

Government Efforts to Protect Intellectual Property For Ki Masjong and Agus Cultural Heritage

¹Aditya Salsabila Consoleo

Faculty of Law, Master of Notary, Tarumanagara University, West Jakarta, Indonesia
Email: adityasalsabilaconsoleo@gmail.com

²M.Sudirman

Faculty of Law, Master of Notary, Tarumanagara University, West Jakarta, Indonesia
Email: m.sudirman321@gmail.com

³Benny Djaja

Faculty of Law, Master of Notary, Tarumanagara University, West Jakarta, Indonesia
Email: benny@fh.untar.ac.id

Abstract

The city of Serang in the Banten area has many social relics including the Banten area, the residence of Ki Masjong and Agus Ju. The lack of attention from the local government is one of the reasons and sources of problems that need to be solved, and there are still many cultural heritage sites in Serang City that have not been protected and managed properly. The process of examining information is carried out in a clear way, subjective, descriptive analysis aims to describe the results of observations from issues regarding the protection of the government against intellectual property, Cultural Heritage to IPR in Islam and general law, namely the Old Banten Pilgrimage based on Law Number 11 of 2010 concerning Cultural Heritage to then describe the obstacles faced by the City Education and Culture Office. Therefore, it is hoped that the results of this study can present a complete picture of the central object of this research. This is the result of research and discussion that resulted in the conclusion that there is a lack of legal protection carried out by the Serang city government against the Old Banten Pilgrimage Cultural Heritage.

Keywords: Government, Protection, Intellectual Property

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A. INTRODUCTION

As a religion that has universal values, Islam highly values human beings as individuals and society. These universal characteristics show that this great Islamic sharia includes various legal systems and legislation that regulate and organize all aspects of people's lives, both related to matters of faith, worship and muamalah, including economics, civil law, criminal, international relations, or social order ¹

One of the developments in the Indonesian economy is the emergence of the issue of Intellectual Property Rights (IPR) or intellectual property. In the teachings of Islam, textually, there is no mention or explanation of this.² However, Islam has provided general rules that provide a legal basis for the ownership of wealth and copyright over one's work. This is as stated by Ibn Hazm that the reward of teaching the Qur'an, teaching knowledge in a monthly and certain amount, treating diseases with the Qur'an, copying the Qur'an or textbooks, are all permissible³

The progress of a country continues to be created along with the development of changes that occur in society due to the advancement of science and technology. The changes that occur will have a positive and negative impact on the one hand, changes in the fields of economy, science, and technology are expected to improve people's living standards. But on the other hand, the developments that occur can also give rise to different conflicts of interest that will ultimately trigger conflicts. The law as part of human civilization is required to continuously change so that it is able to keep up with the developments that occur in society. Laws that contain norms and rules are expected to be able to regulate various aspects of people's lives in facing today's guidance and challenges. ⁴

Copyright protects intellectual property because God's creatures who are endowed with reason and intelligence usually have the ability to create various works in the fields of science, literature, and art. Intellectual property regulation was initially directed by regulation No. 19 of 2002 which was later replaced by regulation No. 28 of 2014 concerning Copyright. In the intellectual property regulation, it is stated that, This Regulation is given to understand the order of the 1978 State Direction Outline (GBHN), especially the progress in the field of

¹ Abdullāh Nāṣiḥ 'Ulwān, *Al-Islam Syarṭah al-Zamān wal Makān* (Cairo: Dār al-Salām, t.th.), p. 10.

² M. Musyafa', "Intellectual Property in the Perspective of Islamic Economics", *Al-Iqtishad* 5, no. 1 (January 2013): p. 40.

³ Ibn Ḥazm, *Al-Muḥallā*, Juz 7 (Beirut: Dar al-Fikr, 1431 AH), p. 18.

⁴ Abū Ḥamid Muḥammad ibn Muḥammad al-Gazālī, *Al-Mustaṣfā*, p. 174.

regulation which is expected to support and protect the creators and their manifestation, thus it is hoped that the dissemination of public products in the field of imaginative and scientific works can be protected juridically which can thus accelerate the most common path to educating the life of the nation. Furthermore, in a work with high artistic value is not an easy job, one needs to sacrifice both time, money, energy, and thoughts, which is a must if the right is formulated as Property Rights which are highly appreciated in the form of legal protection. Protection of Intellectual Property Rights can create a competitive trade and investment climate, can increase the development of technology, science, art, literature, and culture, and can develop the development of local products that have character and cultural traditions in Banten.⁵

Indonesia has a wealth of cultural heritage that is priceless and spread throughout Indonesia. This wealth is both tangible and *intangible*. Tangible cultural heritage that has important value needs to be preserved and designated as a Cultural Heritage. As one of the cultural assets, Culture must be managed appropriately through efforts to protect, develop and utilize it in order to advance national culture and provide welfare for all people. Cultural management still has many problems, both in naming, counting, identification, and classification. The definition and criteria of Cultural Heritage need to be understood by all stakeholders (government, local government, private sector, and everyone).⁶

As a government institution, the Serang City Government has the responsibility and authority to manage and regulate the affairs of Serang City Regional Regulation Number 6 of 2021 concerning Cultural Preservation. In Article 2 regarding duties, responsibilities, and authorities are the duties and authorities of the Serang City Government. Considering the obligations and specialists of Public authorities related to the preservation of cultural heritage objects. The Banten Girang Site Cultural Heritage must be maintained, developed, and preserved by the Serang City Government. The management where Cultural Heritage objects are stored, maintained, and preserved is one of the ways the Serang City Government fulfills its responsibilities. Through the Culture and Tourism Office, the Serang City Government supervises the Cultural Heritage objects.⁷

The preservation of the Cultural Heritage is indeed very important to do considering that the Banten Site is a milestone for the first time the Kingdom was established in Banten, it can make Banten Province, especially Serang City, have several historical tourist attractions of high value. The tomb is a relic of the Kingdom of Banten Girang and is a favorite location for pilgrimages in Serang City in addition to the site of the Old Banten Sultanate. In the Banten website, there is also a burial known as the tomb of the brothers as the first interesting people who embraced Islam in Banten, namely Ki Masjong and Agus Ju. If you look at its physical appearance, from nutrition it seems that it has been almost eroded by the times. So far, the function of the Serang City Education and Culture Office. Considering that this site is still out of attention and maintains the nutrition of Ki Masjong and Agus Ju, considering that this site is still unnoticed by the government because for maintenance costs such as renovating toilets, still relying on donations from the surrounding community or pilgrims, but this does not reduce the attraction of tourists or tourists who are dating.

On the Banten site there is a sacred tomb located above the Cibanten waterway. It is said that Ki Mas Jong and AgusJu were the first residents of Banten Girang to embrace Islam, so this tomb has a connection with Islamic history in Banten. This place is often visited by individuals who need to make a visit or a strict trip, the Banten Site is freely supervised by the local area. The assets come from benefactors and charity boxes of travelers, the lack of attention from the public authorities is the motivation behind why the Banten Girang Site is not as famous as Banten Lama, it seems that there is a need for the rejuvenation of the Banten Girang Site area as done by the public authorities in the Old Banten area to attract guests and further to improve the economy of the surrounding area.⁸

In general, the protection of Intellectual Property Rights is a contemporary issue that was unknown at the beginning of the growth of Islam, so there is no specific passage either from the Qur'an or hadith that regulates it. However, when viewed from the perspective of morality and scientific responsibility, it is seen as a benefit that contains goodness in it, this is then known as the rule of *al-maṣlaḥah al-mursalah*. *Al-maṣlaḥah al-mursalah* is a word derived from Arabic in the form of *mauṣūf*, consisting of two words, namely *maṣlaḥah* and *mursalah*. Etymologically, the word *al-maṣlaḥah* is the singular form of the word *al-maṣāliḥ*, *al-maṣlaḥah* means *al-ṣalāḥ*, *al-ṣalāḥ* is the opposite of the word *al-faṣād* (damage).⁹ Departing from this meaning, *al-Rāzī* concludes that seeking *maṣlaḥah* is an act that is the opposite of getting damage or vice. While *al-Fayūmī*, in his book *al-Miṣbāḥ al-Munīr*, gives the meaning that *al-ṣalāḥ* is *al-khair* (goodness) and *al-ṣawāb* (truth).¹⁰ While the word *al-mursalah*

⁵ Eddy Damian, Copyright Law, P.T.Alumni, Bandung, 2014

⁶ Ibrāhīm ibn Mūsā al-Syāṭibī, *Al-Iṭṣām*, Juz 1 (Cet. I; Saudi Arabia: Dar Ibn 'Affān, 1412 AH, 1992 AD), p. 237.

⁷ Eddy Damian, Copyright Law, P.T.Alumni, Bandung, 2014

⁸ Ibid

⁹ Ibn Manẓūr, *Lisān al-'Arab*, p. 516.

¹⁰ Muḥammad ibn Abī Bakr al-Rāzī, *Mukhtār al-Ṣiḥāḥ* (Cet. V; Beirut: Al-Maktabah al-'Aṣriyyah, 1420 AH / 1999 AD), p. 178.

comes from the word *alirsāl*, which means *al-iṭlāq* (detached).¹¹ Thus if the two words are juxtaposed in the form *maṣlaḥah mursalah* or *al-maṣlaḥah al-mursalah*, in the form or as the will-nature^{ṣūf}, the meaning is to be detached or free from information that indicates the permissibility or impermissibility of doing

B. RESEARCH METHOD

The research methods used in this study are normative juridical law research methods and empirical law research methods. Normative law research describes the legal system as a norm, the norm system that is enforced is norms, rules and laws and regulations. Meanwhile, the empirical research method is field research, which is to examine the applicable legal provisions and what is in the reality of society.¹²

The data collection techniques used are field studies and literature studies. The type of field study research conducted by the researcher is field observation, conducting interviews. The technique of collecting literature studies is carried out by the researcher by examining each legal material related to the researcher's topic. The data analysis used by the researcher is qualitative.¹³

C. RESULT AND DISCUSSION

Several developments in the field of contemporary *muamalah* that have never existed before, also require legal certainty whether these developments can be applied considering that there is no *ṣarḥ* passage from the Qur'an or *sunnah* that regulates it, including Intellectual Property Rights. It is hoped that there will be more scientific studies and encourage scholars to conduct various research and write useful books while their writings and copyrights are preserved from various violations. Islam comes to realize benefits and avoid damage¹⁴

The state of law should have a protection for the preservation of history in Indonesia, in every matter of any object or subject, in essence the relationship between the subject of law and the object of law that is protected by law and gives rise to obligations. Legal protection includes a range of legal actions aimed at protecting human rights and the responsibilities that accompany legal relationships involving fellow human beings as subjects. Legal protection can be interpreted as an effort to protect public authorities or experts with various existing guidelines. In short, Legal Protection is the protection provided by the law itself.

In this study, using the hypothesis of guaranteeing preventive legal certainty owned by Philipus M. Hadjon, before a government decision takes a definitive form, this legal protection provides an opportunity for the people to raise objections (*inspraak*) to their opinions. Finally, this legal protection is very important for government actions that are based on freedom of action because it aims to prevent disputes from occurring. Moreover, with this preventive legal guarantee, it encourages public authorities to be careful in making choices related to *the Freies Ermessen Principle*.

According to Evi Sofiasman, M.pd, Head of the Serang City Education and Culture Office which has a mission to protect and preserve the Banten Pilgrimage Cultural Heritage including the Tombs of Ki Masjong and Agus Ju, the author conducted observations and interviews with the agency. However, the preservation of cultural heritage in Serang City has not been carried out properly until now due to several things, one of which is the lack of legal protection for the Ki Masjong and Agus Ju Cultural Heritage. "In the change of events, utilization and security of cultural heritage we immediately carried out inspections and socialization about culture, this year we have only completed 2 (two) cultural heritage that already have legality or until now there has been legality that has been checked by a team of experts and cultural heritage groups whose safety has been ascertained, namely in addition to that there is also the Juang 45 Building and the Class 2B Detention House. We have not done an extraordinary report to establish it as a cultural heritage. However, the presence of this regulation is not without reason, precisely to save the environment of Banten and make the country capable in terms of security, repair, and utilization of Banten's heritage.

This is the basis for the idea that cultural heritage must obtain a valid guarantee from public authorities, which is affirmed by the basis of Government Regulation Number 11 of 2010 concerning Cultural Heritage. Evi Sofiasman, M.pd, Head of the Development Division of the Serang City Education and Culture Office, stated, based on an interview with the Education and Culture Office. "Part of the efforts we make are carrying out activities such as social investigations, socialization and providing data about culture at large. In addition, we hope that this site can be used as effectively as possible by the local community so that it can continue to be known by many people in the future. In particular, the Education and Culture Office has made a PERDA and

¹¹ Ibn Manẓūr, *Lisān al-'Arab*, Juz 11, p. 285.

¹² Fahmi Muhammad and Jaenal Aripin, *Legal Research Methods* (Jakarta: UIN Syarif Hidayatullah Research Institute, 2010), p.17-18.

¹³ Ibrāhīm m ibn Mūsā al-Syāṭibī, *Al-I'tisām*, Juz 1 (Cet. I; Saudi Arabia: Dar Ibn 'Affān, 1412 AH, 1992 AD), p. 237.

¹⁴ Abdullāh al-Muṣliḥ and Ṣalāḥ Al-Ṣ āwī , *Mā Lā Yasa' al-Tujjār Jahluhu*, p. 256

requirements to protect and preserve the site. The findings of the interview above show that the Serang City government has paid attention to the preservation of the Banten Girang Site. One of the ways to maintain and preserve it is that the Serang City Education and Culture Office collaborates with the surrounding area. with the Banten Provincial Cultural Heritage Preservation Center (BPCB), Tourism Office. Regarding infrastructure that lacks attention and is not optimal for use, the Serang City Government invites each other to take care of and preserve the Banten Girang Site so that in the future it can still be seen or witnessed by each generation.

The preservation of the Cultural Heritage is indeed very important to do considering that the Banten Pilgrimage Cultural Heritage including the Tombs of Ki Masjong and Agus Ju, is a milestone for the first time the kingdom was established in Banten, this can make Banten Province, especially Serang City, have several historical tourist attractions of high value. The Banten Girang site is a relic of the Banten kingdom and is a favorite location for pilgrimages in Serang City in addition to the site of the Old Banten Sultanate.¹⁵ In the Banten Girang website, there is also a pilgrimage that is known as the grave of the brothers and sisters as the first people to embrace Islam in Banten, namely Ki Masjong and Agus Ju. When viewed from its physical appearance, the Banten Girang Site seems to have been almost eroded by the times.¹⁶ So far, the function of the Serang City Education and Culture Office can be said to be not optimal in caring for and maintaining the Banten Girang Site. Considering that this site is still out of the government's attention because for maintenance costs such as renovating toilets, this site still relies on donations from the surrounding community or pilgrims, but this does not reduce the attraction of tourists or pilgrims who come.¹⁷

Based on the results of the interview, it can be concluded that the Serang City government has given a form of attention to the Banten Pilgrimage Cultural Heritage including the Tombs of Ki Masjong and Agus Ju, this is to maintain and preserve. Among the ways that are done to maintain and preserve the Serang City Education and Culture Office in collaboration with the Banten Provincial Cultural Heritage Center (BPCB), the Tourism Office. Related to the infrastructure that lacks attention and is not optimal for use, the Serang City Government invites each other to take care of and preserve the Banten Pilgrimage Cultural Heritage, including the Tombs of Ki Masjong and Agus Ju, so that in the future it can still be seen or witnessed from each generation.¹⁸

According to Law No. 11 of 2010, the Serang City Government is obliged to protect, develop, and utilize Cultural Heritage. However, the implementation of legal protection for cultural heritage by the Serang City Government is still weak due to the lack of legal protection for the cultural heritage of the Banten Girang Site. The Serang City DPRD has been added in securing and protecting Banten's Heritage. Banten Girang Site Culture, it's just that there are still several factors that make the efforts of the Serang City Education and Culture Office ineffective in protecting Cultural Heritage in Serang City.

Based on the findings in the field that occurred after observations and interviews, it can be concluded that the government through the Education and Culture Office of Serang City has tried its best to maintain and preserve the Banten Girang Site. The Serang City Government is also collaborating with the Banten Provincial Cultural Heritage Preservation Center (BPCB) to participate in preserving these historical objects so that there is no damage to these historical objects. The obstacle that causes the Banten Girang Site to be ratified as a National Cultural Heritage is because the Serang City Government does not have an efficient budget to designate the Banten Girang Site as a Cultural Heritage. This is because the Serang City Education and Culture Office must make a 5 (five) year plan to make the Banten Girang Site a Cultural Heritage and revitalize the infrastructure of the Banten Girang Site.

D. CONCLUSION

Based on the findings in the field that occurred after observations and interviews, it can be concluded that the government through the Education and Culture Office of Serang City has tried its best to maintain and preserve the Banten Pilgrimage Cultural Heritage including the Tombs of Ki Masjong and Agus Ju. The Serang City Government is also collaborating with the Banten Provincial Cultural Heritage Preservation Center (BPCB) to participate in preserving these historical objects so that there is no damage to these historical objects. The obstacle that causes the Banten Girang Site to be ratified as a National Cultural Heritage is because the Serang City Government does not have an efficient budget to designate the Banten Girang Site as a Cultural Heritage.

¹⁵ Ahmad Qarib and Isnaini Harahap, "The Application of Maslahah Mursalah in Islamic Economics", *Analytica Islamica* 5, no. 1 (2016): p. 68.

¹⁶ Wawancaara with Evi Sofiasman as the head of the Banten Education and Culture Office

¹⁷ Rahmat Setiawan, Firmansyah Fality, 2020, Weaving Nambo Legal Protection of Intellectual Property Rights, Nasya Expanding Management Publisher, Central Java.

¹⁸ Wawancaara with Evi Sofiasman as the head of the Banten Education and Culture Office

This is because the Serang City Education and Culture Office must make a 5 (five) year plan to designate the Banten Pilgrimage Cultural Heritage including the Tombs of Ki Masjong and Agus Ju, become Cultural Heritage and revitalize Banten's infrastructure.

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