the aesthetic value of traditional building architecture make Indonesia regulate this matter at the legal regulations, as follows:

#### 1. **Draft Law on Traditional Knowledge and Traditional Cultural Expressions ("TCE Bill")**

The architectural forms of traditional houses passed down across generations are the communal wealth of Indonesian indigenous peoples that shall be protected as Traditional Cultural Expressions (TCE).

Since 2008, the government has been moved to draw a Draft Law on Traditional Knowledge and Traditional Cultural Expressions (TCE Bill) due to foreigners' increasing misuse and misappropriation of Indonesian cultural assets. This Bill is part of the National Legislation Program 2010-2014 (Prolegnas).[11] Unfortunately, it has not been passed into law yet. The change in the Republic of Indonesia's leadership has resulted in this Bill being neglected. Therefore, this Bill's fate needs to be clarified.

The TCE Bill provides a much more detailed definition of Traditional Knowledge and TCE than Indonesia's Intellectual Property Law provisions. TCE in this Bill is defined as an intellectual work in the field of art that has elements of past heritage produced, developed, and maintained by specific communities.[12]

Furthermore, Article 2, paragraph (3) of the TCE Bill explains that protected TCE includes one or a combination of 6 (six) forms of expression: verbal textual, music, movement, theater, visual arts, and traditional ceremonies. The next question is, which expression of traditional house architecture is classified? The most possibility is visual arts. The Bill explains that fine arts are in two-dimensional or three-dimensional forms made of leather, wood, bamboo, metal, stone, ceramics, paper, textiles, Etc. However, when reviewing the elucidation of the TCE Bill, there is no confirmation that architecture is part of fine art. Therefore, this Bill does not consider traditional houses and their architecture as TCE.

## 2. Law No. 28 of 2014 on Copyright ("UUHC")

The difficulty of defining Intellectual Property Rights ("IPR") makes many pieces of literature not clearly define IPR. Existing literature still provides an overview of elements contained in IPR. The three critical elements of IPR are human intellectual abilities, property, and rights.[13]

Indonesia formed laws and regulations related to IPR matters as a result of Indonesia's participation in ratifying the WTO Agreement. One of the regulations related to IPR that Indonesia has to have is Copyright. In Indonesia, UUHC has undergone several revisions. The recent regulation is Law No. 28 of 2014, which revoked the previous law, Law No. 19 of 2001.

Copyright is an individual property given to a creator who actualizes his ideas in art, literature, and science.[14] When discussing the correlation of architecture in the copyright regime and TCE, Indonesia has regulated the matter in 1 (one) law, namely UUHC.

Article 40 of UUHC categorizes architectural works as protected works. Elucidation to UUHC states that architectural work is the physical form of a building, the arrangement of the layout of the building, the building design drawings, to the building mockups.[15] Article 38 of the UUHC states that the copyrights on TCE whose creators are unknown are the State. Therefore, the State is entrusted with inventorying and preserving TCE.

Even though UUHC regulates related TCE through two articles (Articles 38 and 39), it needs to be more comprehensive to regulate the broad and crucial TCE for developing and culturally rich countries like Indonesia.

### 3. Law No. 5 of 2017 on Advancement of Culture ("Law No. 5/2017")

Law No. 5/2017 was born as a form of effort to increase the resilience and contribution of Indonesian culture amid globalization through the protection, development, utilization, and fostering of culture.

Article 5 of Law No. 5/2017 states that objects of Culture Advancement are :

- (a) Oral tradition;
- (b) Manuscripts;
- (c) Custom;
- (d) Rites;
- (e) Traditional knowledge
- (f) Traditional technology;
- (g) Art;
- (h) Language;
- (i) Folk games;
- (j) Traditional sport;

If we look directly at Article 5 above, architecture is not the focus of attention in this law. However, when reviewed on the explanation of Law no. 5/2017, it is seen that the architecture is classified as a traditional technology.

It can be assumed that the architecture of traditional houses is also the object of Law No. 5/2017 under the phrase "traditional technology."

## 3.2. Challenges in Protecting Architecture of Traditional Houses in Indonesia

Based on the discussion above, it can be seen that there are several weaknesses in all the regulations mentioned above, and these weaknesses can become challenges and obstacles to protecting traditional house architecture in Indonesia comprehensively :

### 1. Priority of TCE Bill After The Change of President

After the change of Indonesian President, TCE Bill was not a part of the National Regulation Program 2015-2019 and the National Regulation Program 2020-2024.[16] However, the Bill on Culture was passed into Law No. 5/2017.[17] The passage of the Bill on Culture shows that the government is still paying attention to Indonesian culture.

In addition, there are some bills containing cultural and customary elements in the National Legislation Program 2020-2024. They are, as follows :

- (a) the Bill on Communal Intellectual Property;
- (b) the Bill on Regional Languages;
- (c) the Bill on Amendments to Law Number 11 of 2010 concerning Cultural Conservation;
- (d) the Bill on Protection and Preservation of the Indigenous Culture of the Nusantara's Kingdom; and
- (e) the Bill on Indigenous People.

From the 5 (five) bills, the Indigenous Peoples Law Bill still progressed to the harmonization stage on April 2023. Meanwhile, the other bills are still at the registration stage; no action has been taken yet.[16]

The Communal Intellectual Property Bill carries a similar theme as TCE Bill. However, as of April 2023, the Communal Intellectual Property Bill is still registered at National Legislation Program without any significant follow-up.

Is it still a priority due to TCE Bill being drafted by the previous presidential regime?

TCE Bill is not perfect because, as explained above, the architecture of traditional houses is not explicitly referred to as TCE. Even if the TCE Bill will be included in the next president's National Legislation Program, it still needs to be polished again before being passed into law, especially regarding the architecture of traditional houses categorized as part of the protected TCE.

Even so, it shall be admitted that the TCE Bill is still a reference material for scholars or observers of TCE protection in Indonesia. The reason is that this bill thoroughly discusses Traditional Knowledge and TCE in Indonesia. Therefore, it is expected that TCE Bill, whether with the same or a different name, will be discussed and perfected again before it is passed into law. If it happens, Indonesia will have formal legal standing for TCE's preservation and protection.

## 2. **Song and music get more benefit from Copyright protection rather than the other objects of Copyright and the Absence of UUHC's Implementing Regulation on Architecture**

The facts related to songs and music getting more benefits from Copyright protection in Indonesia are reflected from the regulations serving songs and music :

- (a) Government Regulation Number 16 of 2020 on Registration of Works and Related Rights Product (GR No. 16/2020)
- (b) Government Regulation Number 56 of 2021 on Copyright Royalty Management of Song and/or Music (GR No. 56/2021)
- (c) Regulation of the Minister of Law and Human Rights Number 20 of 2021 on Implementing Regulation of Government Regulation Number 16 of 2020 (Regulation of Minister of Law No. 20/2021)

First, the title of GR No. 16/2020 seems general and can be applied to all protected creations in Article 40 paragraph (1) UUHC. Even so, when examined further, GR No. 16/2020 can merely be applied to individual creations and cannot be to communal creations such as traditional house architecture.

This thought arose due to GR No. 16/2020 request that several documents be attached for registry creation, including a statement of ownership on the creation. Indonesian traditional houses, with their unique architecture, are jointly owned by a tribe or local indigenous people, not by individuals. Another reason traditional house architecture is a TCE that has been passed down across generations, it will not be easy to trace who was the creator or architect that first built a traditional house.[18]

Second, GR No. 56/2021 and Regulation of Minister of Law No. 20/2021 are early indications that the government still favors music and songs compared to other creations regulated in UUHC. This is due to merely music and songs still having implementing regulations. Then what about the fate of architecture, dance, choreography, and others?

On April 2023, there still needs to be an implementing regulation of UUHC related to recording architectural creations.

## 3. **The TCE Data Collection/Inventory is Still Not Optimal Yet**

UUHC states that the holder of the TCE Copyright is the State. Therefore, the State is obliged to inventory and maintain TCE. Implementing regulations regarding the

inventory and maintenance of TCE stipulated in UUHC are accommodated in the Regulation of the Minister of Law and Human Rights No. 13 of 2017 concerning Data on Communal Intellectual Property (Regulation of Minister of Law No. 13/2017)

Inventory activities carried out by Indonesia have been much better than a decade earlier. However, when visiting the website of the Indonesian Communal Intellectual Property National Data Center, which is managed by the Directorate General of Intellectual Property of the Republic of Indonesia (DJKI), for communal intellectual property in the form of traditional houses, only 8 (eight) traditional houses are found listed on the website.[19]

Of the traditional houses that have been listed, 6 (six) come from South Sulawesi, 1 (one is from West Sulawesi), and 1 (one) is from North Maluku. [19] So far, only three provinces have registered traditional houses. What about 35 other provinces in Indonesia?

Therefore, the government should encourage regional governments and related parties to continue data collection and registration of various TCEs in each region.

#### 4. CONCLUSION AND RECOMMENDATION

It is necessary to immediately prioritize the ratification of 1 (one) law related to TCE, either under the name TCE Bill or another name. The ratification of law-related TCE is necessary so that Indonesia has a legal basis equal to the law in protecting architecture of traditional houses. The government should treat all created objects equally as regulated in the UUHC and make implementing regulations regarding procedures for registration, including how to register architectural works.

This paper recommends that the government should encourage regional governments and related parties to continue data collection and registration of various TCEs, including architecture of traditional house, in each region to increase the number of registered TCEs. The government should provide a target number of registered architecture of traditional house for the local government. If the target is met, a reward will be given from the central government so that the local government and related parties will be more enthusiastic about collecting data and registering the architecture of traditional house with DJKI.



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