
Protecting Batik As A National Heritage : A Malaysian Legal Analysis

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Abstract

Malaysians, and especially Malays, take pride in keeping batik alive as a cultural tradition or heritage passed down through the ages. Cultural artefacts that can be easily transported, like batik paintings, are a valuable part of Malaysian history. Which country has the exclusive cultural heritage rights to the batik making process is a frequent source of contention between Malaysia and Indonesia, both of which claim a significant role in the art form's history. It's worth noting that on October 2, 2009, batik was officially recognised as part of Indonesia's cultural heritage by UNESCO. The vexing question in this situation is unquestionably about the legal position of batik in Malaysia. Among the question that need to be ponder is whether the production of batik in Malaysia being in its legal rights? This article therefore focuses on the legal protection on batik in Malaysia. For this purpose, the discussion adopts the doctrinal analysis by examining the existing primary and secondary materials including statutory provisions, case law, and other legal and non-legal literature related to the legal protection of batik in Malaysia. This article concludes that batik by its unique nature and design is protected by National Heritage Act 2005 and also be best shielded under intellectual property legislations such as copyright law and industrial design law. Even though Malaysian batik hasn't been officially recognised by international bodies like UNESCO, it still needs legal protection to ensure its continued viability. Efforts are needed to revive batik's status as a as a national heritage and cultural treasure for the nation

Keywords: Batik, National Heritage, Intellectual Property, Protection, Malaysia

Introduction

Malaysians have a long history of creating beautiful works of art using batik. The art of batik as cultural heritage has been handed down through the generations of Malaysians, particularly Malay people. There are two meanings for the word batik. The first sense refers to the practise of dyeing patterned designs onto white fabrics; it has its roots in Indonesia. The second definition refers to white fabric that has been decorated using wooden, copper, or iron blocks, with wax, rosin, or resin applied to the parts that won't be dyed (Abdullah,2020). The history of Malaysia and other Asian nations is intertwined with batik since it is an integral part of their cultural heritage. The term "cultural heritage" refers to the transmission of cultural artefacts from one generation to the next for the purposes of preservation, exploitation, and transmission (Papaioannou, 2017). Cultural artefacts that may be easily transported, like batik paintings, are a valuable part of our history. At first look, batik is a traditional textile being practised and produced on the East Coast of Peninsular Malaysia particularly in Kelantan and Terengganu, (Hussin, Ismail, Hasbullah, & Kadir, 2020). Which nation has the superior cultural rights to the batik producing technique is a frequent source of contention between Malaysia and Indonesia (You & Hardwick, 2000). Despite the controversy, it is worth noting that batik was officially recognised as Indonesia's cultural heritage by UNESCO on October 2, 2009. (Octaviani, 2015). This recognition seems to suggest that batik is a priceless cultural heritage or artefact of the adjacent country. This has caused some in the local community to worry about the long-term viability of Malaysia's batik industry. The vexing question in this situation is unquestionably about the legal position of batik in Malaysia. Among the question that need to be ponder is whether the production of batik in Malaysia being in its legal rights? The future of Malaysia's batik sector is grim, and it will remain so until more is done to revive it as a source of national pride (Abdullah, 2020). Hence, this article therefore focuses on the legal protection on batik in Malaysia.

Methodology

Legal research is a systematic scrutiny of the improvement of legal knowledge (Abdullah, 2018). The library research method is a fundamental method to legal research (Yaqin, 2008). Methods are used to obtain materials such as textbooks, case decisions, statutes, agreements and legal documents before they are analyzed. Data analysis was made on several legal provisions under the National Heritage Act 2005, Copyright Act 1987, Geographical Indications Act 2022 and Industrial Designs Act 1996, especially those related to the legal protection of batik in Malaysia.

History of Batik

Batik is a type of fabric in which the design was either stamped or painted onto the fabric using wax before being dyed (Baharom, 2010). According to history, the word batik was borrowed from the Javanese word tik, which means to drip ink or to write in dots. The word 'ambatik' can also refer to the act of drawing, writing, colouring, or dripping (Nordin & Abu Bakar, 2012). A sarong is a batik garment used to conceal one's lower half. This is supported by the research of Legino (2012). Batik has come a long way since its sarong days, both in terms of quality and affordability. The batik fabric is used to make baju kurung and shirts that are worn as a set. They can be used as one-of-a-kind keepsakes or as embellishments on things like handbags. Uniqueness of batik-made products is a major factor in tourists' decisions to buy them (Pesol et al., 2016).

Evidence for the origins of batik dates back to the early modern era, with artefacts originating from the Far East, the Middle East, Central Asia, and India (The Batik Guild, 1999). The Sui Dynasty (581-618 AD) is credited with the introduction of silk batik to China, and some accounts even attribute its development and cultivation to the Miao people. Beginning in around 710 AD, batik was made in the Japanese city of Nara. Traditional batik, known as kalamkari in India, has been traced back to the first century CE (World Batik Council, 2005). In 1677, according to Chinese trade records, batik was introduced to the Malay Archipelago (particularly Java and Sumatra), as well as Persia and India. It is estimated that batik was first discovered in Egypt somewhere around the fifth century AD. The Yoruba of Southern Nigeria and Senegal in Central Africa have used batik for millennia. And yet, other nations, such as Australia, Sri Lanka, and Malaysia, also make batik. Batik has been made in the Javanese archipelago of Indonesia for centuries, and its popularity has continued to grow as a result of its high quality and extended shelf life in comparison to competing items (The Batik Guild, 1999). Three-dimensional (3D) batik printing technology is the newest use of batik in the Fourth Industrial Revolution era (Endah et al., 2020).

Batik, as is evident, has been around for millennia in virtually every region of the globe. That being the case, every nation has the privilege of safeguarding the batik industry in its own way. Malaysia's batik is still legally protected, notwithstanding UNESCO's recognition of the art form in Indonesia. The patterns and themes used to create batik art are uniquely different in each country.

Batik in Malaysia

According to some scholars, batik was first created in Kelantan, Malaysia, in either 1910 (Mayae3, 2016) or 1911 (Mohd Noor, Shuib & Baharin, 2019). The conventional technique of batik production was uncovered by humans around the 15th century AD. Since the 1770s, Batik Pelangi has been widely distributed across the archipelago (Mayae3, 2016). This multicoloured batik, known as "rainbow batik," is said to have resulted from Malaysia's first conventional batik processing (Legino, 2012).

The motifs and patterns used in the making of a batik can be used to determine the country of origin. Motifs are utilised to provide a decorative touch to a painting or batik design. There are two primary categories of batik motifs namely organic motifs like bamboo flower motifs and geometric patterns like mixed box flower motifs. *Awan larat*, vegetation, flora, and fauna are all included into these designs. On the other hand, we might say that the batik fabric pattern is the technique used to design the batik fabric's motifs (Mayae3, 2016). Common designs include stripes and horizontal stripes. In the early days of batik, the Malay society used potatoes as a stamping instrument to create the design. However, today's batik textiles are created with the use of sophisticated machinery. Applicator blocks, wax mixtures, swabs, and applicators are some of the most popular instruments used today. Computer batik printing techniques have also expanded around the world (The Batik Guild, 1999). In Malaysia, Mayae3 (2016) classifies batik into three types based on manufacturing techniques, namely:

a) Batik Stamp

Numerous patterns may be stamped into cloth using a stamp or block tool, with each design being unique. *Batik Cap* or *Batik terap* is the more common name for it in the East Coast, (Baeren, & Jusilin, 2021). The designer use pattern blocks to transfer a batik design onto white cloth. Wood or metal is used to make pattern blocks. This procedure is carried out in a predetermined sequence till its completion. Dye is added to the cloth by dipping the blocks first.

b) Batik Scatch (*Batik Conteng*)

By applying hot wax with the canting tool, a batik design is drawn on a white piece of cloth. After the preliminary sketches are finished, they will be coloured in a way that complements the design. The use of a paintbrush is essential to this process. The areas where the wax was applied will no longer show any trace of colour when the process of turning off the colour has been finished. The wax will eventually melt and peel off.

c) Batik Screen (*Batik Skrin*)

A polyester fabric screen is lined with wax to create the batik design. A white cloth is used as a backdrop for the screen. A squeegee or squilgee is used to apply colour over the design during the dying process. In order to create a full batik design, this step will be performed several times using different patterns. This is because there is a limit to the number of colours that may be displayed on a single screen.

There is a long and illustrious history behind Malaysia's batik business (Nordin & Abu Bakar, 2012). While it may have humble beginnings, both the textile and tourist industries both benefit from the increased cash that comes from batik manufacturing. But local batik is under greater pressure now. That's because manufacturer in nearby country sometimes steal ideas for their goods by copying local patterns and styles. It has been revealed, for instance, that Indonesian batik manufacturers draw inspiration from the original Malaysian batik tradition by employing colours and motifs that are otherwise foreign to Indonesian batik (Mohd Noor, Shuib & Baharin, 2019). The batik produced by this collective is inspired by the themes and patterns created by Malaysian business owners. Because of this, imported batik was dumped into Malaysia's domestic market, causing havoc in the local batik sector. Therefore, legislation should be enacted to safeguard Malaysian batik. See Table 1 for a comparison between Malaysian and Indonesian batik.

No.	Characteristic	Malaysia	Indonesia
1.	History of Batik	It is believed to have started in Kelantan since 1911.	It is believed to date back to the 12th century.
2.	Motif	More concise.	More dense
3.	Pattern	More to the subtle patterns, many motifs of flora and fauna are just like butterflies. Use brighter colors.	More to fauna such as insects, birds and marine life. Use of dark colors (black and dark brown).
4.	Tool	Mostly canting one eye and banners.	Using a variety of canting with a cloth placed over the palm of the hand to be canting.
5.	Function	Styled as clothing and accessories.	Styled during weddings and formal occasions.
6.	Colour	Using imported dyes	Using natural dyes

Table 1: Differences between Malaysian batik and Indonesian batik (Source: Mohd Noor, Shuib & Baharin, 2019) By establishing the World Batik Council in 2005, the Malaysian government showed that it was serious about fostering the growth of the batik sector. Among other member countries include the Netherlands, Australia, Belgium, India, Indonesia, Japan, Singapore, Sri Lanka, United Kingdom and the United States (World Batik Council, 2005). If batik is to remain a national asset, it must be legally safeguarded. The next topic for discussion will be the legislation in Malaysia that may be used to safeguard batik. This legal safeguard is necessary to prevent the cultural artefact of Malaysian batik, which represents the nation's forebears, from being readily stolen and replicated by others.

Legal Protection of Batik in Malaysia

Batik is a well-known Malaysian handcraft. Producing and manufacturing batik has long been a source of income for Malaysia's Malay population (Department of Environment, t.t). It is, therefore, quite fitting that it has been designated as a national heritage under the National Heritage Act 2005. Cultural heritage needs to be safeguarded legally (Nublan Zaky & Abdul Ghani Azmi, 2017). It is important, though, to single out the several subfields of intellectual property law, including copyright, industrial design, and geographical indications, that serve to safeguard locally produced batik.

National Heritage Act 2005

Malaysian batik has been recognized in the 2012 National Heritage Register for the category of intangible heritage objects (National Heritage Department, 2019). This category is specific to any heritage in the form of clothing, textiles, decorative arts and crafts. Heritage in the forms of textiles, apparel, and ornamental arts and crafts fall under this rubric. This recognition is in line with section 49 (1) of the National Heritage Act 2005 which provides that the Commissioner may declare in the Gazette any object which has cultural heritage significance to be a heritage object and shall cause it to be listed in the Register. This declaration must be listed in the Register. When an object is listed in the Register, the object shall be a heritage object from the date of its registration. It shall cease to be a heritage object when the Commissioner revokes its registration as under section 49 (4) of the National Heritage Act 2005. This Commissioner refers to the "Heritage Commissioner" appointed by the Minister of Tourism, Arts and Culture Malaysia pursuant to section 4 (1) of the act. For tangible heritage objects, a specific penalty is provided for anyone who destroys, damages, disfigures, disposes or alters a tangible cultural heritage object under section 113 of the National Heritage Act 2005. Even though for intangible heritage objects such as batik, there is no specific offence provision, section 118 of the National Heritage Act 2005 provides for general penalties. This provision states:

(1) Any person who commits an offence under this Act or any regulations made under this Act where no penalty is expressly provided shall on conviction be liable to a fine not exceeding fifty thousand

ringgit or to imprisonment for a term not exceeding five years or to both, and for a second or subsequent offence he shall be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

The above provision is one of the importance provisions under the National Heritage Act 2005. Anyone who tries to harm Malaysian batik by, for example, copying the batik's designs and patterns is subject to prosecution under section 118 of the National Heritage Act 2005. This section protects intangible heritage items like batik, however it has not been proven in court.

Copyright Act 1987

Copyright is one of the branches of intellectual property. Batik patterns are best shielded under copyright legislation (Subiyantoro, Susilarningsih & Maryono, 2017). *Miller v. Taylor* (1769) 4 Burr 2303 defines copyright as a property right protected by the law. The owner of a work has copyright, which is a form of exclusive ownership. Within the statutory time limit, the owner of this exclusive right has a limited monopoly on the use of the protected work (Khaw & Tay, 2017). It indirectly limits how much people may enjoy works protected by copyright laws.

Copyright in Malaysia is governed by the Copyright Act 1987. Works eligible for copyright under section 7 of the Copyright Act 1987 are literary works, musical works, artistic works, films, sound recordings and broadcasts. One of the works that qualifies for this legal protection is an artistic work. Artistic work under section 3 of the Copyright Act 1987 are composed of various works, one of which is a graphic work. The same provision also refers to a graphic work as, among other things, any paint drawing, drawing, diagram, map, chart or plan. Thus, batik fulfills the characteristics of a graphic work by referring to paintings and it can no longer be denied (Nordin & Abu Bakar, 2012).

Apart from a work complying with section 7 of the Copyright Act 1987, other conditions that must be met to obtain protection include the originality of a work, the work is in the form of material and it is created by qualified parties (Aziz, 2017). A work that is protected by copyright will grant exclusive rights to the copyright owner under section 13 (1) of the Copyright Act 1987. Any infringement on the copyright of the work is subject to legal action. Thus, the reproduction of batik without permission or plagiarism is an offence under the law. This plagiarism refers to a direct infringement under the Copyright Act 1987. Under section 36 (1) of the Copyright Act 1987, a direct infringement occurs when a person who is not the owner of a copyrighted work commits or causes another party to exercise the exclusive rights of the copyright owner without permission. In addition, indirect infringement under section 36 (2) of the Copyright Act 1987 can also occur if an importer of Malaysian batik plagiarized from abroad (made outside Malaysia) into the country for trade or commercial purposes without the permission of the copyright owner.

Anyone caught copying another person's batik might face legal consequences. The owner of the copyright may file a civil suit against the infringer to recover damages and/or get an injunction preventing further infringement. It is also possible to request the type of remedies used in common law jurisdictions, which is to have the offenders to submit a profit account to the court (Aziz, 2017).

For criminal offences, action may be taken by the Assistant Controller or a police officer not below the rank of Inspector as stipulated under section 44 of the Copyright Act 1987. For first time offences, section 41 of the Copyright Act 1987 stipulates that offenders may be fined not less than two thousand ringgit and not more than twenty thousand ringgits for each infringing copy (plagiarism). In addition, imprisonment can also be imposed for a term not exceeding five years. Punishment of both can also be imposed. However, for subsequent offences, the punishment that can be imposed is a minimum fine of four thousand ringgit and a maximum of forty thousand ringgit for each copy of the infringement or imprisonment not exceeding ten years or both.

Geographical Indications Act 2022

The concept of geographical indication is to see the regional origin of a product (Tay, 2017). According to section 2 of the Geographical Indications Act 2022,

“geographical indication” means an indication which may contain one or more words which identifies any goods as originating in a country or territory, or a region or locality in that country or territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin.”

In other words, geographical indication refers to an indication of where a product is produced and has characteristics that are closely related to its place of production or geographical position (Aziz & Noor, 2014). The original purpose of the enactment of this geographical indication law was more specialized in the production of wine and spirits. In the case of *Bollinger (J) v. Costa Brava Wine Co Ltd* [1959] 3 All ER 800, the plaintiff had sued the defendant on behalf of himself and all wine producers in the Champagne region of France. Plaintiff seeks an injunction order against defendant who is a producer of Spanish Champagne which is a wine produced in Spain or made from grapes of Spanish origin. The court in this case has ruled that the use of the name ‘champagne’ is not permissible as it refers to the production of wine from the Champagne district only.

Section 8(1) of the Geographical Indications Act 2022 provides that any person may file an application for registration of a geographical indication of any goods in the form as determined by the Registrar together with payment of the prescribed fee. The person has been defined in section 8(5) of the Geographical Indications Act 2022 as any person who is carrying on an activity as a producer in the geographical area with respect to the goods and includes an association of such persons; or a competent authority.

'Producer' under section 8 (5) (a) of the Geographical Indications Act 2022 have been defined under section 2 of the same act as those comprising means any producer, manufacturer or trader of goods identified by the geographical indication. Meanwhile "competent authority" means any government or statutory body carrying out the functions of, on behalf of, or sanctioned by, the Government of Malaysia or the Government of a State or government other than the Government of Malaysia; or authority which is competent to certify goods, and has the responsibility for the geographical indication in question; From this provision, it is clear that the registration of geographical indications for a batik product, for example, is not a concept of private ownership by an individual. It is a concept of joint ownership for producers who carry out activities in a specified geographical area. This means, the manufacturer of batik products in a geographical area can register their products under the Geographical Indications Act 2022. Registration of geographical indications under section 17 (1) of this Act must be made without objection and not against public order or moralities and other grounds as provided under section 10 of the Act. Owners of registered geographical indications have the exclusive right to exploit geographical indication products to gain local and international recognition. Section 25 of this Act, confer the right to a registered proprietor to use the geographical indication; and to authorize other persons to use the geographical indication. Unlike Cirebon batik, batik in Indonesia is a regional term with protected intellectual property rights (Mareta, 2017). The geographical indications legislation in Malaysia protects two batik items, Sabah Batik and Terengganu Batik, until November 2022. (Myipo, 2022). With any luck, other types of batik in Malaysia, such as Kelantan batik and Sarawak "pua kumbu" batik, would be able to register as GIs under the Geographical Indications Act of 2022. Legal safeguards for batik are crucial for preventing the theft of its distinctive themes and patterns by unauthorised parties.

Industrial Designs Act 1996

Industrial design in Malaysia is governed under the Industrial Designs Act 1996. Industrial design under section 3 of the Industrial Designs Act 1996 is a feature of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged by the eye. This design refers to the finished goods and should contain attractive features according to the eye to eye assessment (Abdul Jalil, 2004). However, this industrial design does not include a method or principle of construction; or features of shape or configuration of an article which either are dictated solely by the function which the article has to perform or are dependent upon the appearance of another article of which the article is intended by the author of the design to form an integral part. Industrial design can consist of two-dimensional (2D) looks such as patterns and decorations. It can also consist of a three-dimensional (3D) appearance such as the shape of a design (Abdul Jalil, 2004). Nevertheless, according to Nordin and Abu Bakar (2012), notwithstanding how the batik production technique is produced, it qualifies for protection under the Industrial Designs Act 1996 because the batik pattern is a two-dimensional appearance.

The Industrial Designs Act 1996 specifies in subsection 12 (1) that a design must be novel in order to qualify for registration. Under subsection (2) of section 12 of the Industrial Designs Act 1996, an invention is no longer considered novel once it has been made public and registered (Foong, 2016). The judge in *AV Future Link Sdn Bhd v. Inno Supply & Services Sdn Bhd* (2016) 2 MYIPC 529 decided that an industrial design revealed in China but not in Malaysia as of the date of registration is eligible for registration in Malaysia.

Infringement of a registered design is enshrined under section 32 of the Industrial Designs Act 1996. This provision states:

Subject to the provisions of this Act, the owner of a registered industrial design shall have the exclusive right to make or import for sale or hire, or for use for the purposes of any trade or business, or to sell, hire or to offer or expose for sale or hire, any article to which the registered industrial design has been applied.

If any batik design has been registered under the Industrial Designs Act 1996, the owner of the design has the exclusive right as stated in the Act. Any violation of this exclusive right allows legal action to be taken by the registered owner. The owner may institute legal proceedings against the party who infringes his registered design as pursuant to section 33 of the Industrial Designs Act 1996. Remedies for a breach of a registered batik design has been provided by section 35 of the Industrial Designs Act 1996 to include an order for an account of profits, injunction order and award of damages or any other legal remedies.

Conclusion

In Malaysia, batik is protected by several laws. by its unique nature and design is protected by National Heritage Act 2005 and also be best shielded under intellectual property legislations such as copyright law and industrial

design law. Protection through regulations is crucial in sustaining the survival of local batik manufacturing, Malaysian batik hasn't been officially recognised by international bodies like UNESCO. Efforts are needed to revive batik's status as a national heritage and cultural treasure for the nation. It is hoped that batik business owners understand the significance of batik registration and the rules that govern it. In this way, authentic Malaysian batik would be protected from being stolen or copied without due process. The distinctive designs and patterns used in Malaysian batik are what set it apart from similar items from other nations.

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