

PAES: A JAVANESE TRADITIONAL LOCAL WISDOM IN MODERNIZATION BASED ON INDONESIA COPYRIGHT LAW

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ABSTRACT

This writing aims to identify, analyze and elaborate the protection of Paes as a Javanese traditional make-up and its local wisdom based on “Indonesian Law Number 28 of 2014 concerning Copyright”, and “Traditional Cultural Expression (TCE)” protection from the perspective of International Law. This is a normative legal research using statutory approach and conceptual approach. The study shows that Paes as a traditional makeup and its local wisdom can be categorized as one of the TCE that shall be protect by the State. The protection of Paes and its local wisdom as TCE also stipulated in several regulation in international law, i.e the 2003 UNESCO Convention and the 2005 UNESCO Convention.

Keywords: Cultural Protection; Traditional Knowledge; Traditional Cultural Expressions; Copyright.

INTRODUCTION

Background

Nowadays, make-up is something that commonly known in society. Make-up has recognized as a work of art in the form of facial make-up which uses cosmetics to embody a person's character in the character played. Referring to this definition illustrates that make-up is used in art performances only, however make-up is not only used during art performances, or depicts a character in acting, but is also used in people's daily lives, make-up is also used in accordance with customary rules. Every make up has its own history, society especially women at that time had a desire to look better by improving their appearance. Departing from the desire to improving their appearance make beauty, religion and also medicine became the background that cosmetics can develop in most cultures, and develop its main function to enhance facial appearance, depict characters, and add dramatic aspects to their roles.

In Indonesian culture, make-up has acknowledge as a part of arts and ceremonies as one of the cultural characteristics. One example of make-up in Indonesian culture is the use of traditional Javanese make-up in Javanese traditional wedding ceremonies, which are known as paes, in Java this paes is also known by several other names, namely Paes Ageng in Yogyakarta, Paes Bahasan, and Paes Solo which is well known in the Surakarta area. Paes is a Javanese traditional bridal make-up that brings out the beauty in a Javanese woman, this paes is used to beautify the brides' face with a philosophical meaning in the form of prayer and the best wishes for the bride's family in the future.

At the beginning, Paes Ageng was one of the contents of the agreement related to Prince Mangkubumi (Sultan Hamengkubuwono) in 1755 in the Giyanti Agreement. Since the origin

of the same root causes similarities in the three types of Paes, there is no significant and drastic change, but these differences can be seen in a more prominent form in Paes Ageng, and a slightly rounded form in Paes Bahasan from Solo. In Traditional Cultural Expressions (hereinafter referred to as TCE), traditional Javanese make-up and its local wisdom is one of the protected art forms.

Traditional Cultural Expressions in Copyright are one of the objects protected under Indonesian “Law Number 28 Of 2014 concerning Copyright”. Previously, the term of TCE was better known as folklore. TCE is seen as one of the cultural heritages that must be protected, the reason is because it is seen as a giver of identity to the community, especially the indigenous peoples of a country. In the international realm, there is an organization that defines TCE, namely the “World Intellectual Property Organization” (hereinafter referred to as WIPO), in WIPO it is stated that TCE or folklore expressions is defined as “an expression of traditional knowledge, meaning that production consist of elements which constitute an characteristics of traditional cultural patrimony, which is developed and maintained by a community of a country or by individuals who reflect the expectations of traditional culture from both the community and the individual”.

In the current 4.0 revolution, it cannot be denied that the development of the digital world greatly affects the lives of people who are increasingly creative and advanced in their work. In the year of 2020, one of the Indonesian cultures attracts the attention of young people which is traditional Javanese bridal make-up. This traditional Javanese bridal make-up has been developed since a long time ago and has returned to prominence since being used in the music video for “Lathi” by Indonesian artist Weird Genius featuring Sara Fajira. The concept of the song and the music in those video clip “Lathi” is related with the nuances of Javanese culture, especially with the insertion of an traditional Javanese proverb and the use of make-up with similar components to Javanese bridal make-up, which is became unique and have a special attraction for connoisseurs of this song.

In this music video clip, Sara Fajira uses make-up with similar components to the traditional Javanese bridal make-up. This certainly attracts the attention of netizens because the uniqueness of Indonesian culture has been successfully combined with the current EDM music trend. Make up with the concept of the bride is getting more and more viral on social media platforms after an influencer named Jharna Bhagwani who have more than 3.6 million followers on Instagram created a make-up challenge for this song, and it’s called Lathi Challenge.

This research, when compared with prior studies, this analysis has certain similarities in terms of issues, particularly both studying traditional cultural expression, however the focus of the study is dissimilar. Based on the background abovementioned, it is important to examine in depth legal issues related to the legal protection related to Javanese bridal make-up and its local wisdom based on Indonesia copyright perspective as well as the protection of traditional cultural expressions based on international law.

Previous study conducted by Candra Irawan in 2017 examined “Protection of Traditional Knowledge: a perspective on Intellectual Property Law in Indonesia”. In this case, the focus of the researcher is the implementation protection of Traditional Knowledge in Non-Law Perspective and protection of Traditional Knowledge on the Intellectual Property Right of Law Perspective. In 2020, Yenny Eta Widyanti also examined “Perlindungan Ekspresi Budaya Tradisional dalam Sistem Sui Generis”. This writing focusing on analyzing the importance of Indonesian traditional cultural expressions governed by sui generis.

This writing will identify, analyze and elaborate the protection of traditional Javanese make-up and its local wisdom based on Indonesian “Law Number 28 of 2014 concerning Copyright, and protection of Traditional Cultural Expressions based on International Law”. This article will systematically discuss the relevant substance with the focus of the problem.

First, it is presented about the protection of TCE according to Indonesian Copyright Law. Second, the protection of TCE under international law.

METHODOLOGY

This is a normative legal research using a statutory approach and conceptual approach that examines the provisions of applicable legal provisions related to the subject matter discussed. Referring to Soerjono Soekanto's, normative legal research includes research on legal principles, legal systematics, levels of legal synchronization, legal history and comparative legal research. In addition, according to Peter Mahmud Marzuki's opinion, normative legal research is a composition to find a rule of law, legal principles and legal doctrines to answer legal problems.

Protection of Javanese Traditional Makeup and its Local Wisdom Based on Indonesian Copyright Law

Indonesia is known as an archipelago with 17.000 islands. These island are scattered into several different regions with various kinds of cultures that has been acknowledged, develop and exist. The protection of people's rights to traditional cultural assets is known as one of the governments obligations based on the "1945 Constitution of the Republic of Indonesia", where "the state respects the traditional culture of indigenous peoples as part of the national culture of the Republic of Indonesia". The regulation regarding TCE can be found in the provisions of Article 18 B section (2), Article 28 I section (3) and Article 32 section (2) of the 1945 "Constitution of the Republic of Indonesia" (UUD NRI 1945).

The law recognizes that protection of copyright occurs automatically from the time the work is completed. This means that protection is given when the creation is manifested in a material form (fixation) in accordance with the creator's wishes and in accordance with the characteristics of the creation. The state in this case is the government, which has a constitutional obligations of the State, is expected to be able to readily provide protection for work acknowledged as nation's cultural heritage. The protection of copyright against traditional cultural in Indonesia is passed down from generation to generation.

The Intellectual Property Rights are rights to property that come from human intellectual work, which is a right that comes from the human creativity of human thinking as manifested in various types of works where this work is useful to support their life. Referring to this concept, it can be understood that the protection of TCE is included in the copyright regime. According to the prevailing doctrine among the public, intellectual property is intangible property that originates from a person's intellectual property.

As one of the objects of copyright protection, TCE is protected based on Indonesian "Law Number 28 of 2014 concerning Copyright" (hereinafter UUHC), considering that the form of TCE also consists of art, literature and science. According to Article 32 section (1) of the "1945 Constitution of the Republic of Indonesia", it is stipulated that "the state shall advance the national culture of Indonesia among the civilization of the world by assuring the freedom of society to preserve and to develop cultural values". In this concept, all Indonesian culture must be preserved and protected by the government, hence the existing cultural values can be inherited in social life.

According to Article 1 number 1 of UUHC, it is stipulated that "Copyright means an exclusive right of the author vested automatically on the basis of declaratory principle after Works are embodied in a tangible form without reducing by virtue of restrictions in accordance with the provisions of laws and regulations". The TCE regulations can be found in the provisions of Article 38 section (1), (2), (3), (4) UUHC. It is important to know that all forms of intellectual property in the Republic of Indonesia are protected by the law. The

copyrighted work of an TCE is the work of the human mind, which gives birth to a right known as copyright. The creator has the right to enjoy copyright when the work is tangible and distinctive (originality), unfortunately this is not appropriate for Traditional Cultural Expressions whose creator is unknown.

The application of TCE protection certainly departs from the idea that it is a valuable asset for an indigenous community, even at the customary level. The protection for traditional Javanese make-up is given based on UUHC in the form of protection for TCE considering that traditional Javanese make-up is one of the expressions of the traditional cultures. As indicated in the Trade-Related Aspects of Intellectual Property Rights (hereinafter TRIPs Agreement), Indonesia as one of the countries that ratified the agreement is obliged to adjust the regulations relating to copyright protection with the TRIPs Agreement. Unfortunately, the adjustment of the Indonesian Copyright Law with the TRIPs Agreement tends to protect works of art and literature produced individually, as regulated in Article 40 section (1) of “Indonesian Law Number 28 of 2014 concerning Copyright”.

In terms of protection of TCE, it is stipulated in Article 38 section (1) of UUHC, “The Copyright of traditional cultural expressions is held by the State”. In this case, the state as the right holder is obliged to inventory, maintain the traditional cultural expressions, the state is also must pay attention to the use of TCE as its use must pay attention to the existing values and life in society. The protection against TCE also can be seen through the characteristic attached to the TCE. Protection of TCE is different from the Intellectual Property Rights regime in general, therefore the appropriate protection component to be applied on TCE needs to be distinguished from the types of Intellectual Property Rights in general.

In providing regulatory protection, preventive and repressive regulatory protection measures are required. According to Philipus M. Hadjon’s opinion, “the protection of preventive rules aims to prevent disputes, which directs government action to be careful in making decisions based on discretion, while repressive protection aims to resolve disputes, including handling at judicial forums”. In this case, the preventive protection of TCE in Indonesia is contained in UUHC, it can be seen from Article 60 section (1) which states that “Copyrights on the traditional cultural expressions held by State as referred to in Article 38 section (1) endure indefinitely”. This Article aims to protect traditional works. Repressive protection is the final protection in the form of sanctions such as fines, imprisonment and additional penalties given when an offense has occurred or has been committed. However, until now there has been no repressive protection yet concerning the protection of TCE.

In providing the legal protection for TCE, traditional Javanese make-up must go through the Ministry of Tourism stage which is registered at the Ministry of Law and Human Rights through the Intellectual Property Rights regime, known as copyright that traditional Javanese make-up must fulfill the element of originality so that it can be completely protected by law. In addition, the protection of copyright law on TCE also aims to be protected from exploitation by foreign parties and also to avoid unauthorized use by the state owner of TCE for foreign parties. In this case, it is hoped that there will be cooperation between the Central Government and the Provincial Government to protect the wealth of traditional cultures. The traditional Javanese make-up is an Indonesian cultural asset whose existence is very important and valuable to indigenous peoples and the country. Providing a legal protection for TCE shows the existence of a cultures that accentuates the characteristics of a region.

Legal Protection of Traditional Cultural Expressions Based on International Law

There are several international instruments that relate to the indigenous people and their culture. The issues surrounding the protection of Traditional Knowledge, are one aspect of Intellectual Property. According to WIPO, “Traditional Knowledge” is works based on

traditional literary works, inventions, designs, brands, names, and symbols along with confidential information and all innovations are tradition-based. In those definition, it defines a traditional meaning which includes 2 things, such as; (a) knowledge, which refers to certain things that are known and not merely a form of expression; (b) traditional, namely that this knowledge is related to a particular culture. Traditional knowledge is defined as knowledge that is also used by a particular community or tribe which is hereditary and continues to develop in accordance with environmental changes.

According to International Law perspective, TCE is regulated in the World Intellectual Property Organization. TCE also known as expressions of folklore, it may include several elements such as music, dance, art, design, names, signs, symbols, ceremonies, performances, architectural forms, handicrafts and narratives, etc. According to WIPO, “traditional knowledge (TK) is knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity”.

There is a connection between Traditional Knowledge and Traditional Culture Expressions as stated in the “United Nations Educational, Scientific and Cultural Organization Convention 2003 on the Safeguarding of Intangible Cultural Heritage” (hereinafter UNESCO Convention 2003). The “UNESCO Convention 2003” is “aimed to safeguard the expressions, knowledge, and techniques that communities recognize as an integral part of their cultural heritage”.

The provisions of Article 2 of the “UNESCO Convention 2003” are also the basis for the TCE protection. In this convention the term used is Intangible Cultural Heritage. Referring to the provisions of Article 2 of the “UNESCO Convention 2003”, it is known that the intangible cultural heritage means “the practices representations, expressions, knowledge, skills, -as well as the instruments, objects, artefacts, and cultural spaces, associated therewith – that communities, groups, and, in some cases, individuals recognize as part of their cultural heritage”.

According to the provisions of this Convention, it is known that intangible cultural heritage is transmitted from generation to generation within communities and group in response to their environment as well as their interaction with nature and history. This practice provides them with a sense of identity and continuity. Further, this condition also promotes respect for cultural diversity and human creativity.

Hence, it is known that Traditional Knowledge is protected through the use of a rule of binding law. One of the protections of TCE is also regulated in the “UNESCO Convention 2005 on the Protection of the Diversity of Cultural Expression”. Referring to the provisions of Article 2 section (1) of the “UNESCO Convention 2005”, namely:

“Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this convention in order to infringe human rights and fundamental freedom as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.”

The definition of “Cultural Diversity” is defined in the provisions of Article 4 point 1 of the “UNESCO Convention 2005”, which is understood as the various ways in which the culture of community groups finds expression. This expression is passed down in society. This provision also states that cultural diversity is also in the form of artistic creation, production, dissemination, distribution and enjoyment.

Article 4 number 1 of the “UNESCO Convention 2005”, states that “cultural diversity refers to the way in which groups and communities’ express culture, where this is carried out from generation to generation in groups and communities”. As a cultural heritage, this

cultural diversity is not only manifested by mankind with cultural expressions but also through the modes of art, production, dissemination, distribution using existing facilities and technology.

In these conventions, it has been described how important it is to provide protection for knowledge and traditional cultural expressions. In the perspective of “Intellectual Property Rights” (hereinafter IPR), both the “UNESCO Convention 2003 and the UNESCO Convention 2005” emphasize the importance of protecting the moral rights of a nation against the cultural heritage possessed by the nation, especially nations originating from UNESCO members, such as Indonesia.

Based on the abovementioned, it is known that there are several regulation which concern about the protection of TCE under international law, i.e the “UNESCO Convention 2003 and the UNESCO Convention 2005”. Hence, the importance of traditional cultural expression has been acknowledged and legally protected under international law.

Legal Protection of Traditional Cultural Expressions in South Korea

In South Korea they regulated TCE through “Cultural Heritage Protection Act”. According to Article 1 of “Cultural Heritage Protection Act”, “The purpose of this Act is to promote the cultural edification of Korean nationals and to contribute to the development of human culture by inheriting national culture and enabling it to be utilized through the preservation of cultural heritage.” According to article 2 Number 1 of “Cultural Heritage Protection Act”, “the term “cultural heritage” in this Act means “artificially or naturally formed national, racial, or world heritage of outstanding historic, artistic, academic, or scenic value, which is classified into the following categories: <Amended by Act No. 13249, Mar. 27, 2015>”. According to article 2 Number 1 point 2, namely:

“Intangible cultural heritage: Among intangible cultural heritage which have been passed of throughout many generations, referring to those falling under any of the following items:

1. Traditional performing arts and arts;
2. Traditional skills concerning crafts, art, etc;
3. Traditional knowledge concerning Korean medicine, agriculture, fisheri, etc;
4. Oral traditions and expressions;
5. Traditional ways of life concerning food, cloth, shelter, etc;
6. Social rituals such as folk religion
7. Traditional games, festivals and practical and martial arts;”

The literary subject matter offered in myths and folklore are portrayed as wedding traditions and wedding cultures in Traditional Korean Wedding; wedding clothes visibly depict the wedding rituals culture of each time, and have meaningful ties amongst them. Wedding cultures is featured in folk contents as social rituals such as folk religion, also there are some related tales such as “Seodongyo, Princess Nakrang & Prince Hodong”, all literary works that reference the marriage concept, incorporating many different wedding traditions and rituals. Furthermore, because the ritual is based on costumes, the wedding costume exists and varies depending on the time and class of the participants. A frequent part of the bride’s outfit is known as “Wonsam (圓衫) or Hwalyot”, and “Joekdoori, Hwaguan (花冠: a ceremonial coronet), binyeo (chignon hairpin), or daenggii (hair ribbons) as hair ornaments, and Yeonjeegonjee-makeup (red and black rouge spots on a bride’s brow and cheek)”. According to article According to article 2 Number 1 point 2, these Traditional Korean Wedding Culture included as “Intangible cultural heritage under Social rituals such as folk religion”.

Legal Protection of Traditional Cultural Expressions in Japan

Meanwhile in Japan, they also have their traditional make up known as “Geisha”, the word Geisha literally means “artisan” they practice the traditional Japanese Arts and are purveyors of Japanese Culture. The striking visual appearance of geisha as they play their role as living symbols of traditional Japan makes their distinctive clothing and make up a familiar sight in advertisements and tourist photos. Geisha are valued highly in Japan because of the dedication years of training to acquire folk performing skills known as Japanese traditional instruments and rituals. A Geisha’s outfit consists of her kimono, haircut, hair accessories and make up.

The Kimono they wear has its own set of rules and connotation; for example if a women wore long-sleeved kimonos with unique tucks throughout the shoulders, it is a style known as “Kata Age (肩上げ)”, and the sleeves known as “Sode Age (袖上げ)”, in order for them to be mature. Despite the fact they are have no longer have obligatory, maiko keep wearing kimono with these tucks demonstrate that they are still a child. “Furisode (振袖)” are long sleeves, worn by young, single ladies to indicate their availability for marriage. The sleeves are suggested to be lengthy in order to capture the attention of a potential suitor. Geisha, on the other hand, wear kimono with shorter sleeves known as “Kosode (小袖)”, this shows that they are mature ladies that no longer need to draw attention to themselves with dazzling attire.

For the hairstyles for maiko (maiko are the youthful geiko who haven’t yet completed their studies to be a geisha) will include “a red piece of fabric” knotted the front known as a “Chinkoro (ちんころ)”, which is a physical depiction of their youth and immaturity. For the first time, the hairdo a maiko would wear is known as “Warechinobu (割れしの)” and it is distinguished by the classic bun and a red piece of fabric wrapped in it to match the “Chinkoro”. As a show of wealth, a particular hair ornament called as a “Kanokodome” is worn in the middle of this bun.

For the make-up, the very first stage in applying make up for a geisha would be to use an unique wax known as “Abura (油)” all over her face and neck. The most significant aspect of a geisha’s unique makeup was the white foundation known as “Oshiroi (白粉)”. It’s called “white powder” because it’s carefully blended with water in a little dish to produce a paste. The paste was further applied on their cheeks and neck using using special paintbrush known as “Hake (刷毛)”. A geisha would combine some of “Oshiroi” with some pink powder known as “Tonoko (砥の)” in a different plate and contour portion of her face to give a pale look and noticeable blush on the cheek when looked real close.

Then she would paint a two stripes on the back of her neck it is known as “Eriashi (襟足)”, which translates to “Neck Lines.”. Throughout a special occasions, she will paint three stripes instead of two, a technique known as “Sanbonashi (三本足),” which translates as “Three-Pointed Lines.” The next step after applying the “Oshiroi”, she would pat some extra white powder known as “Kona Oshiroi (粉白粉)” all over her face to soften the makeup look on her skin. Because the powder is so light, the pink powder she previously applied will show through. Following that is the eye-catching red known as “Beni (紅)”, which translates as “Crimson”.

“Japan's Law for the Protection of Cultural Properties” has often been heralded as one of the most sophisticated and complete attempts of its kind. Initially promulgated on May 30, 1950, it became effective on August 29, 1950. Geisha as a part of Japanese TCE regulated through “Law for the Protection of Cultural Property Law No. 214, May 30, 1950 last Amendment: Law No. 7 March 30, 2007”. According to Article 2 Number 2 : “Definition of Cultural Property, namely “Drama, music, applied art, and other intangible cultural products

that are of a significant historical and artistic value to Japan (hereinafter referred to as “Intangible Cultural Property”).”

According to Article 2 Number 3, it stated that

“(i) Manners and custom related to food, clothing and housing to occupations to religious faiths, and annual festivals, etc.; (ii) folk performing arts; (iii) folk skills; (iv) clothes, utensils, houses and other object used therefor, which are indispensable to the understanding of changes in the mode of life of Japan (hereinafter referred to as “Folk Cultural Property”).”

According to Article 78: “Designation as “Important Tangible Folk Cultural Property” and “Important Intangible Folk Cultural Property”, stipulated that

“The Minister of Education, Culture, Sports, Science and Technology may designate an especially important object of ‘Tangible Folk Cultural Property’ as ‘Important Intangible Folk Cultural Property’ and an especially important element of ‘Intangible Folk Cultural Property’ as ‘Important Intangible Folk Cultural Property’.”

Based on the abovementioned, it can be interpreted that geisha as one of the Japanese TCEs are regulated in “Law for the Protection of Cultural Property Law No. 214, May 30, 1950 last Amendment: Law No. 7 March 30, 2007” as folk performing arts, so it can be concluded that geisha are one of Japanese TCEs.

Legal Protection of Traditional Cultural Expressions in China

Meanwhile, Chinese folk art is a traditional ethnic culture formed through longtime historical sedimentation. Chinese folk art is an expression of forms of art, and the development of the colors of fine arts also directly reflects the progress of Chinese folk aesthetic art to a certain extent. One of the Chinese art forms as a symbolic aesthetic characteristic of colors are reflected incisively and vividly in facial ancient makeup used in traditional Chinese drama.

China has a thousand of years history with make up, Chinese “makeup and ornament culture is rich in contents, diversified in forms, and full of Chinese aesthetic connotation.” Back then, during the “Tang Dynasty” making up became highly skilled artform. In the “Tang Dynasty”, woman’s makeup are using foundation powder, rouge and a dusting of light yellow powder, also bluish black eyebrows were carefully painted on, lipstick was applied and dimples either added or emphasized. Woman’s at this era using an ornamental flourish pasted or painted onto the forehead. In Tang Dynasty the eyebrows were painted in bluish black were called daimei, long fine eyebrows were called emei, and guangmei for eyebrows that were short and thick.

As one of the Chinese TCE’s, ancient make up are regulated in “Order of The President of the People’s Republic of China No.42 Law of the People’s Republic of China on Intangible Cultural Heritage”.

According to Article 2 “Law of the People’s Republic of China on Intangible Cultural Heritage”,

“For the purpose of this Law, intangible cultural heritage shall mean various traditional cultural manifestations which are handed down by the people of all ethnicities from generation to generation and regarded as a constituent part of their cultural heritage, and physical objects and premises related to the traditional cultural manifestations, including;

1. Traditional oral literature and the language as a carrier thereof;
2. Traditional fine arts, calligraphy, music, dance, drama, folk art and acrobatics;
3. Traditional artistry, medicine and calendar;
4. Traditional rituals, festivals, and other folk custom;

5. Traditional sports and entertainment;
6. Other intangible cultural heritage.

The relevant provisions of the “Law of the People’s Republic of China on the Protection of Cultural Relics” “shall apply to the physical objects and premises that are constituent part of the intangible cultural heritage and falling under the category of cultural relics.”

According to Article 3, it stated that:

“The State shall preserve the intangible cultural heritage by adopting measures such as affirmation, recording and filling and protect the intangible cultural heritage that reflects the distinguished traditional culture of the Chinese nation and has historical, literary artistic or scientific value by adopting measures such as the inheritance and promotion of such heritage.”

Based on the abovementioned, it can be interpreted that ancient Chinese make up as one of the China TCE’s are regulated in “Order of The President of the People’s Republic of China No.42 Law of the People’s Republic of China on Intangible Cultural Heritage as one of folk art and part of intangible cultural heritage”.

Based on the abovementioned, the protection for TCE has been acknowledge or recognize by several nations including South Korea, Japan, and China. The protection of TCE mostly known as Folk is protected by Act and Law based on their nations. South Korea, Japan and China also ratified “Berne Convention”, which according to the Berne Convention article 15 paragraph 4 (a) its stated: “in the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.” Hence, the protection of makeup as TCE can be acknowledge as a part of copyright and protected under copyright regime.

CONCLUSIONS

Indonesia as an archipelagic country is of course known as a country that has various kinds of traditional arts and culture that were born from customary customs as one of the identities of the community in which both traditional arts and culture are needed to obtain legal protection. Legal instruments protecting TCE is regulated under the Copyright regime, namely based on “Law Number 28 of 2014 concerning Copyright”. Based on the provisions of the UUHC, Traditional Javanese Makeup and its local wisdom can be categorized as one of the TCE that should be protected by the State. By providing legal protection for TCE, it shows that there is a culture that accentuates the characteristics of a region. Apart from “UUHC”, “UNESCO Convention 2003 on the Safeguarding of Intangible Cultural Heritage”, “UNESCO Convention 2005 on the Protection of the Diversity of Cultural Expression” can also be used as a basis for protecting traditional cultural expressions. In the perspective of Intellectual Property Rights, both the “UNESCO Convention 2003” and the “UNESCO Convention 2005” emphasize the importance of protecting a nation's moral rights as well as the cultural heritage possessed by the nation, especially nations originating from UNESCO members, such as Indonesia. The protection of traditional arts and culture also applied in South Korea, Japan and China. Hence, the protection of make-up as a part of cultural heritage can be acknowledge as a part of copyright and it’s protected under the copyright regime.

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