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RESEARCH ARTICLE

COPYRIGHTS PROTECTION OF INDIGENOUS PEOPLE OF INDONESIA REGARDING ITS TRADITIONAL CULTURAL EXPRESSION WITHIN ISLAMIC LAW (MAQASID AL SYARI'AH) PERSPECTIVE

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ABSTRACT

Copyrights protection of Indigenous People of Indonesia in the form of Traditional Cultural Expression was not yet perceived to be fair. The state has the obligation to give a comprehensive protection that would protect the rights of indigenous people of Indonesia under the appropriate law. The existence of indigenous people and the copyrights of Traditional Cultural Expression is part of nation's wealth and identity. This study would focused on how does Islam view this matter through law provision using *Maqasid al Syari'ah* method in protecting the rights of indigenous people of Indonesia, whereas Islamic law is one of the secondary laws and therefore expected to strongly contribute solution over this matter. Study method was normative with conceptual and case approach to obtain conclusion that protecting Traditional Cultural Expression by using Islamic law with *Maqasid al Syari'ah* method was an obligation. This was based on the rule of obligation to protect several things such as: life and human rights protection (*hifzul nafsi/hifzul 'irdhi*), intellectual property protection (*hifzul aqli*) and wealth protection (*hifzul maal*).

INTRODUCTION

Each Intellectual Copyrights owner, also all owner of its copyrighted products has the human rights to be protected and that their moral and economy rights were met. The same goes to indigenous people¹ as part of the citizen that has the rights to maintain their moral and economy rights regarding their Traditional Cultural Expression. This was in accordance with constitutional law in article 18b of 1945 Constitution of Republic of Indonesia which states:² “*The State shall recognize and respect, to be regulated by the law, the homogeneity of societies with customary law along with their traditional rights for as long as they remain in existence and in agreement with societal development and with the principle of the Unitary State of the Republic of Indonesia.*” Recognition and respect over the rights of indigenous people was also stated in *United Nations Declaration One the Rights of Indigenous People* in article 31.³

“... they also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions”. Indonesia was known due to its diverse tribes, customs, languages and beliefs which make this nation highly wealthy in traditional cultures. Tribes in Indonesia was estimated to reach 1340, with 15 ethnics has more than 1 million people as its members (BPS, 2010). The remaining was ethnic groups with less than 1 million members and spread over all archipelago of Indonesia.⁴ Citizen composition was dominated by Moslem about 207,176,162 people or about 87,18%.⁵ This means Moslem is the main contributor for major thinking and thus Western rules should be customized by considering people's condition and its religious and cultural values. Traditional Cultural Expression (TCE) currently was one of the copyrighted protections as suggested in article 38 of Copyrights Statute No 28 of 2014 and also a part of the Intellectual Property Right (IPR).

¹ This paper use the term of traditional people with synonym of term *indigeneous people* under the meaning of group of people with origin (from generation to generation) in certain geographic location, and has their own value, ideology, economy, politic, culture, social and their own territory. This was done to use only one terms over different terms. The use of indigenous people was selected due to its acceptance in social and politics and that it has broader meaning.

² Undang Undang Dasar Negara Republik Indonesia Tahun 1945

³ United Nation Declaration on The Rights of Indigenous People, article 31

⁴ Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional Direktorat Perlindungan dan Kesejahteraan Masyarakat, *Masyarakat Adat di Indonesia Menuju Perlindungan Sosial Yang Inklusif*, (Jakarta: Direktorat Perlindungan dan Kesejahteraan Masyarakat Kementerian PPN/BAPPENAS, 2013), hal. 15

⁵ Lihat hasil sensus penduduk, <http://www.mikirbae.com/2015/05/komposisi-penduduk-menurut-agama.html> diakses pada tanggal 7 Maret 2017

Indonesia's Intellectual Property Rights currently refers to TRIP (*Trade Related Intellectual Property Right*) agreement as one of the *agreement* from World Trade Organization (WTO) that should be implemented by many developing countries including Indonesia. There were several main differences between rules implemented by conventional HKI and people condition in Indonesia, whereas conventional HKI rules mention that protection over copyright should be based on materialized creative work, with new value, owned by individual, and become part of the modification and industrial process.⁶ Of course, this was not in agreement with the existence of Traditional Cultural Expression as a traditional wealth owned generation after generation and communal in ownership. Due to this inappropriateness, indigenous people still haven't received justice regarding their ownership of these traditional rights. In the meantime, currently, economy utilization has been done toward Traditional Cultural Expression by outsider of the indigenous people community, and therefore inflicts financial loss for indigenous people. One of the causes would be weak legal protection toward Cultural Expression existence.

There was *misappropriation*, impairment of cultural values and exploitation by outsiders either domestic or foreign people, which create financial loss for indigenous people as the legal owner of their traditional wealth. One of the traditional cultural expressions of indigenous people that has been exploited by foreigner was: the act of Britain citizen, Christopher Harrison, through his company Harrison & Gil which claimed the copyrights of Jepara carvings.⁷ Other issues also occurs in Indonesia such as the claim of Traditional Knowledge and Traditional Cultural Expression of Indonesia by Malaysia, in a commercial ad in *Discovery Channel Dalam Enigmatic Malaysia*, which display Pendet dance, wayang and Reog Ponorogo which claimed as the traditional wealth of Malaysia.⁸ Although Malaysia eventually apologize to Indonesia, this should become a valuable lesson whereas the State should paid more attention toward own its traditional wealth. The implementation of Islamic law in Indonesia is one of the recognition form toward legal pluralism in this nation, thus its existence was expected to contribute in solving the existed problems. However, regarding regulation concerning the protection of copyright, Islamic law has its own method in its legal provision through *Maqasid al Syari'ah* approach (purposes of legal provision) in which these purpose would aimed to *maslahah* (goodness). Islamic law as one of the legal composition in developing national law has an important role in giving solution over legal issues in Indonesia, including copyright of indigenous people regarding Traditional Cultural Expression. Through the method of *Maqasid al Syari'ah*, Islam has given its answers concerning the importance of *maslahah* for the life of the people. Therefore, if *maslahah* was obtained then legal purposes aimed to justice, utilization and law certainty would correspondingly attain. Based on the background above, problem under study was related with what is the view of Islamic law, through *Maqasid al Syari'ah* method, concerning how to protect the right of Indonesian

indigenous people regarding their Traditional Cultural Expression.

MATERIALS AND METHODS

This research type is a normative legal research namely doctrinal method or research. The research approaches used were statute approach, case approach, historical approach, comparative approach, and conceptual approach. The type of legal material in this study consists of primary, secondary, and tertiary legal materials. Primary, secondary and tertiary legal materials are obtained in libraries and related agencies. The collection of legal materials was conducted through a documentation study in the form of primary, secondary, and tertiary laws through inventory, selection, and systematization, to explore the documents and literature according to the research problem. The technique of obtaining legal material is by searching the literature through libraries, both libraries of various universities and public libraries and through the internet. Legal materials that have been collected were analyzed qualitatively using inductive and deductive thinking processes so that they can be interpreted in the form of statements. The analysis technique used was grammatical interpretation or interpretation according to a language, and comparative interpretation is an interpretation by comparing, looking at the clarity of a constitution, in this case, is the view of Islamic law, through *Maqasid al Syari'ah* method, in giving legal protection toward the right of indigenous people over their Traditional Cultural Expression and refer it to National law as the contribution of Islamic law to develop a fair, beneficial and certain national law.

RESULTS AND DISCUSSION

Copyright of Traditional Cultural Expression in National and International Legal Framework: Copyright is one part of the Intellectual property right (HKI), whereas HKI is the right over property due to human intellectual ability. One that tried to do something and eventually able to produce something with high value must have sacrificed a great amount of their time, mind, effort, and cost. Based on this conception, it encourage award to be given toward the produced works in the form of legal protection for HKI. This protection would also include all copyrights produced by its inventors. Several sectors of HKI have been regulated within Indonesia's law provision such as: copyright, patent, brand, trade secret, integrated circuit layout design, industrial product design, and plant varieties protection.⁹ While several legal instrument for its protection in international level were lies in several agreement such as: UNESCO *Convention for the safeguard of the Intangible Cultural Heritage* 2003, ratified by Indonesia through Government Regulation No 78 of 2007, this convention regulate intangible cultural heritage as the cultural heritage invented and practiced from generation to generation; UNESCO *Convention the Protection of the Diversity of Cultural Expression* 2005, which aimed to protect and promote various cultural expression, and other agreement with protection more directed toward maintenance and preservation. Those conventions would be stronger if being implemented using statute in national level. National law which regulates

⁶ Miranda risang ayu dkk., *sisitem perlindungan sumber daya budaya tak benda di Palembang, Sumatera selatan, Indonesia*, mimbar hukum volume 2, nomor 2, Juni 2017, hal. 206

⁷ Yusna Melianti dkk, *Pengaturan folklor Secara Sui Generis Dalam Undang-undang Tersendiri* jurnal masalah-masalah Hukum, jilid 45 No.1, hal. 75

⁸ Badan Penelitian dan Pengembangan HAM Kementerian Hukum dan HAM RI, *Perlindungan Kekayaan Intelektual Atas Pengetahuan Tradisional & Ekspresi Budaya Tradisional*, (Bandung, PT. Alumnii, 2013)

⁹ Aprillyana Purba dkk, *TRIPs-WTO & Hukum HKI Indonesia Kajian Perlindungan Hak Cipta Seni Batik Tradisional Indonesia*, (Jakarta: PT. Asdi Mahasatya, 2005), hal. 16

Traditional Cultural Expression was Copyright Statute No 28 of 2014 and also mentioned in Statute No 11 of 2010 concerning Cultural Preservation which regulate tangible Cultural Resources also Statute No 5 of 2017 concerning Cultural Advancement. However, unfortunately, several protections in this national law did not specifically regulate the rights of indigenous people as the owner of Traditional Cultural Expression. Related with the contribution of Islamic law through fatwa of Majelis Ulama Indonesia (Indonesia Scholar Assembly), protection of copyright was provided through provision of MUI No. 1/MUNAS/VII/15/2015 concerning the protection of HKI and fatwa No 1 of 2003 concerning Copy Right. Regardless, the power of fatwa was not binding, because fatwa was religious-based opinion given due to demand from individual or groups to answer legal issues which was not specifically regulated in the *nash* either Al Qur'an or hadith. Regulation in article 38 of copyright statute No 28 of 2014 was highly general and short. It means that there should be more explanation and regulation given in government's implementation provision. Material formulation that should be developed was:¹⁰

a. The state personification as the holder of copyright and traditional cultural expression. It was still uncertain whether to put it under the Ministry of Education or Ministry of Law and Human Rights, or Ministry of Domestic Affairs, or Provincial or Regency Government or whether it was put into independent institution. Copyright of Traditional Cultural Expression was hold by the State, although further explanation concerning the term 'hold', the legal construction of the term 'hold by the State' should be developed. Regarding statement that the State obliged to inventory, to maintain and preserve traditional cultural expression, it does need further regulation concerning what effort involved and how does it maintain and preserved traditional cultural expression, all of those should be put into concrete explanation. There was vague of norm in regulation concerning protection over Traditional Cultural Expression in copyright statute of 2014, therefore further specific legal umbrella (*suigeneris*) in accordance with the character of Indonesia should not be separated from moral and religious values. In this condition, Islamic law was needed as support and reinforce the state law provision, so that the aspiration of lawful justice for the citizen particularly for indigenous people over its traditional rights can be fulfilled.

View of Islamic Law toward Copyright over Traditional Cultural Expression

Traditional Cultural Expression as Part of Copyright of Indigenous People

Copyright of Traditional Cultural Expression in National and International Legal Framework

Copyright is one part of the Intellectual property right (HKI), whereas HKI is the right over property due to human intellectual ability. One that tried to do something and eventually able to produce something with high value must have sacrificed a great amount of their time, mind, effort, and cost.

¹⁰ I Wayan Suparta, *Perlindungan Hukum Pengetahuan Tradisional dan Ekspresi Budaya Tradisional*, dalam Bibin Rubini, et.al. *Meneroka Relasi Hukum, Negera, dan Budaya* (Jakarta: Yayasan Pustaka Obor Indonesia Bekerjasama Dengan Fakultas Hukum Universitas Pakuan, Bogor, 2017), hal. 232

Based on this conception, it encourage award to be given toward the produced works in the form of legal protection for HKI. This protection would also include all copyrights produced by its inventors. Several sectors of HKI have been regulated within Indonesia's law provision such as: copyright, patent, brand, trade secret, integrated circuit layout design, industrial product design, and plant varieties protection.¹¹ While several legal instrument for its protection in international level were lies in several agreement such as: UNESCO *Convention for the safeguard of the Intangible Cultural Heritage* 2003, ratified by Indonesia through Government Regulation No 78 of 2007, this convention regulate intangible cultural heritage as the cultural heritage invented and practiced from generation to generation; UNESCO *Convention the Protection of the Diversity of Cultural Expression* 2005, which aimed to protect and promote various cultural expression, and other agreement with protection more directed toward maintenance and preservation.

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¹¹ Aprillyana Purba dkk, *TRIPs-WTO & Hukum HKI Indonesia Kajian Perlindungan Hak Cipta Seni Batik Tradisional Indonesia*, (Jakarta: PT. Asdi Mahasatya, 2005), hal. 16

¹² I Wayan Suparta, *Perlindungan Hukum Pengetahuan Tradisional dan Ekspresi Budaya Tradisional*, dalam Bibin Rubini, et.al. *Meneroka Relasi Hukum, Negera, dan Budaya* (Jakarta: Yayasan Pustaka Obor Indonesia Bekerjasama Dengan Fakultas Hukum Universitas Pakuan, Bogor, 2017), hal. 232

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View of Islamic Law toward Copyright over Traditional Cultural Expression

Traditional Cultural Expression as Part of Copyright of Indigenous People

Therefore, it became an obligation for the State to protect its citizen's right including indigenous people as part of Indonesian citizen who has the right to obtain protection. By giving this protection toward indigenous people over their own traditional cultural expression, it would bring consequences by preserving tangibles of this traditional wealth, which also part of the state's wealth. If protection was already adequately given, the purpose of welfare and justice in the development of state law would automatically attain because all citizen has already enjoy it. This has become the future expectation to attain justice by the state in the form of protection toward the rights of indigenous people so that their existence were always appreciated and respected.

Copyright from Islamic Perspective

The existence of copyright as one part of the Intellectual Property Rights (HKI) within Islamic law still haven't supported by explicit principle. This might be due to copyright as current and novel issues and was not familiar for people of the past. However, copyright is a 'right' which assumed to be protected. The concept of rights in Islam was highly clear whereas rights are part of wealth (*maal*) and should be protected in accordance with *hifzul maal* (wealth protection) principle in *maqasid al syari'ah* (law provision objective) approach. According to M. Ali Hasan, the rights are the correct power over something or to pursue something. It also means authority according to the law. Umar Shihab suggests the rights in literal meaning as the authority to do or to not do something. The right, according to him, is the opposite of obligation or duty which is a demand for someone to do something.¹³ The general definition of rights was a provision used by *syara'* to provide a power or a legal burden/responsibility.¹⁴ Some might define rights as the power over something or something that should be done from one to another.¹⁵ If one was given authority, then the authority would become his "right" to rule over something. According to Islamic law, this authority should be acknowledged in *syara'*, if it was not acknowledged in *syara'* then it cannot be called as 'rights'. For example, let's take a look at someone who steal or robbed something that belongs to other people. Speaking *de facto*, this thing would belong to the thief however since stealing or robbing was unjust according to *syara'*, it means that the thief's authority over the thing was not the 'right'.

¹³ Fauzi, *Teori Hak, Harta & Istislahi Serta Aplikasinya Dalam Fiqih Kontemporer*, (Jakarta: Kencana, 2017) hal 20

¹⁴ H. Hendi Suhendi, *Fiqih Muamalah*, (Jakarta: RajaGrafindo Persada, 2016), hal.32

¹⁵ *Ibid.* hal 33

Therefore, the right in its implementation always related to the maintenance of other's *maslahah* and not inflicts damage of others. It means that every individual did not have absolute freedom to use his/her right, because he/she is not the absolute owner and limited by other's *maslahah* in using his/her right. Thus, "right" according to Fauzi is the authority related to power and acknowledged by *syara'*.¹⁶ In the meantime, we should look at the definition of copyright as the outcome of hard work by one who has sacrifice his effort, time and cost also in thinking to create a beneficial works and brought *maslahah* (goodness) for himself. But the reality speaks differently; Traditional Cultural Expression was not only brought *maslahah* (goodness) for indigenous people, but also it brought benefit and *maslahah* for others. The definition of copyright should be refers to general definition in Intellectual Property Rights (HKI). The term HKI has the meaning as wealth in the form of a right under legal protection whereas other people were forbidden to use this right without the consent of its owner.¹⁷ According to Oran's *dictionary of the law intellectual property*, it meant as follows "intellectual property or similar intangible right in an original tangible or perceivable work. The right obtains a copyright, patent, etc".¹⁸ The point is that copyright as part of HKI is the wealth brought by copyright with economy value. Thus this type of right should be put into *haqq adami* (human) meaning the right meant to maintain human *maslahah* (goodness). To preserved the continuity of this *maslahah*, legal protection was needed to prevent its missappropriation, regarding this matter Allah SWT suggested this in surah As-Syura: 183

"And do not deprive people of their due and do not commit abuse on earth, spreading corruption."

Concerning all misappropriation, such as hijacking or stealing in this matter, Islam has forbid it. Allah SWT says in surah Al Baqarah: 188

"And do not consume one another's wealth unjustly or send it [in bribery] to the ruler in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]"

Along with this, fatwa from MUI as one of the legal system within Islamic law and acknowledged in Indonesia suggest that Intellectual Property Rights and including within it copyright is the right over wealth (*huquq maliyah*) that should be under legal protection (*mashun*) as other wealth. Fatwa from MUI No. 1 of 2005 was based on several opinions such as: The majority opinion of scholars from mazhab Maliki, Syafi'i and Hambali who suggest that copyright for an original and beneficial creations was considered to be valuable wealth as if tangibles if it can be used according to *syara'* (Islamic law). This fatwa was based on other Moslem scholars such as Fathi al-Duraini, *Haqq al Ibtikar fi al-Fiqh al-Islami al-Muqarran* (Beirut: Mu'assanah al-Risalah, 1984), p. 20 Regarding its author's right (*haqq al-ta'lif*), one of it was copyright, MUI cite the opinion of Wahbah Al Zuhaili who suggest that: "Based on this matter (that author's right is the protected right by *syara'* [Islamic law] under the basis of *qaidah istishlah*),

¹⁶ Wahbah Al Zuhaili, *Fiqih Islam Wa Adillatuhu*, jilid IV (Jakarta: Gema Insani, 2011), hal. 364.

¹⁷ Ridwan Khairandy, *Pokok-pokok Hukum Dagang Indonesia*, (Yogyakarta, FH UII Press, 2013), hal. 423

¹⁸ Daniel Oran J.D, et all, *Dictionary of The Law*, Third Edition, west legal studies, 2000. Hal 253

reprinting or copying a book (without legal permission) was considered to be infringement or criminal act toward author's right; it means that the act was considered to be wrong and elicit sin in the view of syara' and also considered to be an act of stealing which elicit compensation toward author's right concerning the reprinting of books, and it would also inflict moral damage to the author (Wahbah al Zuhaili, al Fiqh, al Islami wa Adillatuhu, Beirut: Dar al-Fikr al-Mu'ashir, 1998, juz 4, page 2862).

This opinion was then used by MUI as the basis for these provisions:

- In Islamic law, copyright was seen as one of the *huquq maliyah* (right of wealth) and should be legally protected (*mashun*) like other wealth (*maal*).
- Copyright under the protection of Islamic law as mention in poin 1 was the copyright for creations that did not against Islamic law.
- Just like *maal*, copyright can be used as the object of contract (*al-ma'qud alaih*) either *mu'awadhah* agreement (commercial exchange) or *tabarru'at* agreement (non commercial exchange) and it can be given (*waqaf*) and inherited.
- Each and every infringement toward copyright, particularly hijacking, is sin and haram in syara'.

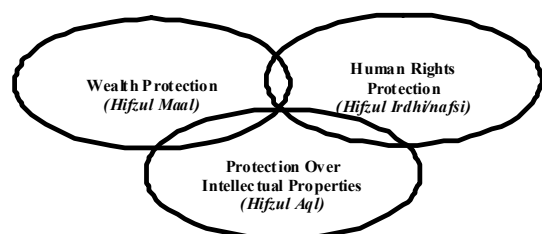
By looking at these description, it can be concluded that copyright is part of *maal* (wealth) and can be used as object in contract/agreement either commercial or non commercial exchange also it can be given and it can be inherited. This copyright should be protected from every type of infringement. It was also said that copyright seen as the part of wealth has the same position with other wealth and should be protected. This protection toward copyright should give *maslahah* (goodness) to the creator as legal subject and also *maslahah* (goodness) to the consumers as the legal object. It is expected that this protection would be able to give encouragement toward all experts to keep working and create new works and knowledge including copyright in the form of Traditional Cultural Expression that has given wealth for all of its users.

Indigenous People's Right of Traditional Cultural Expression Copyright according to *Maqasid al Syari'ah* Perspective

Maqasid al Syari'ah is the method used by scholars to provide law. There is no specific definition concerning *Maqasid al Syari'ah* because scholars would suggest more of the content of *Maqasid al Syari'ah* which is law provision with the objective to attain "*maslahah*" (goodness). Definition of "*maslahah*" was vary according to scholars due to different opinion regarding the limit of *maslahah*, however they do agree in defining *maslahah* more to the utilization/benefit side. It was described by al Buti that *maslahah* means: "*benefit intended for the people by Allah (the maker of syari')* in order to maintain religion, spirit, mind, offspring and wealth based on certain priorities".¹⁹ While As Syatiby considers *maslahah* as "*jalbul mashalih wa dar'ul mafasid*" which means taking benefit and refuse damages, which not based on mind alone but also to maintain the right of the people.

¹⁹ Amir muallim & YUSDANI, *Konfigurasi Pemikiran Hukum Islam*, (Yogyakarta: UII Press Indonesia, 2001), hal. 37

Ibnu 'Asyur in Jasser Auda suggest that "*Maqasid of Islamic law are the objective/purposes behind Islamic rulings*".²⁰ The concept of *benefit* in *Maqasid al Syari'ah* was obtained through religious protection (*hifzu al din*), spirit protection/honor/human right (*hifzu al nafs/hifzu al 'irdh*) and mind protection (*hifzu al aqli*), offspring protection (*hifzu al nashl*) and wealth protection (*hifzu al maal*). This protection concept has been developed by Jasser Auda by put means toward *Maqasid al Syari'ah* as the value and meaning for purpose to be realized by syar'i behind the making of syari'at and the law obtained from mujtahid study toward syari'ah texts.²¹ One of the famous works was *Maqasid Al Syariah as Philosophy of Islamic Law*, Jasser Auda used 6 system features optimized as the analysis blade which are cognition dimension of religious thought (*cognition*), *wholeness*, *interrelated hierarchy*, *multidimensionality* and *purposefulness*.²² All those features were interconnected and forming a whole thinking system, which eventually create a feature that could present the core of this system methodology which is the purposefulness feature (*maqasid*). By looking at this matter, *Maqasid al Syari'ah* has become the basic principle and fundamental methodology within Islamic law reformation brought by Jasser Auda. Several reformations brought by Auda were to reform *Maqasid al Syari'ah* in the contemporary perspective, from *protection and preservation* toward *Maqasid al Syari'ah* with slight nuance of *development* and *human rights* also the concept of human resource development. In this context, author would like to try to analyze the position of indigenous people's right of their traditional expression as the wealth that ingrained in their life, and the protection that can be given through this method. By looking at the thinking concept of *Maqasid* from Auda, author could see that indigenous people has the right to be protected regarding their intangibles wealth in their traditional cultural expression. Also the state as the highest constitution bears the responsibility to conduct this protection without any differences. This should be done given that indigenous people is part of the citizen who has human rights to be protected, respected and given opportunity in developing their own resources to improve their welfare for the *maslahah*. By viewing protection system of *maqasid* from Auda, author could conclude that the form of protection according to *Maqasid al Syari'ah* toward indigenous people concerning their Traditional Cultural Expression can be seen from figures below:



Source : Author

Figure 5: Copyright *Maqasid* in the form of Traditional Cultural Expression

²⁰ Jasser Auda, *Maqasid Al Syari'ah as Philosophy of Islamic Law*, (Wangsiton; The International Institut of Islamic Thought London, 2008), hal. 2

²¹ Moh. Anas kholis & Nor Salam, M.HI., *Epistemologi Hukum Islam Transformatif Sebuah Tawaran Metodologis Dalam Pembacaan Kontemporer*, (Malang: UIN Maliki Press, 2015), hal. 148

²² Jasser Auda, *Membumikan Hukum Islam Melalui maqasid Al syari'ah*, (Bandung: PT. Mizan Pustaka, 2015), hal. 11

From the figure above, it can be seen clearly that indigenous people's right concerning Traditional Cultural Expression carry several elements to be protected, such as 1) element of indigenous people's right for their economy fulfillment (*hifzul maal*), 2) element of right to be respected as the acknowledgement of human rights (*hifzul irdhi/hifzul nafsi*), 3) element of right to be appreciated over their intellectual properties in creating works (*hifzul aqli*). These three elements were interwoven one another. It means that each element has become so connected to one another and making it inseparable. This brought consequence that to fulfill these elements, it will not be based on priorities but it was always goes hand in hand. Fulfillment of those three elements was the realization of protection given by *Maqasid al Syari'ah*, which would end up in masalah or goodness particularly for indigenous people. Islamic law (*syari'at*) was made by Allah SWT to bring prosperity for whole mankind. *Syari'at* reflects that Islam is the religion of "*rahmatan lil alamin*" (blessed for all universes), it means that the law was made for the goodness of all mankind without any differences. If the universality of Islamic law through *rahmatan lil alamin* was able to exist and protect all mankind without any differences, including in their beliefs, thus the provision of state law by the authority to protect copyright of Traditional Cultural Expression of indigenous people should be based on *Maqasid al Syari'ah*, whether preventive or repressive in nature.

Conclusion

Legal protection for Indigenous people's copyright of their Traditional Cultural Expression from Islamic law perspective (*Maqasid al Syari'ah*) suggests that there were elements within Traditional Cultural Expression that should be protected;

- Traditional Cultural Expression (TCE) that contain acknowledgement and respect element toward the existence of indigenous people and their traditional right as the embodiment of spirit protection and human right protection (*hifzul nafsi/hifzul 'irdhi*).
- Traditional Cultural Expression (TCE) is part of intellectual outcome by indigenous people to create works, and therefore should be protected as the protection of intellectual properties (*hifzul aqli*).
- Traditional Cultural Expression (TCE) is part of wealth that belongs to indigenous people, therefore their right over economy fulfillment through TCE should be protected as the embodiment of wealth protection (*hifzul maal*).

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