



# Indonesian Law Journal

## TOPIC OF THIS EDITION

### IMPLEMENTATION OF COMMUNAL INTELLECTUAL PROPERTY LAW IN BORDERLESS DIGITAL ENVIRONMENT

The Legal Aspect of Prevention of The Threat of Extinction in The Origin Flora and Fauna of Kalimantan in A Digital World

**Muhammad Arief Adillah**  
**Cahyoko Edi Tando**

Urgency of Sui Generis Protection for Indonesia's Communal Intellectual Property: Stick with Defensive, Shift to Positive, or Hybrid Approach?

**Bryan Eduardus Christiano**

Communal Intellectual Property in The Digital Age: Exploring The Relevance, Regulation, and Impact of Creative Commons Licenses

**Muhammad Iqbal**

Balancing Tradition and Innovation: Legal Framework for Protecting Communal Intellectual Property in The Borderless Age

**Aji Baskoro, Annisa Hafizhah**

Study of The Implications of The Government Regulation of The Republic of Indonesia Number 56 of 2022 Concerning Communal Intellectual Property in Indonesia

**Marcellino Gonzales**



P - ISSN : 1907 – 8463

E - ISSN : 2722 – 8568

**Indonesian  
Law Journal**  
Volume 16 No. 1, 2023



**TOPIC OF THIS EDITION**

IMPLEMENTATION OF COMMUNAL INTELLECTUAL PROPERTY LAW IN  
BORDERLESS DIGITAL ENVIRONMENT



**Indonesian  
Law Journal**

Volume 16 No. 1 | November 2023

**Editor in Chief**

Prof. Dr. Widodo Ekatjahjana, S.H., M.Hum.

**Vice Editor in Chief**

Dr. Nofli, Bc.I.P., S.Sos., S.H., M.Si.

**Editors**

Bambang Iriana Djajaatmadja, S.H., LL.M.; Prof. Dr. Irwansyah S.H., M.H.  
Dr. Sanusi, S.H., M.L.I.S., LL.M.; Dr. Jelly Leviza, S.H., M.Hum.  
Cekli Setya Pratiwi, S.H., LL.M., M.CL.; Slamet Yuswanto, S.H., M.Hum;

**Managing Editor**

Claudia Valeriana Gregorius, S.S., S.H., M.M.

**Assistance Editors**

Rahma Fitri, S.H., M.Kn.; Indar Saleh, S.S.;  
Kadek Derik Yunitasari, S.H.; Sri Indah Haura'Nisa, S.H.

**Tim Development**

Idham Adriansyah, S.Kom.

**Circulation**

M Anas S.I.Kom.

**Peer Reviewers**

Prof. Hikmahanto Juwana, S.H., LL.M., Ph.D;  
Iman Prihandono, S.H., M.H., LL.M., Ph.D.;  
I Gede Widhiana Suarda, S.H., M.Hum., Ph.D.; Dr. Muchammad Ali Safa'at, S.H., M.H.;  
Dhiana Puspitawati, S.H., LL.M., Ph.D.  
Dr. Aji Mulyana, S.H., M.H; Dr. Vita Cita Emia Tarigan, S.H., L.L.M.;  
Amandus Jong Tallo, S.T., M.Eng; Nikmah Mentari, S.H., M.H.;  
Theofransus L.A. Litaay, S.H., LL.M., Ph.D.  
Chang, Soonpeel, LL.B., LL.M.



# Indonesian Law Journal

Volume 16 No. 1 | November 2023



**FROM  
EDITOR'S  
DESK**

As we embark on the publication of this journal, it is with profound gratitude and humility that we extend our thanks to God, the almighty, the ultimate source of knowledge and wisdom for publishing the Indonesian Law Journal (ILJ) Volume 16, No. 1 of 2023. The ILJ is a peer-reviewed journal published in English and intended to disseminate scientific articles and analyze legal issues from academics, researchers, observers, practitioners, and all patrons in Indonesia. As one of the scientific journals in law published by the National Law Development Agency – Ministry of Law and Human Rights of the Republic of Indonesia, the ILJ provides a forum for legal ideas to respond to legal problems in recent times. The ILJ is in line with the function of the National Law Development Agency, which is to develop and foster national law in Indonesia.

As the world's largest island country, Indonesia certainly has diverse communal intellectual property. Communal intellectual property is a term used to describe the intellectual property rights held by a group of people who live in a particular community from generation to generation. These rights are often related to traditional knowledge, traditional cultural expressions, genetic resources, and potential geographic indications. With the promulgation of Government Regulation Number 56 of 2022 concerning Communal Intellectual Property on 20 December 2022, part of the protection of national CIP can simultaneously strengthen the defensive protection after previously Indonesia had a National CIP Data Center initiated by the Directorate General of Wealth Intellectuals (DJKI), Ministry of Law and Human Rights of the Republic of Indonesia.

Therefore, the ILJ Volume 16 No. 1 of 2023 has the theme "Implementation of Communal Intellectual Property Law in Borderless Digital Environment". In ILJ Volume 16 No. 1 of 2023, 5 (five) writers with various backgrounds discuss this matter. Start with the article of Muhammad Arief Adillah and Cahyoko Edi Tando with their article's title related to «The Legal Aspect of Prevention of the Threat of Extinction in the Origin Flora and Fauna of Kalimantan in a Digital World». In this article, the authors try to explain the an analysis related to preventing the extinction of flora and fauna from a legal perspective.

The following article by Bryan Eduardus Christiano is "Urgency of Sui Generis Protection for Indonesia's Communal Intellectual Property: Stick with Defensive, Shift to Positive, or Hybrid Approach?". This article comprehensively analyzes Indonesia's legal framework, focusing on Government Regulation of CIP and its defensive strategies. It also explores the necessity of implementing a *sui generis* regulation through doctrinal research and comparative analysis with leading countries.



The third article written by Muhammad Iqbal is “Communal Intellectual Property in the Digital Age: Exploring the Relevance, Regulation, and Impact of Creative Commons Licenses”. In this article, the author explores communal intellectual property, focusing on shared ownership and collective control, contrasting it with traditional individual ownership in the digital era. The author examines the impact of AI and blockchain on copyright and open licensing, as well as the Indonesian stance on them, and concludes by acknowledging the need for an evolving legal framework to accommodate these licensing models.

The fourth article, “Balancing Tradition and Innovation: Legal Framework for Protecting Communal Intellectual Property in the Borderless Age,” was written by Aji Baskoro, who collaborates with Annisa Hafizhah. This article reveals that the Indonesian government employs a positive and defensive legal framework to protect traditional cultural expressions. Logical justifications for legal protection include societal benefits, national identity and sovereignty, preservation of ancestral heritage, and economic considerations. These measures are crucial in the borderless era, characterized by potential claims, theft, and other forms of infringement.

There is also an article related to “Study of the Implications of the Government Regulation of The Republic Of Indonesia Number 56 of 2022 Concerning Communal Intellectual Property in Indonesia” written by Marcellino Gonzales. The author concludes that Government Regulation of CIP has regulated the communal intellectual property inventory mechanism provisions, which prioritizes digital data collection processes, as well as communal intellectual property management, utilization, and maintenance mechanisms themselves with these provisions.

So, this is the entire article published in the ILJ Volume 16 No. 1 of 2023. We want to express our gratitude and most profound appreciation to all contributors, Editorial team members, Reviewers, and Mitra Bestari for their progressive contribution and excellence to the ILJ this edition. This fine collection of articles will be a valuable resource for legal practitioners, readers, and researchers, stimulating further research into the vibrant area of law and social sciences and contributing to the development of national law in the future.

***Editor of Indonesian Law Journal***

**Indonesian  
Law Journal**

Volume 16 No. 1 | November 2023

EDITORIAL BOARD	v
FROM EDITOR'S DESK	vii
CONTENTS	ix
THE LEGAL ASPECT OF PREVENTION OF THE THREAT OF EXTINCTION IN THE ORIGIN FLORA AND FAUNA OF KALIMANTAN IN A DIGITAL WORLD <b>Muhammad Arief Adillah, Cahyoko Edi Tando</b>	1
URGENCY OF SUI GENERIS PROTECTION FOR INDONESIA'S COMMUNAL INTELLECTUAL PROPERTY: STICK WITH DEFENSIVE, SHIFT TO POSITIVE, OR HYBRID APPROACH? <b>Bryan Eduardus Christiano</b>	19
COMMUNAL INTELLECTUAL PROPERTY IN THE DIGITAL AGE: EXPLORING THE RELEVANCE, REGULATION, AND IMPACT OF CREATIVE COMMONS LICENSES <b>Muhammad Iqbal</b>	39
BALANCING TRADITION AND INNOVATION: LEGAL FRAMEWORK FOR PROTECTING COMMUNAL INTELLECTUAL PROPERTY IN THE BORDERLESS AGE <b>Aji Baskoro, Annisa Hafizhah</b>	63
STUDY OF THE IMPLICATIONS OF THE GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA NUMBER 56 OF 2022 CONCERNING COMMUNAL INTELLECTUAL PROPERTY IN INDONESIA <b>Marcellino Gonzales</b>	89
AUTHOR GUIDELINES	109



## THE LEGAL ASPECT OF PREVENTION OF THE THREAT OF EXTINCTION IN THE ORIGIN FLORA AND FAUNA OF KALIMANTAN IN A DIGITAL WORLD

Muhammad Arief Adillah<sup>1</sup>, Cahyoko Edi Tando<sup>2</sup>

<sup>1</sup>Imigration Polytechnic

<sup>2</sup>Correctional Politechnic, Community Guidance Study Program

Raya Gandul Street No. 4, Gandul, Depok City, West Java, Indonesia 16514

Author's e-mail: tando\_c@yahoo.com

### ABSTRACT

Kalimantan Island is one of the countries with various natural wealth of flora and fauna. However, this wealth is threatened, and the flora and fauna on the island of Kalimantan are damaged due to various factors so some are threatened with extinction. The aim of this research is to carry out an analysis related to preventing the extinction of flora and fauna from a legal perspective. The method use qualitative research. This research will discuss the prevention of extinction threats in terms of legal aspects related to the prevention of flora and fauna extinction threats it is supported by data sources through several relevant informants and links them to the digital world without boundaries. This research resulted in several facts that the legal aspects in Indonesia have yet to be widely known about the concept of biodiversity and only use the concept of the Environment.

**Keywords** : Characteristics, Extinction, Kalimantan Island, Native Resource

### A. Introduction

The island of Kalimantan has a variety of natural wealth consisting of flora and fauna, as well as a wealth of cultural diversity which is still being preserved today. This condition continues to survive with various conditions and constraints due to various activities specifically designated for economic areas, development of residential areas, plantations, mining, forest fires and others.<sup>1</sup> The geographical conditions on the island of Kalimantan are rocky, hilly and rich in peat land which is estimated to reach 3.1 million until 6.1 million hectares.<sup>2</sup> According to Forest Watch Indonesia, the diversity that exists on the island of Kalimantan will certainly have a positive impact on the progress and development of development in Kalimantan if it is supported by good management, as well as dissemination to the wider community about ideal forest management so that forests are maintained

---

1 Birka Wicke et al., "Exploring Land Use Changes and the Role of Palm Oil Production in Indonesia and Malaysia," *Land Use Policy* 28, no. 1 (2011): 193–206, <https://doi.org/10.1016/j.landusepol.2010.06.001>.

2 Titi Kalima et al., "Tree Species Diversity and Ethnobotany of Degraded Peat Swamp Forest in Central Kalimantan," *Reinwardtia* 19, no. 1 (2020): 27–54, <https://doi.org/10.14203/reinwardtia.v19i1.3819>.

and well preserved.<sup>3</sup> On the other hand, the diversity on the island of Kalimantan, when examined more deeply, will find various types of plants and plants that are specifically typical of the island of Kalimantan.<sup>4</sup> One of the characteristics of the identical Fauna that only exists on the island of Kalimantan is the Orangutan, Borneo Red Cat, Sun Bear, *Pesut Mahakam* (a type of dolphin), Proboscis monkey, there are also several types of Flora namely Ulin Wood, Ramin Wood, Tengkwang Tungkul, as well as the Black Orchid which is typical of Kalimantan. However, these conditions do not make Kalimantan's flora and fauna sustainable and endangered. There are several problems including land conversion on the island of Kalimantan, recorded data for the period 1972 to 2015 found fact that land change in Kalimantan for large-scale plantations has occurred massively but has a relatively small number, namely land change of 15% with the reason is that land use utilizes land that has previously been used and does not use new land on a large scale.<sup>5</sup> Other data for 2001-2016 (15 years) has changed by 23% with an estimated forest destruction of 15% there has been an increase in plantation land clearing activities on a large scale to meet international market demand.<sup>6</sup>

Reports from the conversation website in 2018 over the past 16 years there have been around 100,000 Orangutans being hunted. As well as other fauna, for example the Kalimantan elephant whose population is around 30-80 individuals which are scattered in the Nunukan area, North Kalimantan Province.<sup>7</sup> The decline in the native fauna of Kalimantan Island is due to their economic value as pets, and the reason for hunting is to disturb the fields of farmers on Kalimantan Island.<sup>8</sup> As well as other reasons from BBC Indonesia that there is trade in wild animals abroad, for example from Thailand and Malaysia.<sup>9</sup> Then there are flora that are already rare in Indonesia, namely the Black Orchid plant which is native to the island of Kalimantan, mainly from East Kalimantan and parts of West Kalimantan and the Semar Pouch Plant which is often found in West Kalimantan Province which is now experiencing extinction.<sup>10</sup> Given the natural wealth that is threatened with extinction due to

- 
- 3 FWI, *Deforestasi Tanpa Henti "Potret Deforestasi Di Sumatera Utara, Kalimantan Timur Dan Maluku Utara* (Bogor, Indonesia, 2018).
  - 4 Grace V. Blackham, Edward L. Webb, and Richard T. Corlett, "Natural Regeneration in a Degraded Tropical Peatland, Central Kalimantan, Indonesia: Implications for Forest Restoration," *Forest Ecology and Management* 324 (2014): 8–15, <https://doi.org/10.1016/j.foreco.2014.03.041>.
  - 5 David L.A. Gaveau et al., "Slowing Deforestation in Indonesia Follows Declining Oil Palm Expansion and Lower Oil Prices," *PLoS ONE* 17, no. 3 March (2022): 1–19, <https://doi.org/10.1371/journal.pone.0266178>.
  - 6 David L.A. Gaveau et al., "Rise and Fall of Forest Loss and Industrial Plantations in Borneo (2000–2017)," *Conservation Letters*, 2018, 1–8, <https://doi.org/10.1111/conl.12622>.
  - 7 wwf Indonesia, "Upaya Bersama Untuk Melindungi Gajah Kalimantan," [www.wwf.id](http://www.wwf.id), 2020, <https://www.wwf.id/publikasi/upaya-bersama-untuk-melindungi-gajah-kalimantan>.
  - 8 Theconversation.com, "100 Ribu Orang Utan Punah Di Kalimantan Akibat Penebangan Hutan Dan Perburuan," <https://theconversation.com/>, 2018, <https://theconversation.com/100-ribu-orang-utan-punah-di-kalimantan-akibat-penebangan-hutan-dan-perburuan-92450>.
  - 9 BBC Indonesia, "Orangutan Dipulangkan Ke Indonesia Di Tengah 'Perburuan Yang Masih Terjadi,'" [www.bbc.com](http://www.bbc.com), 2021, <https://www.bbc.com/indonesia/majalah-55899594>.
  - 10 CNN Indonesia, "4 Tanaman Endemik Di Indonesia Yang Hampir Punah," 2CNN Indonesia, 2022, <https://>

changes in land use change due to various factors, of course, it must receive attention from various parties.<sup>11</sup> A study conducted by the Ministry of Environment and Forestry of the Republic of Indonesia (*KemenLHK RI*) noted that are currently at a critically endangered level, namely the Ivory Hornbill typical of Kalimantan Island which is a type of bird and has a costly price. In the international market, then the Super Red Arowana which is a mammal in the fish family whose status is (already endangered) or endangered, which can be interpreted as one or two more steps, the two animals will experience total extinction they cannot be overcome or restored anymore.<sup>12</sup>

One way to prevent this is to designate the flora and fauna characteristic of Kalimantan as Communal Intellectual Property which cannot be found in other areas throughout Indonesia. In addition, engagement with the Dayak people on the island of Kalimantan to manage forests is urgently needed and requires support from all parties, including the Indonesian government. Forest management by the Dayaks people who are known for their carefulness in managing forests is undoubtedly able to adapt and return the flora and fauna species that are about to become extinct to be saved.<sup>13</sup> The threat of extinction of various flora and fauna on the Kalimantan Island is undoubtedly a concern for all parties. However, through the world of technology that is already sophisticated, genetic engineering is starting to be carried out to prevent sustainable extinction. Through sophisticated technology, several endangered flora and fauna will be saved with various latest discoveries. Even those that have become extinct can be revived even in the virtual world so that it will feel real even in digital form.

On the other hand, the condition regarding the virtual world that has been supported by artificial intelligence (AI) has now entered stage 4.0 with the sophistication it offers and is expected to be able to save several species that are suspected of being extinct or endangered even though they have to sacrifice considerable resources and significant financing. With a success rate it could fail due to technical errors.<sup>14</sup> Even so, at least AI users can feel through their senses the species of flora and fauna that have been destroyed, as well as those that are threatened with extinction.

---

[www.cnnindonesia.com/gaya-hidup/20220316103010-284-771892/4-tanaman-endemik-di-indonesia-yang-hampir-punah](http://www.cnnindonesia.com/gaya-hidup/20220316103010-284-771892/4-tanaman-endemik-di-indonesia-yang-hampir-punah).

- 11 [mmc.kalteng.go.id](https://mmc.kalteng.go.id/berita/read/753/pohon-ulin-si-pohon-besi-terkenal-di-kalimantan), "Pohon Ulin, Si Pohon Besi Terkenal Di Kalimantan," [mmc.kalteng.go.id](https://mmc.kalteng.go.id), 2018, <https://mmc.kalteng.go.id/berita/read/753/pohon-ulin-si-pohon-besi-terkenal-di-kalimantan>.
- 12 [balaikliringkehati.menlhk.go.id](https://balaikliringkehati.menlhk.go.id/), "Rangkong Gading Dan Arwana Super Red Satwa Karismatik Kalbar Yang Terancam Punah," <https://balaikliringkehati.menlhk.go.id/>, 2019, <https://balaikliringkehati.menlhk.go.id/rangkong-gading-dan-arwana-super-red-satwa-karismatik-kalbar-yang-terancam-punah/>.
- 13 Cahyoko Edi Tando, Sudarmo, and Rina Herlina Haryanti, "Collaborative Governance Effort to Manage Forest in Kalimantan Island: Literature Review," *Jurnal Manajemen Hutan Tropika (Journal of Tropical Forest Management)* 28, no. 1 (2022): 15–21, <https://doi.org/10.7226/jtfm.27.1.15>.
- 14 BBC Indonesia, "Dapatkah Hewan Yang Sudah Punah Dihidupkan Kembali Untuk Melawan Perubahan Iklim?," *BBC Indonesia*, April 2021, <https://www.bbc.com/indonesia/majalah-58592804>.

Therefore, this research will also review the extent of the role of the rules implemented by the Government, for example the Ministerial Regulation of Law and Human Rights number 13 of 2017 concerning Data on Communal Intellectual Property which is authorized to collect data on all varieties of flora and fauna that are threatened with extinction or that are in danger of extinction critical stage. In addition, the study will also target the Ministerial Regulation of Environment and Forestry of the Republic of Indonesia number P.2/Menlhk/Setjen/Kum.1/1/2018 concerning Access to genetic resources of wild species and sharing of benefits from their use. Also, Ministerial Regulation Agriculture number: 67//Permentan/OT.140/12/2006 concerning the preservation and utilization of plant genetic resources. The last one is from Government Regulation Number 48 of 2011 concerning animal genetic resources and livestock breeding. On the other hand, the researcher also uses the rules of the Act number 11 of 2019 concerning the national system of science and technology as one of the reference materials for this research, in addition to using primary data sources as processed research results as well as several scientific articles to support analysis in research.

Through these legal regulations, of course the government, through the Dayak tribal community, must be able to preserve flora and fauna that are threatened with extinction. On the other hand, enforcement efforts are still on a massive scale and relatively minimal, this can cause many problems to arise. Researchers see that enforcement efforts are still minimal and there needs to be greater enforcement than just saving flora and fauna, because the sustainability of this should be maintained without having to quarantine every flora and fauna and return them to their natural habitat. This research will discuss how to prevent the extinction of native Kalimantan flora and fauna about to the use of the digital world without boundaries which will focus more on intergovernmental relations. The purpose of this research is that there will be a contribution in providing a broadly positive impact on the development of the digital world, especially in preventing the extinction of flora and fauna which should be preserved for future generations of youth.

This research will begin with a background explanation regarding the main problem and is linked to the legal aspect, then continued with research methods using a sociolegal aspect approach, then a sub-discussion in which there are results and in-depth discussion so that conclusions can be drawn to answer the research question already available.

## **B. Research Method**

Research Method Method will use a qualitative approach in the form of a sociolegal approach to the problem of the threat of extinction of several native flora and fauna species from the island of Kalimantan, and also carry out an analytical approach to legal aspects related to the sustainability of flora and fauna. Beside that, this research use the legal aspect with have relevation in this paper and also use the reference of this research is

that the native flora and fauna of Kalimantan Island are communal intellectual property. The data collection will be carried out online and the data source will use primary data sources in the form of processed interviews and also secondary data sources originating from government regulations that the researchers mentioned in the previous sub-discussion as well as several relevant scientific journal articles in this study.<sup>15</sup> As for the data analysis, the researcher will be presented interactively and sequentially as well as a narrative explanation and the use of tables or pictures if needed during the analysis.<sup>16</sup>

### C. Discussions

The results of the study show that the flora and fauna of Borneo are threatened with extinction in a borderless digital world, when referring to the theory of intergovernmental relations that at least there are several mechanisms for prevention. This theory was chosen because it would be an appropriate analytical tool considering that extinction is not only an obligation of the Dayak people, but also of all agencies that must be involved, including the government and business actors involved in it.

The prevention of the extinction of flora and fauna includes when viewed using intergovernmental relations, namely as follows:

#### 1. Intergovernmental Relations in Terms of Legal Aspect

This research uses the study of intergovernmental relations theory, namely the relationship carried out by the government with other parties interested in handling and following up on the threat of extinction so far.<sup>17</sup> In addition, intergovernmental relations also allow the government to apply so far because of complex problems and the emphasis on intergovernmental relations will focus on local governments in the regions.<sup>18</sup> Intergovernmental relations will also focus on internal government, namely the formal structure and will traditionally be more vocal in analyzing local governments in their follow-up in reviewing various issues.<sup>19</sup>

Strengthening the researcher's analysis also analyzes from a regulatory standpoint related to regional autonomy through Law Number 23 of 2014 concerning Regional Government

---

15 Sugiyono, *Metode Penelitian Pendidikan (Pendekatan Kuantitatif, Kualitatif, Dan R&D)*, 10th ed. (Bandung: Alfabeta, 2014).

16 Surya Galang Gumilang, "Metode Penelitian Kualitatif Dalam Perspektif Rancangan," *Jurnal Fokus Konseling* (2016).

17 Brendan F. Burke, "Understanding Intergovernmental Relations, Twenty-Five Years Hence," *State and Local Government Review* 46, no. 1 (2014): 63–76, <https://doi.org/10.1177/0160323x13520461>.

18 John Phillimore, "Understanding Intergovernmental Relations: Key Features and Trends," *Australian Journal of Public Administration* 72, no. 3 (2013): 228–38, <https://doi.org/10.1111/1467-8500.12025>.

19 Grichawat Lowatcharin, Charles David Crumpton, and Sittipol Pacharoen, "Intergovernmental Relations in a World of Governance: A Consideration of International Experiences, Challenges, and New Directions," *Asia-Pacific Social Science Review* 19, no. 4 (2019): 44–55.



which is already underway in Indonesia. Clearly the regulation also gives authority to the region in managing its nature and the wealth contained therein for the welfare of its people in the form of recommendations.<sup>20</sup> Meanwhile, national policy-making is carried out by the central government. The problems raised by the researchers in this study will be analyzed by presenting research data related to intergovernmental relations and the use of related rules to implement relevant rules in responding to the threat of extinction of the unique flora and fauna of Kalimantan Island.

In particular, the existence of flora and fauna must be maintained and preserved, through Law Number 5 of 1990 concerning Conservation of Living Natural Resources and their Ecosystems, it can be concluded that conservation efforts can be made by providing education and outreach, then supporting conservation efforts, establishing captive breeding, creating prohibition boards, prohibiting animal hunting, and preventing wildlife trade. Therefore, existing actions must be carried out continuously by various parties, including the involvement of law enforcement officials, for example the police, maritime security agencies, the Indonesian national army, as well as customs and excise agencies if the flora and fauna are to be traded abroad.

The natural wealth that exists in Indonesia, especially in Kalimantan, has of course invited many parties to take negative actions, thus having a negative impact on the sustainability of the flora and fauna. Through existing actions, of course cases that lead to the threat of extinction still occur. Economic activities are also often the cause of the extinction of flora and fauna. There is also Law Number 12 of 1992 concerning Plant Cultivation Systems where discussions are found in relation to intergovernmental relations, only the involvement of government agencies related to licensing and also research related to varieties to prevent extinction which has not been carried out completely, apart from taking action against individuals who carry out activities. Illegal activities are only small in nature and in fact illegal activities to improve the economy in the year in which this Law was issued were so severe in Kalimantan that they continued for the following years.

## **2. Condition of Flora and Fauna on the Kalimantan Island**

The form of the implementation of the Indonesian government when referring to Law Number 23 of 2014 concerning Regional Government,<sup>21</sup> which is contained in article 9 explains that the basis of concurrent government which is not absolute will be given power to regional governments and in article 10 paragraph 2 it again emphasizes that the delegation of power can be carried out to vertical agencies in the regions or governors who are in level

---

20 C Sahabuddin et al., "Administration of Post-Reformation Decentralization Government," *International Journal of Recent Technology and Engineering* 8, no. 3 (2019): 7631-34, <https://doi.org/10.35940/ijrte.C6182.098319>.

21 "Law Number 23 of 2014 Concerning Regional Government".

1 regions. So the confirmation regarding the principle of regional government autonomy in fostering its region is huge, especially in providing basic services to its people.

Related to existing problems in this study the threat of extinction of flora and fauna on the island of Kalimantan has shown very worrying things when referring to the Report from the Organization for the Protection of Animals in Kalimantan, namely World Wild Life in 2022 for fauna similar to the Orang Utan there are only 230 thousand orangutans in the world and  $\pm$  50% are on the Kalimantan, poaching is also carried out for the pangolin fauna because there are only eight species in the world and one of them is on the Kalimantan while reports from National Geographic note that tens of thousands of pangolins are hunted every year to be used as medicine combined with other plants and be an alternative treatment. Apart from that, there are also the Proboscis Monkeys, of which there are only 7,000 recorded in the world until 2022, as well as several other animals including the White-Foreheaded Monkeys (Red Monkeys), Sunda Clouded Tigers (a type of cat), and White-Foreheaded Monkeys.<sup>22</sup>

The flora side of Kalimantan Island, it shows similar things that cause the threat of extinction of flora, including acts of exploration, poaching, and even forest fires which occur every year on the island of Kalimantan. It is known that the island of Kalimantan is the wealthiest biodiversity area in the world it contains almost all plant species in the world and has survived for more than 150 years and make Indonesia one of the second richest biodiversity after the Amazon in South America.<sup>23</sup>

Likewise, when viewed from the law regarding the protection of flora and fauna habitat, namely through Law Number 8 of 1999 concerning Utilization of wild plant and animal species which in article 7 can carry out captive breeding of animals and plants in a controlled artificial environment and breeding of young which can be taken from nature,<sup>24</sup> while the second point described in this article is that captive breeding can be carried out both for protected and unprotected wild plants and animals.<sup>25</sup> After that, when referring to Law Number 32 of 2009 concerning Environmental Protection and Management the environment contained therein must be protected by prioritizing the principles of responsibility, sustainability and justice.<sup>26</sup>

In general, the rules regarding biodiversity in Indonesia still need to be widely known and are still focused on the environment which can be interpreted as the surrounding

---

22 Kompas.com, "Hewan Langka Terancam Punah Di Pulau Kalimantan," Kompas.com, 2022, <https://www.kompas.com/skola/read/2022/03/22/161341169/hewan-langka-terancam-punah-di-pulau-kalimantan?page=all>.

23 Efridani Lubis, "Konsep Hukum Biodiversitas Dalam Dunia Digital (Fondasi Teoritik Pengembangan Hukum Lingkungan Indonesia Berbasis Biodiversitas)," *Jurnal Hukum Jurisdictie* 3, no. 2 (2021): 133-44, <https://doi.org/10.34005/jhj.v3i2.54>.

24 "Government Regulation Number 48 of 2011 Concerning Animal Genetic Resources and Livestock Breeding".

25 "Law No. 8 of 1999 concerning Utilization of Wild Plants and Animals".

26 "Law Number 32 of 2009 Concerning Environmental Protection and Management".

environment and still need to lead to the contents of the forest, including its flora and fauna. When referring to the rules, namely the Ministerial Regulation of Environment and Forestry of the Republic of Indonesia number P.2/Menlhk/Setjen/Kum.1/1/2018 concerning Access to genetic resources of wild species and sharing of benefits for their utilization, which adopts more results from the Nagoya Protocol which is specifically aimed at utilization which contributes to the state in cooperation with several parties. Another thing is also evident when research by Lubis in 2021 shows that the law regarding biodiversity in only touches on environmental law.<sup>27</sup>

Apart from that, another study from Najicha in 2022, biodiversity is linked to the environmental conservation cluster. In his research, he explained that existing regulations still have weaknesses and require further revision, for example Law Number 23 of 1997 concerning environmental management needs improvement because it must be adapted to the current conditions which are more complex, than Law Number 32 of 2009 concerning the implied protection and management of the environment still do not intersect with the rights of the local government, so there are indications of overlap in environmental management.<sup>28</sup>

The 2019 Asram research also explained that the legal products of the law related to environmental protection only contain the environment broadly so there are multiple interpretations of the environment that there are still many changes that need to be adjusted in the form of laws that provide more separate protection for the environment.<sup>29</sup> Therefore, the sectoral ego in biodiversity management in Indonesia still has many obstacles and if this is allowed to drag on it will harm the sustainability of flora and fauna which currently require protection stages so that they do not become extinct and will not be able to return again and of course there will affect the food supply chain in nature.

So, this condition on the island of Kalimantan is very worrying for all the flora and fauna. While the research results when refers to local regulations regarding handling from a legal perspective, for example in West Kalimantan Province, namely by West Kalimantan Provincial Government Regulation Number 3 of 2014 concerning Environmental Protection and Management, Article 21 shows the reasons why extinction threats can occur, namely due to climate change and damaged ecosystem factors. The damage from climate change will undoubtedly have a impact and this area will also be affected including storms, drought, sea level rise and temperature. As for ecosystems, they include damage to mangrove areas, peatlands, coral reefs, forest and land fires, and extensive seagrass beds prone to

---

27 Lubis, "Konsep Hukum Biodiversitas Dalam Dunia Digital (Fondasi Teoritik Pengembangan Hukum Lingkungan Indonesia Berbasis Biodiversitas)."

28 Fatma Ulfatun Najicha, "Penegakan Hukum Konservasi Lingkungan Di Indonesia Dalam Perencanaan Pembangunan Berkelanjutan," *Doktrina: Journal of Law* 5, no. 1 (2022): 1-7.

29 Asram A.T. Jadda, "Tinjauan Hukum Lingkungan Terhadap Perlindungan Dan Pengelolaan Keanekaragaman Hayati," *Madani Legal Review* 3, no. 1 (2019): 39-62.

fires.<sup>30</sup>

Then if we compare it with other regions, for example from the Province of East Kalimantan adheres to Local Government East Kalimantan Regulation Number 12 of 2021 concerning Criteria for Areas with High Conservation Value (ANKT), which are listed in article 4 where prevention of flora and fauna is associated with high conservation areas for unique, rare and vulnerable or endangered ecosystems, then for captive areas to maintain biodiversity continuity, as well as areas designated for the cultural identity of the Province of East Kalimantan as well as areas used as the carrying capacity of resources for food for the local population,<sup>31</sup> so that a mechanism for sustainability will be created when reviewing these regulations.

Meanwhile, if you review Law Number 8 of 1999 concerning the Utilization of wild plant and animal species in article 34 there are only a few types of flora and fauna that can be special attention from the President of the Republic of Indonesia, especially if it is to be utilized economically. As for the endemic island of Kalimantan itself, there are only orangutans. Of course, this condition must receive the attention of all parties because the flora and fauna on the island of Kalimantan have of course been damaged and lost their homes and of course need to be preserved.

### **3. Prevention From Threats of Extinction of Flora and Fauna Through a Wide Virtual World**

Virtual world is one of the existence of technological sophistication scientist are currently developing from all over the world. The virtual world is generally a utopia from the real world which is expected to be an ideal world without restrictions and without laws to create something ideal. The virtual world is also capable of presenting all forms of knowledge and its ability to continue to evolve with the times and of course must be able to be the answer to become a supporter in the movement to prevent the extinction of flora and fauna on the island of Kalimantan. In Zubaidah's research in 2019, it was said that the damage to nature that has resulted in reduced biodiversity includes turning animals and plants into endangerment due to a lack of information about the importance of their existence and they are often considered a threat to the survival of human life.<sup>32</sup> Where so far the existence of the virtual world only supports the existence of the market and commercial interests do not lead to the existence of this biodiversity. He also added that there is a global scale ecological crisis which is a threat to all countries in the world and this needs to be a concern

---

30 "Regional Government of West Kalimantan Province Number 3 of 2014 Concerning Environmental Protection and Management".

31 "East Kalimantan Governor Regulation Number 12 of 2021 concerning Criteria for Areas with High Conservation Value".

32 Siti Zubaidah, "Biodiversitas: Lestarian Melalui Pembelajaran Dan Pewarisan Pengetahuan Lokal," *Jurnal Pendidikan Biologi FMIPA UNM*, no. August (2019): 1-14.

for all parties in ecological conversion in all lines of life.<sup>33</sup>

Referring to the Law Number 11 of 2019 concerning the National System of Science and Technology in Article 6 which can be interpreted that the existence of technology must undoubtedly be able to contribute to the State of Indonesia both in the short and long term including in the context of maintaining sustainability natural.<sup>34</sup> In research conducted by Sardjono in 2011 stated that the existence of technology in various angles must be able to answer all challenges in various ways, one of which is *Sistem Pembelajaran* (Learning System).<sup>35</sup> He also added to his research that in preserving the natural environment, the most important thing is the local community's real and sustainable contribution and the government's role as an outreach activist to all communities. Thus, strengthening nature will depend heavily on the people who in general have direct contact with them and through the learning system mechanism it will certainly be easy to understand because it is not only for government needs but has also led to the basic, secondary to tertiary education system and the business community.

The results of research in the field also found that related to this socialization activist there is the role from the Ministry of Law and Human Rights which also contributes significantly to policy-making wherein the rules are Ministerial Regulation of Law and Human Rights Number 13 of 2017 concerning Data on Communal Intellectual Property. It is known that the regulation can be said to have succeeded in providing data and clarity on several sources include fauna dan flora as communal intellectual property in Indonesia.<sup>36</sup> Through these regulations, the public will understand and understand some of the flora and fauna which are currently a government priority and are protected. Prevention in the form of dissemination of this rule is the basis for the regions on the island of Kalimantan to continue to monitor efforts to develop various types of flora and fauna.

Another findshows that the existence of these regulations also provides many illustrations that the communal wealth of flora and fauna unique to Kalimantan makes Kalimantan very rich in wealth. In addition, artificial intelligence in the virtual world will be a guide in providing an overview of the impacts of cultivation, vegetation between forests and their contents which contain flora and fauna, where the technology will be a collection of information about the location of forests and their contents in protecting species and their habitat. One of the internet pages on Media Indonesia in 2020 where the use of the

---

33 Muhammad Asril et al., *Keanekaragaman Hayati*, ed. Ronal Watrianthos, 1st ed. (Jakarta: Yayasan Kita Menulis, 2022).

34 "Law of the Republic of Indonesia Number 11 of 2019 Concerning the National System of Science and Technology".

35 Wahyu Sardjono, "Model Pelestarian Lingkungan Hidup Berbasis Teknologi Informasi Pada Aktivitas Sosialisasi Berbasis Masyarakat Sebagai Sentra Partisipan," *ComTech: Computer, Mathematics and Engineering Applications* 2, no. 1 (2011): 368, <https://doi.org/10.21512/comtech.v2i1.2765>.

36 "Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 Concerning Communal Intellectual Property Data".

virtual world in several artificial intelligences has been combined and used as monitoring of the West Bali National Park (TNBB) in collaboration with the Ministry of Environment and Forestry of the Republic of Indonesia, but in this condition it is still in progress early stage and is expected to become a pilot project in Indonesia.<sup>37</sup>

The digital world also does not only function as a commercial facility, but there is also a concept that supports programs from the government and pays attention to natural conditions without destroying it, namely the concept of digital tourism in villages that combines the concept of digital technology with its natural wealth and culture in the village. This concept is also one way to improve the village economy, including preserving culture and protecting the environment.

On the other hand, it refers to the rules, namely the Ministerial Regulation of Tourism and Creative Economy/Head of the Tourism and Creative Economy Agency of the Republic of Indonesia Number 9 of 2021 concerning Guidelines for Sustainable Tourism Destinations where in art. 2 regarding criteria for sustainable tourism destinations it also explains that the application of standards in tourism also does not only emphasize the involvement of information systems in the field of technology that presents a virtual world to involve many sectors, namely the government and the private sector as well as from the community in achieving its goal.<sup>38</sup>

Referring to Indonesia's National Artificial Intelligence Strategy for the period 2020 to 2045 in explanation on pages 149-150 that prevention of damage to nature which is a threat to flora and fauna will combine with technology to become fast detection and fast response to natural damage. Detection in this book will focus on inputting data such as weather, temperature, and visuals, both from satellite imagery, sensors, surveillance cameras and others.<sup>39</sup> Innovations made in preventing the threat of extinction of flora and fauna through the virtual world certainly require support and also a lot the necessary funds. Innovation will not only protect the habitat but will also be combined to improve the economy for the local community. Indirectly, the community will also feel a loss due to the destruction of nature and the habitat of the flora and fauna that they have been able to use, which have become scarce, and for flora and fauna that are already endangered, they will be included in national priorities and a captive breeding is needed to stabilize these flora and fauna so that not extinct. Extinction in nature can of course be a disruption to the natural food supply chain and if there is no action from the government in utilizing technology it will be a loss to all parties.

---

37 Putri Rosmalia, "Kecerdasan Buatan Untuk Lindungi Alam," Media Indonesia, 2020, <https://mediaindonesia.com/teknologi/357114/kecerdasan-buatan-untuk-lindungi-alam>.

38 "Regulation of the Minister of Tourism and Creative Economy / Head of the Tourism and Creative Economy Agency of the Republic of Indonesia Number 9 of 2021 concerning Guidelines for Sustainable Tourism Destinations".

39 Sekretariat Nasional Kecerdasan Artifisial Indonesia, *Strategi Nasional Kecerdasan Artifisial Indonesia 2020-2045* (Jakarta: Sekretariat Nasional Kecerdasan Artifisial Indonesia, 2020).

#### 4. Challenges and Solutions for Flora dan Funa Conservation Efforts in Indonesia

The challenges in carrying out law enforcement related to violations or economic activities that can cause damage to the flora and fauna habitat on Kalimantan Island must of course be a national development priority program. Scientists estimate that at least 45% of flora will become extinct in Kalimantan, Madagascar, Hawaii, and parts of the Philippines. Apart from that, there are + 100,000 species of flora whose uses and benefits are unknown and which are threatened with extinction, which means that 3 out of 4 flora will slowly experience extinction.<sup>40</sup> Apart from that, data collection in 2019 for fauna in the world and 17% of it is in Indonesia or around 300 thousand, and Indonesia is inhabited by at least 515 various types of mammals. Based on data on biodiversity in Indonesia, there are at least 294 types of flora and fauna that are experiencing extinction.<sup>41</sup>

One of the supporting factors in causing this extinction, according to the BRIN agency or the National Innovation Research Agency, is that anthropogenic activity factors include agriculture and land clearing and tend to play a very high role, especially in Kalimantan, and almost evenly in Papua, including in the Sumatra region. This, of course, disrupts the existing ecosystem and disrupts the food supply chain which will change drastically and threaten human safety itself. Research conducted by Fitriani states that if there is no attention and every program is not a priority, it will certainly disappear or become extinct.<sup>42</sup>

Several other sources say that one of them is an environmental observer organization based in Germany, namely DW, where one of their findings is that the Earth will lose one million species of flora and fauna by 2030, apart from that every ten minutes every species of flora and fauna experiences extinction without its existence is known.<sup>43</sup> Referring to legal aspects in Indonesia through Law Number 32 of 2009 concerning Environmental Protection and Management, or the Law concerning Regional Government, it still does not touch on aspects of cooperation in handling the threat of extinction of Flora and Fauna in Indonesia, including in Kalimantan. Apart from that, until 2023, Executive Order Number 1 of 2023 concerning Mainstreaming Diversity Preservation in Sustainable Development has been issued, which explains on the first page that this activity involves many government agencies, both central and regional, as well as the police.<sup>44</sup>

---

40 forestdigest.com, "Tumbuhan Dan Fungi Yang Belum Teridentifikasi Segera Punah," *Forestdigest.Com*, last modified 2023, accessed November 8, 2023, <https://www.forestdigest.com/detail/2435/tumbuhan-dan-fungi-punah>.

41 news.detik.com, "Miris! Ada Banyak Satwa Endemik Indonesia Yang Terancam Punah," *News.Detik.Com*, last modified 2019, accessed November 8, 2023, <https://news.detik.com/adv-nhl-detikcom/d-4604960/miris-ada-banyak-satwa-endemik-indonesia-yang-terancam-punah>.

42 Fitriani Fitriani, "Ancaman Kepunahan Dan Strategi Pemertahanan Tradisi Sinrili Di Masyarakat Makassar," *Paradigma : Jurnal kajian Budaya* 12, no. 2 (2022): 185–194.

43 dw.com, "Punahnya Keragaman Hayati Ancaman Terbesar Bagi Umat Manusia," *Dw.Com*, last modified 2022, accessed November 9, 2023, <https://www.dw.com/id/punahnya-keragaman-hayati-ancaman-terbesar-bagi-umat-manusia/a-62206772>.

44 Intruksi Presiden Nomor 1 Tahun 2023 Tentang Pengarustamaan Pelestarian Keanekaragaman Dalam Pembangunan Berkelanjutan.

However, if we look at the existence of this Excequtive Order which contains cooperation between the center and regions without involving business actors and in fact if only the government acts, including the local government or the police, the researchers believe that it will certainly not be effective. Apart from that, the Law on Regional Government should also be able to use extinction prevention actions as a strong legal umbrella. Apart from that, there is also the Ministerial Regulation of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 concerning Communal Intellectual Property Data, which should be one of the legal aspects in reporting to support the efforts of the Presidential Instruction which still has minimal weaknesses, especially when there is no cross-actor involvement of course. will make things difficult for the government itself.

#### **D. Closing**

This study concludes that in preventing the threat of extinction of flora and fauna in Kalimantan, the research results show that the technological conditions in Indonesia, which are currently supported by statutory regulations must of course be able to accommodate this. Meanwhile, the concept of using it in the field has been implemented in one of the national parks as an initial protection system and will be implemented in 2021. Meanwhile, the laws and regulations related to biodiversity in Indonesia are not widely known and are still in the realm of law. environment. So it really needs to be implemented widely, especially in strengthening the field of biodiversity. Apart from that, Indonesia is one of the countries with the richest biodiversity in the world and a high forest content. With existing regulations, including the 2013 Excequtive Order, a solution for cooperation in supporting efforts to preserve and prevent the extinction of flora and fauna in Indonesia, including in Kalimantan, should be possible. However, of course real implementation must be carried out in real terms. When there is a balance between legal regulations and the correct application of technology, the condition of Indonesia's biodiversity will certainly be well maintained. Apart from that, to support sustainability it must be accompanied by additional aspects of punishment and also strong support for law enforcement from across sectors and not only local and central government, but also representation from all existing elements, including government, private sector and local communities.



## Bibliography

### A. Books

- Asril, Muhammad, Marulam MT Simarmata, Silvia Permata Sari, Indarwati, Ryan Budi Setiawan Arsi, Afriansyah, and Junairiah. *Keanekaragaman Hayati*. Edited by Ronal Watrianthos. 1st ed. Jakarta: Yayasan Kita Menulis, 2022.
- Gumilang, Surya Galang. "Metode Penelitian Kualitatif Dalam Perspektif Rancangan." *Jurnal Fokus Konseling* (2016).
- Sugiyono. *Metode Penelitian Pendidikan (Pendekatan Kuantitatif, Kualitatif, Dan R&D)*. 10th ed. Bandung: Alfabeta, 2014.
- Sekretariat Nasional Kecerdasan Artifisial Indonesia. *Strategi Nasional Kecerdasan Artifisial Indonesia 2020-2045*. Jakarta: Sekretariat Nasional Kecerdasan Artifisial Indonesia, 2020.
- Sugiyono. *Metode Penelitian Pendidikan (Pendekatan Kuantitatif, Kualitatif, Dan R&D)*. 10th ed. Bandung: Alfabeta, 2014.

### B. Paper/Article/Proceeding/Research Result

- Blackham, Grace V., Edward L. Webb, and Richard T. Corlett. "Natural Regeneration in a Degraded Tropical Peatland, Central Kalimantan, Indonesia: Implications for Forest Restoration." *Forest Ecology and Management* 324 (2014): 8–15. <https://doi.org/10.1016/j.foreco.2014.03.041>.
- Burke, Brendan F. "Understanding Intergovernmental Relations, Twenty-Five Years Hence." *State and Local Government Review* 46, no. 1 (2014): 63–76. <https://doi.org/10.1177/0160323x13520461>.
- Fitriani, Fitriani. "Ancaman Kepunahan Dan Strategi Pemertahanan Tradisi Sinrili Di Masyarakat Makassar." *Paradigma : Jurnal kajian Budaya* 12, no. 2 (2022): 185–194.
- Gaveau, David L.A., Bruno Locatelli, Mohammad A. Salim, Husnayaen, Timer Manurung, Adria Descals, Arild Angelsen, Erik Meijaard, and Douglas Sheil. "Slowing Deforestation in Indonesia Follows Declining Oil Palm Expansion and Lower Oil Prices." *PLoS ONE* 17, no. 3 March (2022): 1–19. <https://doi.org/10.1371/journal.pone.0266178>.
- Gaveau, David L.A., Bruno Locatelli, Mohammad A. Salim, Husna Yaen, Pablo Pacheco, and Douglas Sheil. "Rise and Fall of Forest Loss and Industrial Plantations in Borneo (2000–2017)." *Conservation Letters*, 2018, 1–8. <https://doi.org/10.1111/conl.12622>.
- Jadda, Asram A.T. "Tinjauan Hukum Lingkungan Terhadap Perlindungan Dan Pengelolaan Keanekaragaman Hayati." *Madani Legal Review* 3, no. 1 (2019): 39–62.
- Kalima, Titi, Sri Suharti, Sumarhani, and Liam A. Trethowan. "Tree Species Diversity and Ethnobotany of Degraded Peat Swamp Forest in Central Kalimantan." *Reinwardtia* 19, no. 1 (2020): 27–54. <https://doi.org/10.14203/reinwardtia.v19i1.3819>.
- Lowatcharin, Grichawat, CharlesDavidCrompton, andSittipolPacharoen. "Intergovernmental Relations in a World of Governance: A Consideration of International Experiences, Challenges, and New Directions." *Asia-Pacific Social Science Review* 19, no. 4 (2019): 44–55.

- Lubis, Efridani. "Konsep Hukum Biodiversitas Dalam Dunia Digital (Fondasi Teoritik Pengembangan Hukum Lingkungan Indonesia Berbasis Biodiversitas)." *Jurnal Hukum Jurisdiction* 3, no. 2 (2021): 133–44. <https://doi.org/10.34005/jhj.v3i2.54>.
- Phillimore, John. "Intergovernmental Relations: Key Features and Trends." *Australian Journal of Public Administration* 72, no. 3 (2013): 228–38. <https://doi.org/10.1111/1467-8500.12025>.
- Sahabuddin, C, M Muliaty, U Farida, Hasbi, and Y Yusriadi. "Administration of Post-Reformation Decentralization Government." *International Journal of Recent Technology and Engineering* 8, no. 3 (2019): 7631–34. <https://doi.org/10.35940/ijrte.C6182.098319>.
- Sardjono, Wahyu. "Model Pelestarian Lingkungan Hidup Berbasis Teknologi Informasi Pada Aktivitas Sosialisasi Berbasis Masyarakat Sebagai Sentra Partisipan." *ComTech: Computer, Mathematics and Engineering Applications* 2, no. 1 (2011): 368. <https://doi.org/10.21512/comtech.v2i1.2765>.
- Tando, Cahyoko Edi, Sudarmo, and Rina Herlina Haryanti. "Collaborative Governance Effort to Manage Forest in Kalimantan Island: Literature Review." *Jurnal Manajemen Hutan Tropika (Journal of Tropical Forest Management)* 28, no. 1 (2022): 15–21. <https://doi.org/10.7226/jtfm.27.1.15>.
- Ulfatun Najicha, Fatma. "Penegakan Hukum Konservasi Lingkungan Di Indonesia Dalam Perencanaan Pembangunan Berkelanjutan." *Doktrina: Journal of Law* 5, no. 1 (2022): 1–7.
- Wicke, Birka, Richard Sikkema, Veronika Dornburg, and André Faaij. "Exploring Land Use Changes and the Role of Palm Oil Production in Indonesia and Malaysia." *Land Use Policy* 28, no. 1 (2011): 193–206. <https://doi.org/10.1016/j.landusepol.2010.06.001>.
- Zubaidah, Siti. "Biodiversitas: Lestarian Melalui Pembelajaran Dan Pewarisan Pengetahuan Lokal." *Jurnal Pendidikan Biologi FMIPA UNM*, no. August (2019): 1–14.

### C. Internet

- balaikliringkehati.menlhk.go.id. "Rangkong Gading Dan Arwana Super Red Satwa Karismatik Kalbar Yang Terancam Punah." <https://balaikliringkehati.menlhk.go.id/>, 2019. <https://balaikliringkehati.menlhk.go.id/rangkong-gading-dan-arwana-super-red-satwa-karismatik-kalbar-yang-terancam-punah/> (diakses 2 Mei 2023).
- BBC Indonesia. "Dapatkah Hewan Yang Sudah Punah Dihidupkan Kembali Untuk Melawan Perubahan Iklim?" *BBC Indonesia*, April 2021. <https://www.bbc.com/indonesia/majalah-58592804> (diakses 2 Mei 2023).
- . "Orangutan Dipulangkan Ke Indonesia Di Tengah 'Perburuan Yang Masih Terjadi.'" [www.bbc.com](https://www.bbc.com/indonesia/majalah-55899594), 2021. <https://www.bbc.com/indonesia/majalah-55899594> (diakses 1 Mei 2023).
- CNN Indonesia. "4 Tanaman Endemik Di Indonesia Yang Hampir Punah." *2CNN Indonesia*, 2022. <https://www.cnnindonesia.com/gaya-hidup/20220316103010-284-771892/4-tanaman-endemik-di-indonesia-yang-hampir-punah> (diakses 28 April 2023).
- dw.com. "Punahnya Keragaman Hayati Ancaman Terbesar Bagi Umat Manusia." *Dw.Com*. Last modified 2022. Accessed November 9, 2023. <https://www.dw.com/id/punahnya-keragaman-hayati-ancaman-terbesar-bagi-umat-manusia/a-62206772>.

- forestdigest.com. "Tumbuhan Dan Fungi Yang Belum Teridentifikasi Segera Punah." *Forestdigest.Com*. Last modified 2023. Accessed November 8, 2023. <https://www.forestdigest.com/detail/2435/tumbuhan-dan-fungi-punah>.
- FWI. *Deforestasi Tanpa Henti "Potret Deforestasi Di Sumatera Utara, Kalimantan Timur Dan Maluku Utara*. Bogor, Indonesia, 2018.
- Kompas.com. "Hewan Langka Terancam Punah Di Pulau Kalimantan." Kompas.com, 2022. <https://www.kompas.com/skola/read/2022/03/22/161341169/hewan-langka-terancam-punah-di-pulau-kalimantan?page=all> (diakses 29 April 2023).
- mmc.kalteng.go.id. "Pohon Ulin, Si Pohon Besi Terkenal Di Kalimantan." mmc.kalteng.go.id, 2018. <https://mmc.kalteng.go.id/berita/read/753/pohon-ulin-si-pohon-besi-terkenal-di-kalimantan> (diakses 30 April 2023).
- news.detik.com. "Miris! Ada Banyak Satwa Endemik Indonesia Yang Terancam Punah." *News.Detik.Com*. Last modified 2019. Accessed November 8, 2023. <https://news.detik.com/adv-nhl-detikcom/d-4604960/miris-ada-banyak-satwa-endemik-indonesia-yang-terancam-punah>.
- Rosmalia, Putri. "Kecerdasan Buatan Untuk Lindungi Alam." Media Indonesia, 2020. <https://mediaindonesia.com/teknologi/357114/kecerdasan-buatan-untuk-lindungi-alam> (diakses 1 Mei 2023).
- Theconversation.com. "100 Ribu Orang Utan Punah Di Kalimantan Akibat Penebangan Hutan Dan Perburuan." <https://theconversation.com/>, 2018. <https://theconversation.com/100-ribu-orang-utan-punah-di-kalimantan-akibat-penebangan-hutan-dan-perburuan-92450> (diakses 2 Mei 2023).
- wwf Indonesia. "Upaya Bersama Untuk Melindungi Gajah Kalimantan." www.wwf.id, 2020. <https://www.wwf.id/publikasi/upaya-bersama-untuk-melindungi-gajah-kalimantan> (diakses 25 April 2023).

#### **D. Regulations**

- Intruksi Presiden Nomor 1 Tahun 2023 Tentang Pengarustamaan Pelestarian Keanekaragaman Dalam Pembangunan Berkelanjutan.
- Pemerintah Daerah Provinsi Kalimantan Barat Nomor 3 Tahun 2014 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup.
- Peraturan Gubernur Kalimantan Timur Nomor 12 Tahun 2021 tentang Kriteria Area Dengan Nilai Konservasi Tinggi.
- Peraturan Menteri Hukum dan HAM RI Nomor 13 Tahun 2017 tentang Data Kekayaan Intelektual Komunal.
- Peraturan Menteri Pariwisata dan Ekonomi Kreatif/Kepala Badan Pariwisata dan Ekonomi Kreatif Republik Indonesia Nomor 9 Tahun 2021 tentang Pedoman Destinasi Pariwisata Berkelanjutan.

Peraturan pemerintah Nomor 48 tahun 2011 Tentang Sumber Daya Genetik Hewan Dan Pembibitan Ternak.

Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah.

Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

Undang-Undang Nomor 8 Tahun 1999 Tentang Pemanfaatan Jenis Tumbuhan Dan Satwa Liar.

Undang-Undang Republik Indonesia Nomor 11 tahun 2019 Tentang Sistem Nasional Ilmu Pengetahuan Dan Teknologi.

## Curriculum Vitae of Author

**Muhammad Arief Adillah** is a lecturer in Polytechnic Immigration and a candidate Doctor at Institut Pendidikan Dalam Negeri (IPDN) Cilandak, Jakarta and majoring in Governance Science. He is interested in writing this article, especially in preventing flora and fauna, because of any relevant from local government. Currently, his activity also writes articles for international conferences.

## URGENCY OF SUI GENERIS PROTECTION FOR INDONESIA'S COMMUNAL INTELLECTUAL PROPERTY: STICK WITH DEFENSIVE, SHIFT TO POSITIVE, OR HYBRID APPROACH?

**Bryan Eduardus Christiano**

National Law Debate Community Indonesia  
Jalan Prof. Mr. Djokosoetono, Beji, Depok, Jawa Barat 16424  
E-mail: bryaneduardusc@gmail.com

### ABSTRACT

Intellectual property involves exclusive rights granted to creators, categorized as non-communal and communal. Indonesia, rich in cultural diversity, possesses significant communal assets, offering vast potential if properly utilized. However, inadequate legal protection and overlapping regulations have left the country vulnerable to theft and piracy, as evident in cases such as Malaysia's claims on Wayang, Pendet, and Reog Ponorogo, and Singapore's unauthorized performance of I La Galigo. The study conducts a comprehensive analysis of Indonesia's legal framework, focusing on PP KIK and its defensive strategies. It also explores the necessity of implementing a *sui generis* regulation through doctrinal research and comparative analysis with leading countries like India, the Philippines, and Peru. The comparison underscores the limitations of relying solely on defensive data collection, emphasizing the need for a comprehensive strategy. This article provides tailored recommendations for Indonesia to develop its *sui generis* approach.

**Keywords:** communal intellectual property, legal protection, negative protection, positive protection, sui generis

### A. Introduction

The era of globalization has brought about a multitude of outcomes, with a significant impact on cultural diversity, cross-cultural engagements, and the emergence of new cultural manifestations. Amidst the positive influence of information technology on human welfare and progress, there exists a dual narrative, as it also serves as a potential haven for illicit activities. Within this borderless context, entities with opportunistic motives may exploit information technology to assert proprietary rights over traditional knowledge that has not been widely disseminated.<sup>1</sup>

Categorically, property rights encompass real property, personal property, and intellectual property ("IPR"). IPR, involving intangible assets born out of human creativity,

---

1 Mahmuda Febriaharini, "Eksistensi Hak Atas Kekayaan Intelektual Terhadap Hukum Siber," *Serat Acitya* Vol. 5, No. 1 (2016): 15.

is granted to the creators or owners of intellectual works. In general, IPR is divided into two categories: (i) non-communal, which includes copyrights, patents, trademarks, trade secrets, industrial design, integrated circuit layout design, and plant varieties; and (ii) communal ("KIK"), which includes traditional cultural expressions ("TCE"), traditional knowledge ("TK"), geographical indications ("GI"), and genetic resources ("GR").<sup>2</sup> Communal rights, serving as the embodiment of a community's identity, persist across generations without explicit attribution to individual creators, developing organically within the community and collectively owned and preserved.<sup>3</sup>

Presently, there is a heightened awareness regarding the significance of IPR, particularly through the issuance of Government Regulation Number 24 of 2022, facilitating the utilization of IPR as collateral for loans, taking the form of fiduciary guarantees.<sup>4</sup> Consequently, there have been many studies about intellectual property, but most of them mainly concentrate on the rights owned by individuals. This article will delineate the imperative safeguarding of communal wealth, which holds significant potential.

The acknowledgment of KIK begins with recognizing it as a component of human rights, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"). Article 11(1) UNDRIP stipulates the right of indigenous peoples to preserve and promote their cultural traditions and customs. After the Convention on Biological Diversity was signed in 1992, there has been a push to protect TK. Several international conferences, especially under the World Intellectual Property Organization (WIPO), have been held to create a suitable system for safeguarding TK and other KIK.<sup>5</sup>

Indonesia stands out not only for having the largest biodiversity in the world, but also for being one of the six countries that have a high level of cultural diversity. Indonesia stands out for its high ecological uniqueness with a significant level of endemism, coupled with being the world's largest archipelagic country, hosting diverse tribes, languages, and a vibrant cultural arts scene.

According to the Directorate General of Intellectual Property, a total of 2,335 KIK have been registered: (i) 1,338 TCE (59%); (ii) 654 TK (28%); (iii) 187 GI (8%); and (iv) 117 GR (5%).<sup>6</sup> These classifications cover a broad array of Indonesian cultural assets, including

---

2 Dara Effida, "Tinjauan Yuridis Indikasi Geografis Sebagai Hak Kekayaan Intelektual Non-Individual (Komunal)," *Ius Civile* Vol. 3, No. 2 (2019): 59.

3 Eman Suparman, "Perlindungan Hukum Kekayaan Intelektual Masyarakat Tradisional," *Jurnal Pengabdian Kepada Masyarakat* Vol. 2, No. 7 (2018): 558.

4 Humas OJK, "Prospek Hak Kekayaan Intelektual (HKI) sebagai Jaminan Utang," Otoritas Jasa Keuangan, <https://www.ojk.go.id/ojk-institute/id/capacitybuilding/upcoming/1110/prospek-hak-kekayaan-intelektual-hki-sebagai-jaminan-utang> (accessed 9 November 2023).

5 Simona Bustani, "Perlindungan Hak Komunal Masyarakat Adat Dalam Perspektif Kekayaan Intelektual Tradisional Di Era Globalisasi: Kenyataan Dan Harapan," *Hukum Prioris* Vol. 6, No. 3 (2018): 307–308.

6 Humas DJKI, "DJKI: Belum Memiliki Kedaulatan Kekayaan Intelektual Komunal, Kebudayaan Indonesia Rawan Dicuri," Ministry of Law and Human Rights, <https://www.dgip.go.id/artikel/detail-artikel/djki-belum->

tangible items like heritage sites, artifacts, traditional crafts, and genetic resources, as well as intangible forms such as music and dance. The substantial potential poses a significant challenge, emphasizing the crucial requirement to establish robust legal safeguards for these valuable assets.

Indonesia's KIK remains susceptible to theft and unauthorized recognition by foreign nations. An instance is Malaysia's assertion of possession of Wayang, Pendet, and Reog Ponorogo dances in a tourism promotion.<sup>7</sup> Singapore has also been involved in misappropriating Indonesia's KIK through its unauthorized performance of the classic Bugis people's art piece called "I La Galigo" theater performance, which has sacred value.<sup>8</sup> Other examples include the imitation of traditional music with rhythmic dance house music, T-shirts imitating Indonesia's KIK, and the sale of handicrafts as if they are "authentic" from their rightful owners.

These violations resulted in economic and non-economic losses to Indonesia. Economically, as exemplified by Kopi Gayo, the first GI product from Indonesia accepted in the European Union. Following its registration, there was a substantial surge in the per-kilogram price, escalating from Rp. 50,000.00 to Rp. 120,000.00.<sup>9</sup> Meanwhile, from a non-economic perspective, this potential serves as a significant asset in shaping the nation branding of Indonesia,<sup>10</sup> encompassing all dimensions of the international community's perception of the country. This is something of utmost importance, playing a crucial role in enhancing a nation's competitiveness. An example of this is Bali's Endek fabric, chosen by the fashion house Christian Dior as part of its collection during Paris Fashion Week 2021.<sup>11</sup>

The weakness of legal protection for Indonesian KIK is based on various factors.<sup>12</sup> However, since 2020, the Indonesian government has taken action by making KIK one of the National Development Priority Programs (2020-2024) with a primary target of defensive

---

[memiliki-kedaulatan-kekayaan-intelektual-komunal-kebudayaan-indonesia-rawan-dicuri?kategori=ki-komunal](#) (accessed 27 April 2023).

- 7 Yenny Widyanti, "Protection of Indonesian Traditional Cultural Expressions in the *Sui Generis* System," *Arena Hukum* Vol. 13, No. 3 (2020): 390.
- 8 Simona Bustami, "Urgensi Pengaturan Ekspresi Budaya (Folklore) Masyarakat Adat," *Hukum Prioris* Vol. 2, No. 4 (2019): 247.
- 9 Directorate General of Intellectual Property, "Peran KI dalam Mendayagunakan UMKM," Presentation Material by the Secretary, June 2021. This inventory is an effort by the Government to maximize the economic potential for the community's economy, in line with the "*economic stimulus growth theory*".
- 10 Directorate General of Intellectual Property, "Rencana Strategis Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM RI Periode 2020-2024," : 5.
- 11 Ministry of Foreign Affairs, "Kain Endek Bali Warnai Koleksi Christian Dior Spring/Summer 2021," <https://kemlu.go.id/paris/id/news/8677/kain-endek-bali-warnai-koleksi-christian-dior-springsummer-2021> (accessed 10 November 2023). Humas OJK, "Prospek Hak Kekayaan Intelektual (HKI) sebagai Jaminan Utang," Otoritas Jasa Keuangan, <https://www.ojk.go.id/ojk-institute/id/capacitybuilding/upcoming/1110/prospek-hak-kekayaan-intelektual-hki-sebagai-jaminan-utang> (accessed 9 November 2023).
- 12 Jake Philips, "Australia's Heritage Protection Act: An Alternative to Copyright in the Struggle to Protect Communal Interests in Authored Works of Folklore," *Pacific Rim and Policy Journal* Vol. 18 (2009): 549.



protection through the creation of an inventory of data integrated into a single database called the Communal Intellectual Property National Data Center. Defensive approach is commonly used for protection, employing a comprehensive database to prevent misuse,<sup>13</sup> while positive protection focuses on legal measures against exploitation with regard to KIK. Although these two methods come from two opposite poles, some countries have started to integrate both approaches into positive law, one of which is Peru.

The research aims to investigate several key aspects: First, the *status quo* of the legal structure of Indonesia's KIK; Second, the classification of KIK in Indonesia; Third, the pros and cons of defensive and positive protection; Fourth, a comparative analysis of advanced protection models in countries such as India, the Philippines, and Peru, aiming to identify differences and draw valuable lessons from these models; and lastly, an analysis of whether Indonesia should consider adopting a *sui generis* approach, exploring the potential implications and benefits associated with such a decision.

This article introduces a fresh perspective by examining Indonesia's positive law through diverse approaches related to the intended protection. In contrast to existing publications, this work emphasizes comparative studies of countries with either advanced regulations or cultural contexts akin to Indonesia. These comparative analyses serve as a foundation for evaluating whether Indonesia's existing protective measures are adequate to preempt potentially detrimental actions by other nations.

## B. Research Method

The present study adopts a normative juridical approach, which entails the scrutiny of pertinent literature materials, including legal provisions, regulations, books, journals, and reputable websites, as secondary sources of data.<sup>14</sup> The analytical process involves a thorough examination, study, review, and comparison of diverse literature sources, followed by an interpretation of the findings. Qualitative juridical methods are employed to analyze the data and obtain insightful results that align with the protection of KIK under Indonesia's national law.

---

13 Teshager Dagne, "Law and Policy on Intellectual Property, Traditional Knowledge and Development: Legally Protecting Creativity and Collective Rights in Traditional Knowledge Based Agricultural Products Through Geographical Indications," *The Estey Centre Journal on International Law and Trade Policy*, Vol. 11 No. 1 (2010): 117.

14 Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003), p. 13.

## C. Discussions

### 1. Status Quo of Indonesia's Communal Intellectual Property Legal Structure

The regulation of IPR in Indonesian law was first established in 1961 through Law No. 21 of 1961 on Trademarks, followed by Law No. 6 of 1982 on Copyrights. These laws laid the foundation for the current regulation, which has undergone various changes.<sup>15</sup> KIK in Indonesia is regulated by various laws, including: (i) Law No. 28 of 2014 concerning Copyrights; (ii) Law No. 13 of 2016 concerning Patents; (iii) Law No. 20 of 2016 concerning Trademarks and Geographical Indications; and (iv) Law No. 5 of 2017 concerning the Advancement of Culture. In addition, more detailed regulations are also contained in various derivative regulations, such as Government Regulation No. 48 of 2011, and even regulations issued by local governments, such as Bali Provincial Regulation No. 1 of 2018.

However, not all legal frameworks apply universally to all types of KIK. The Berne Convention, an international agreement ratified by Indonesia through the Decree of President No. 18 of 1997, provides legal protection for traditional cultural expressions, which offers a crucial advantage in utilizing these expressions to support the nation's economy. Additionally, Article 33(3) of the 1945 Constitution of the Republic of Indonesia serves as the legal basis for TK and GR protection.

Safeguarding KIK poses a significant challenge, as there exists no regulated procedure for discerning KIK-identified works from those that are not, and no authorized implementing agency has been established since the law's inception in 1982. Although the Cultural Advancement Act was expected to provide a solution to the lack of legal provisions, it actually created more problems. Under Article 17, the Central and/or Local Governments are granted absolute autonomy to undertake an assessment of TCE, which imposes an obligation on the State to conduct an inventory, preserve, and uphold TCE.<sup>16</sup> However, uncertainty emerged with regard to conflicting regulations, Article 18(1), which provides freedom for any individual to undertake an inventory of cultural artifacts. This lack of clarity in the legal framework has contributed to a long list of claims. One of the reasons for this failure is the individualistic nature of the Copyright regime, while TCE is a communal expression.<sup>17</sup>

---

15 Fadjar Adam, *Hak Atas Kekayaan Intelektual* (Palu: Yayasan Masyarakat Indonesia Baru Pers, 2002), p. 9.

16 In this regard, there is no further technical regulation. PP 56/2023, as one of the latest regulations on KIK, does make extensive mention of the phrase "Local Government" (*Pemerintah Daerah*). It states that Local Governments have the obligation to "inventory, safeguard and maintain" together with the Minister and/or minister/head of a non-ministerial government agency (Article 3). It has not been explicitly stated, the specific authority and role that each party carries out. This is seen by the author as essential, because of course the Local Government should have a more thorough understanding of the potential of KIK. Therefore, arrangements relating to the active role of the Local Government should be set out in various derivative regulations.

17 Simona Bustani, "Urgensi Pengaturan Ekspresi Budaya (Folklore) Masyarakat Adat," *Jurnal Hukum Prioris* Vol. 2, No. 4 (2016): 251.

Inventory-based data collection has been carried out since 2017 based on Minister of Law and Human Rights Regulation No. 13 of 2017. This regulation is one of the first to unify KIK data collection, which was previously spread across various Ministries and Institutions. However, the increase in the number of inventories is still not considered optimal. In an effort to further boost this effort, in 2022, the government issued a new regulation regarding KIK, Government Regulation of the Republic of Indonesia No. 56 of 2022 concerning Communal Intellectual Property (“**PP KIK**”).

Article 3(1) states that the state holds the right to KIK,<sup>18</sup> with the obligation to inventory, safeguard, and maintain it.<sup>19</sup> Article 5(1) states that the right to KIK is an inclusive moral right, which is held and/or carried out by the Indigenous Community, with economic benefits that apply indefinitely.<sup>20</sup> Article 12 regulates a detailed inventory, which is carried out through: (i) recording, conducted through a ministry/non-ministry government institution database and local government integrated with the KIK Indonesia information system;<sup>21</sup> and (ii) data integration.<sup>22</sup> Data loaded by the information system is open with two exceptions in Article 31(2): (i) data that is sacred, confidential, and/or held firmly based on the applicant's request; or (ii) determined otherwise by provisions of the legislation.<sup>23</sup> Furthermore, KIK utilization for commercial purposes is required to obtain a permit according to prevailing laws and regulations.<sup>24</sup>

## 2. Classification of Communal Intellectual Property in Indonesia

WIPO classifies various forms of KIK into three interconnected areas: traditional knowledge, traditional cultural expressions, and genetic resources,<sup>25</sup> while in Indonesia, KIK is divided into four types, including:

### a. Traditional Culture Expressions

TCE are defined as any form of creative expression, whether tangible, intangible, or a combination of both, that reflects the existence of a traditional culture held communally and across generations.<sup>26</sup> Article 38(1) of the UUHC also includes the definition of TCE,

---

18 Peraturan Pemerintah Tentang Kekayaan Intelektual Komunal (PP KIK), No. 56/2022, LN. 2022/ No. 232, TLN No. 6837, Article 3(1).

19 PP KIK, Article 3(2).

20 PP KIK, Article 5(1).

21 PP KIK, Article 13(4).

22 PP KIK, Article 12.

23 PP KIK, Article 31(2).

24 PP KIK, Article 33(3).

25 World Intellectual Property Organization, *Traditional Knowledge and Intellectual Property* (Geneva: WIPO, 2015), p. 1.

26 Direktorat Jenderal Kekayaan Intelektual, “Kekayaan Intelektual Komunal,” *Desa Gemilang Informasi Publik*, <https://www.dgip.go.id/menu-utama/ki-komunal/pengenalan> (accessed 20 April 2023).

which encompasses one or a combination of various types of arts and literary works such as music, dance, prose, drama, theater, all types of visual arts, and traditional ceremonies.<sup>27</sup> There are two forms of copyright protection for TCE. The first is where the identity of the creator is unknown, which includes oral, musical, and intangible cultural expressions. The WIPO Report refers to this cultural expression as “*mother-style folklore*”. The second arises when the originator(s) of a derivative TCE can be discerned, in which they intentionally or unintentionally refine and innovate fundamental designs or structures or offer fresh interpretations of sacred iconography or visuals that enhance their artistic value. This type is known as “*child-style folklore*”.<sup>28</sup>

### **b. Traditional Knowledge**

TK comprises intellectual innovations in the sphere of knowledge and technology, possessing distinctive attributes of customary inheritance produced, evolved, and upheld by a particular community or society.<sup>29</sup> As defined by the WIPO, knowledge is classified as TK if it meets the following criteria: (i) transmitted from one generation to another; (ii) encompasses an understanding of the environment and its interactions; (iii) integral and indivisible from the community of its origin; and (iv) represents a way of life that is collectively practiced.<sup>30</sup> The constraint faced by certain groups of Indonesian society is the notion that traditional knowledge is a public right, which results in communities not objecting to the imitation of their products.<sup>31</sup> Another weakness is the limited availability of data, documentation, and information.<sup>32</sup> It is not entirely inaccurate to say that other countries, such as the Netherlands, have more comprehensive documentation of KIK than Indonesia.<sup>33</sup>

### **c. Genetic Resources**

Genetic Resources refer to plants, animals, microorganisms, or their parts that have actual or potential value.<sup>34</sup> Protection of GR is regulated under the Convention on Biological Diversity (CBD), which has been ratified by Indonesia through Law No. 5 of 1994.<sup>35</sup> Based

---

27 Dyah Asri, “Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta,” *Journal of Intellectual Property* Vol. 1, No.1 (2018): 20–22.

28 Lorraine Aragon, “Copyrighting Culture for the Nation? Intangible Property Nationalism and the Regional Arts of Indonesia,” *International Journal of Cultural Property* Vol. 19 (2014): 292.

29 DJKI, “Kekayaan Intelektual Komunal...”

30 Atvi Lutviansori, *Hak Cipta dan Perlindungan Folklore di Indonesia* (Yogyakarta: Graha Ilmu, 2010), p. 96.

31 Muthia Septarina, “Perlindungan Hukum Pengetahuan Tradisional Dalam Konsep Hukum Kekayaan Intelektual,” *Al’Adl: Jurnal Hukum* Vol. 8, No. 2 (2016): 47–48.

32 *Ibid.*

33 Muhammad Citra Ramadhan and Fitri Yanni Dewi Siregar, “Protecting Communal Intellectual...,” p. 275.

34 DJKI, “Kekayaan Intelektual Komunal...”

35 Devica Masrur, “Upaya Perlindungan Sumber Daya Genetik Berdasarkan Undang-Undang Nomor 13 Tahun 2016 Tentang Paten,” *Jurnal Jurisprudence* Vol. 8, No. 2 (2019): 6.

on data from the World Conservation Monitoring Committee, Indonesia's biodiversity includes 27,500 species of flowering plants (10% of the world's plant species), 515 species of mammals, 1,539 species of birds, and 781 species of reptiles and amphibians.<sup>36</sup> One notable violation experienced by Indonesia is biopiracy by the Japanese cosmetic company Shiseido, which filed 51 patent applications for medicinal plants and native Indonesian spices. Based on the European Patent website, there are about 40% of Indonesian plants patented in the Japanese Patent Office, including Brotowali and Sambiloto.

#### d. Geographical Indication

GI denotes the provenance of a product or commodity that stems from its geographical milieu, encompassing both natural and human-induced factors, or a confluence of both, giving it a certain reputation, quality, and characteristic that has the potential to be protected.<sup>37</sup> According to Article 53 of the Trademark and Geographical Indication Law, GI is registered through a *first-to-file* system, which suggests that sole exclusivity to commercialize geographical indications, is only granted to the first GI registered with the Directorate General of IPR.<sup>38</sup> GI serves to demonstrate the connection between the quality, characteristics, or reputation of a product with its place of origin.

The imitation practice against GI occurs, for example, in coffee that is not originating from Toraja but is marketed under the name of "Kopi Toraja". Before "Kopi Toraja" was registered as GI in Indonesia, the name had been registered as a trademark in the United States. This hindered the export of coffee to be marketed using the name Toraja or the traditional Toraja house image to the domestic market of the United States.<sup>39</sup> As of now, effective protection for GI still encounters numerous obstacles, such as the lack of absence of a consensus on appointing a rights holder. Furthermore, the community's inadequate legal awareness results in their reluctance to deal with it.<sup>40</sup>

### 3. Defensive and Positive Protection of Communal Intellectual Property

In relation to a country's efforts to protect its KIK rights, there are two different approaches. This is in line with the classification proposed by WIPO, namely defensive

---

36 *Ibid.*

37 Michael Blakeney, "Geographical Indications and Environmental Protection," *Frontiers of Law in China* Vol. 12 (2017): 2.

38 Syarifah Mahila, "Keberadaan Hak Kekayaan Intelektual Seni Batik Jambi Di Kota Jambi," *Universitas Batanghari Jambi* Vol. 18, No. 3 (2018): 270.

39 Ahmad Ramli, *Hukum Kekayaan Intelektual: Indikasi Geografis dan Kekayaan Tradisi dalam Teori dan Praktik* (s.l.: Rafika Aditama, 2019), p. 10.

40 Rashmi Aggarwal, "Branding of Geographical Indications in India: A Paradigm to Sustain Its Premium Value," *International Journal of Law and Management* Vol. 56 (2014): 435.

and positive protection.<sup>41</sup> This section will discuss both methods of protection, as well as their advantages and disadvantages.

### a. Defensive Protection

This approach is implemented by registering or inventorying cultural heritage to preserve it for future generations,<sup>42</sup> as well as protecting its assets by safeguarding against illegitimate rights acquired by third parties.<sup>43</sup> Cultural preservation and administration are typically intertwined by undertaking an assessment and recording through the employment of information technology.<sup>44</sup> Numerous countries consider defensive protection essential as they believe that the current intellectual property system, particularly patents, has flaws that permit companies to exploit KIK unjustly.<sup>45</sup>

Furthermore, defensive protection may be easier to implement compared to positive protection. Defensive protection is not attained through asserting IPRs, although in certain situations, pursuing or obtaining such rights may be part of a defensive strategy.<sup>46</sup> A defensive protection system must include certain elements: (i) criteria that define relevant prior art; (ii) a mechanism that guarantees the availability and accessibility of prior art to search authorities;<sup>47</sup> and (iii) prior art, which is crucial in determining patent eligibility, as it must fulfil novelty and non-obviousness.<sup>48</sup>

However, it should be noted that defensive protection should not be considered as a replacement for positive protection. Its effect is only to prevent others from obtaining rights over KIK.<sup>49</sup> A criticism of this method is the potential for it to be a double-edged sword due to the disclosure requirement of patent law. While it can prevent third parties from obtaining

---

41 Yunita Putri, "Perlindungan Bagi Hak Kekayaan Intelektual Komunal," *Jurnal Hukum De'Rechsstaat* Vol. 7, No. 2 (2021): 183.

42 Nuzulia Sari and Dinda Mawaradah, "Sistem Pendataan Kebudayaan Terpadu Alternatif Perlindungan Hukum Ekspresi Budaya Tradisional," *Jurnal Legislasi Indonesia* Vol. 18, No. 3 (2021): 409.

43 World Intellectual Property Organization, *Intellectual Property and Genetic Resources* (Geneva: WIPO, 2020), p. 22.

44 Martin Fredriksson, "Balancing Community Rights And National Interests In International Protection Of Traditional Knowledge: A Study Of India's Traditional Knowledge Digital Library," *Third World Quarterly* Vol. 43, No. 2 (2022): 359.

45 Graham Dutfield, *Protecting Traditional Knowledge and Folklore: A Review of Progress in Diplomacy and Policy and Formulation Issue Paper No. 1* (Geneva: ICTSD and UNCTAD, 2003), p. 27.

46 Vera Shrivastav, "Protection Of Traditional Knowledge Within The Existing Framework Of Intellectual Property Rights: Defensive And Positive Approach," *Social Science Research Network Electronic Journal* (2014): 17.

47 Juhi Chowdhary, "Intellectual Property and Traditional Knowledge," Legal Service India, <https://www.legalserviceindia.com/article/I98-Intellectual-Property-and-Traditional-knowledge.html> (accessed 20 April 2023).

48 Rudi Bekkers, Arianna Martinelli and Federico Tamagni, "The Impact Of Including Standards-Related Documentation In Patent Prior Art: Evidence From An EPO Policy Change," *ScienceDirect Research Policy* Vol. 49 (2020), <https://www.sciencedirect.com/science/article/pii/S004873332030086X> (accessed 20 April 2023).

49 Vera Shrivastav, "Protection Of Traditional...", p. 15.

patents over that knowledge, it also provides them with access to the information, which they can use to develop novel and patentable inventions.

#### **b. Positive Protection**

Positive protection is a means of empowering communities to assert their KIK, regulate its use, and benefit from its commercialization by granting them rights.<sup>50</sup> These rights are typically in the form of an IPR, such as a patent or a *sui generis* right.<sup>51</sup> Positive protection enables IPR holders to take legal action or seek redress for certain forms of infringement.<sup>52</sup> Various mechanisms have been developed for positive protection, including: (i) existing IP systems, such as patents or registered trademarks; (ii) adaptations and *sui generis* elements of existing IP systems, such as copyright and unregistered trademarks; and (iii) stand-alone *sui generis* IP systems.<sup>53</sup> Positive protection involves using legal remedies, such as applying relevant laws that protect KIK rights or establishing special laws. Nonetheless, the protection granted under national laws may not be applicable in other countries, so there is a growing call for an international legal instrument.<sup>54</sup>

#### **4. Cross-Cultural Perspectives on Communal Intellectual Property Protection: A Comparative Study of India, the Philippines, and Peru**

Although there are various positive methods of protection, such as patents and trademarks, many countries are opting to develop a *sui generis* approach of protection.<sup>55</sup> *Sui generis*, in legal terms, means the science of its own kind. Several countries are developing a concept to handle specific practical needs or policy aims to contain specific legitimized stipulations and measures of implementation or administration.<sup>56</sup> WIPO's Statement by the Committee of Intergovernmental on The Intellectual Property and Genetic Resources Traditional Knowledge and Folklore emphasizes that the success of this *sui generis* law hinges significantly on the collaboration among indigenous communities, the implementation of equitable benefit-sharing mechanisms, and the competence of local stakeholders who perceive that communal interests are duly represented in national law. This section will

---

50 World Intellectual Property Organization, *Traditional Knowledge and Intellectual Property: Background Brief No. 1* (Geneva: WIPO, 2012), p. 2; Ken & Krishme Attorney at Law, "Traditional Knowledge," <https://kankrishme.com/service/traditional-knowledge/> (accessed 20 April 2023).

51 Poorvika Chandanam, "Intellectual Property Rights and Traditional Form of Expressions," *IP Matters*, <https://www.theipmatters.com/post/intellectual-property-rights-and-traditional-form-of-expressions> (accessed 20 April 2023).

52 Vera Shrivastav, "Protection of Traditional...", p. 19.

53 World Intellectual Property Organization, "Intergovernmental Committee On Intellectual Property And Genetic Resources, Traditional Knowledge And Folklore" (Document WIPO/GRTKF/IC/5/12 Prepared by the Secretariat at the Fifth Session of the Intergovernmental Committee, Geneva, 7-15 July, 2003), [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_5/wipo\\_grtkf\\_ic\\_5\\_12.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_5/wipo_grtkf_ic_5_12.pdf) (accessed 20 April 2023).

54 Vera Shrivastav, "Protection of Traditional...", p. 19.

55 Deekshitha Ganesan, "Sui Generis is...", p. 53.

56 Rohaini and Nenny Dwi Ariani, "Positive Protection: Protecting Genetic Resources Related to Traditional Knowledge in Indonesia," *Fiat Justisia Jurnal Ilmu Hukum* Vol. 11 No. 2 (2017): 129.

discuss the advantages and disadvantages of various approaches taken by some leading countries, namely India, Peru, and the Philippines.

#### a. India

India's cultural diversity has given birth to many distinctive products. As mentioned in the previous section, India adopted a defensive mechanism by creating the Traditional Knowledge Digital Library ("TKDL") database, one of the earliest initiatives to protect KIK in the world.<sup>57</sup> The TKDL was developed in response to the indiscriminate patenting of Indian TK and is now one of the largest databases of its kind.<sup>58</sup> However, it still faces difficulties in consolidating the entirety of India's oral and undocumented TK, which could also be a challenge for Indonesia.<sup>59</sup> While India is one of the first and most advanced countries in data collection, it recognizes that databases alone are not enough to prevent the misappropriation of traditional knowledge.<sup>60</sup>

#### b. Philippines

On October 29, 1997, the Philippines became the first country to introduce laws safeguarding the rights of indigenous people through the Indigenous People Rights Act ("IPRA"). This legislation aims to offer protection to TK, customary practices, culture, religious sites, ceremonies, and biological resources, reflecting a positive approach.<sup>61</sup> Following Article 32 of IPRA, the indigenous people are entitled to have their cultural and intellectual rights recognized, fully controlled, and protected. Additionally, Section 10 affirms their right to manage, develop, and safeguard science, technology, and cultural expressions.<sup>62</sup> These rights are in accordance with the Philippine Constitution, specifically Section 17, Article 14. The indigenous people, acknowledged as the rightful general owners of KIK in perpetuity, are entitled to all benefits arising from knowledge and innovations, emphasizing the importance of fair sharing.<sup>63</sup> Commercial use of KIK must only be undertaken with the prior informed consent under mutually agreed terms.<sup>64</sup>

---

57 Deekshitha Ganesan, "Sui Generis is...," p. 49.

58 *Ibid.* This initiative has successfully documented at least 400 GIs in various product categories of goods and/or services, as well as quality assurance as an economic foundation. In addition, India also provides protection facilities with maximum registration for areas with special flora and fauna richness.

59 Azadi Ka Amrit Mahotsav, "Cabinet Approves Widening Access Of The Traditional Knowledge Digital Library (TKDL) Database To Users, Besides Patent Offices," PIB Delhi, <https://pib.gov.in/PressReleasePage.aspx?PRID=1852528> (accessed 20 April 2023).

60 Martin Fredriksson, "Balancing Community Rights...," p. 358.

61 Yenny Eta Widyanti, "The Urgency Of *Sui Generis* Protection Of Communal Intellectual Property In Indonesia: A Comparative Study in Philippines," *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 13 No. 1 (2022): 16.

62 Yenny Eta Widyanti, "The Urgency Of...," p. 10.

63 *Ibid.*, p. 18.

64 *Ibid.* Prior Informed Consent (PIC) stipulates that KIK holders must be consulted before their KIK is accessed or used by a third party. An agreement must be reached in advance on appropriate terms, as one way to ensure fair access and benefit sharing.



### c. Peru

Peru has one of the most comprehensive regulations, as stated in Law 27811 of July 24, 2002, which primarily focuses on the rights of indigenous communities.<sup>65</sup> Peru is one of the countries that perform both defensive and positive mechanisms. This regulation has led to the opinion that India, as a country that wants to establish a *sui generis* model, should adopt the Peru model in order to strengthen its existing protection and fill the gap created by oral and undocumented IPs.<sup>66</sup>

The law prohibits individual ownership of KIK and requires indigenous people to exercise their rights collectively through a representative organization.<sup>67</sup> The communities should have exclusive authority to make decisions about licensing agreements, with the State providing necessary assistance and ensuring fair sharing of benefits. The funds obtained are subsequently utilized for the welfare of all aboriginal communities. Two distinct forms of royalty payments must be deliberated: (i) a share of the market sales generated of the product developed; and (ii) a minimum of 5 percent of the gross value of the market sales as remuneration for sustainable progress.<sup>68</sup> If any rights granted by the law are transgressed, the communities possess the authority to initiate infringement actions.<sup>69</sup>

Peru has categorized its TK into three groups.<sup>70</sup> The first group includes TK, which has been disseminated outside the indigenous community and is therefore considered in the public domain. The second group includes TK, which has become public within the last 20 years, but usage of this information will require payment of royalties. These categories are documented in the Public Register of Collective Knowledge of Indigenous People. The third group is made up of undisclosed TK, which is recorded in the Confidential National Register of Indigenous People.<sup>71</sup>

	India	Philippines	Peru
Approach	<b>Defensive</b> , through Data Inventory by developing the <b>TKDL Database</b> (one of the largest) in response to indiscriminate patenting; a benchmark in KIK protection worldwide.	<b>Positive</b> , first to introduce legislation protecting the rights of indigenous peoples; in accordance with the Philippine Constitution.	<b>Sui Generis</b> , both Defensive (e.g. Public Register & Confidential National Register) and Positive.
Initiation	Initiated in 2001.	<b>IPRA</b> : October 29, 1997	<b>Law 27811</b> : July 24, 2002

65 Susanna E. Clark, Isabel Lapeña and Manuel Ruiz, "The Protection of Traditional Knowledge in Peru: A Comparative Perspective," *Washington University Global Studies Law Review* Vol. 3, Iss. 3 (2004): 757.

66 *Ibid.*

67 Deekshitha Ganesan, "Sui Generis is...", p. 54.

68 WIPO, "Intergovernmental Committee On..."

69 *Ibid.*

70 Deekshitha Ganesan, "Sui Generis is...", p. 54.

71 *Ibid.*

<p>Main Substances</p>	<ul style="list-style-type: none"> <li>• Available in digital format, in 5 languages: English, German, French, Japanese, and Spanish.</li> <li>• Bridge information in ancient Sanskrit and patent examiners; minimising possibility that patents be granted for "inventions" that involve insignificant modifications.</li> <li>• Facing difficulties in consolidating the entirety of oral and undocumented KIK.</li> </ul>	<ul style="list-style-type: none"> <li>• Communities are recognised as the lawful general owners in perpetuity.</li> <li>• Entitled to all benefits derived from knowledge and innovation, which must be shared equitably.</li> <li>• Commercial use should only be made with the consent of the public owner on mutually agreed terms.</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibits individual ownership; exercises rights collectively through representative organization.</li> <li>• Communities have exclusive authority to make decisions on license agreements, even to initiate infringement actions.</li> <li>• State provides necessary assistance, and fair and equitable sharing of benefits.</li> <li>• Categorises TK into 3 groups: (i) Public Domain; (ii) become public within the last 20 years; and (iii) undisclosed. Each with a different protection.</li> </ul>
------------------------	---	--	--

Table 1. KIK Protection in India, the Philippines, and Peru

## 5. Urgency of A Sui Generis Protection for Indonesia's Communal Intellectual Property: Defensive, Positive, or Hybrid?

Indonesia adopts a defensive protection approach, as explicitly stated in Article 27(2) of the PP KIK, "*The integration of KIK data [...] constitutes a form of defensive protection against KIK.*"<sup>72</sup> Furthermore, the Explanation of the Article clarifies that the intended protection is used to defend the existing rights against misuse, misrepresentation, and misappropriation.<sup>73</sup> This database approach aims to prevent the grant of conventional IP that lacks novelty<sup>74</sup> and avoids claims from third parties.<sup>75</sup> This approach to establish a national database is similar to India's approach with its TKDL. However, to date, there appears to be a lack of discernible commitment from the Government in mobilizing concerted efforts concerning inventory initiatives. This raises significant concerns about the efficacy of the approach, emphasizing the need for robust and accurate data collection.

Nevertheless, even if these measures are diligently implemented, they may fail to ensure optimal protection for Indonesia's cultural heritage. Drawing insights from India,

72 PP KIK, Article 27(2).

73 PP KIK, Explanation of Article 27(2).

74 Ministry of Law and Human Rights, *Inventarisasi Kekayaan Intelektual Komunal: Buku Panduan* (Kupang: Ministry of Law and Human Rights of East Nusa Tenggara, 2019), p. 3.

75 Humas DJKI, "PP Nomor 56 Tahun 2022 Disahkan, Inventarisasi Kekayaan Intelektual Komunal Akan Semakin Digeber," Ministry of Law and Human Rights, <https://www.dgip.go.id/artikel/detail-artikel/pp-nomor-56-tahun-2022-disahkan-inventarisasi-kekayaan-intelektual-komunal-akan-semakin-digeber?kategori=liputan-humas> (accessed 20 April 2023).

which faced substantial challenges in documenting orally transmitted cultures, databases alone do not provide a sufficient solution. Therefore, a more comprehensive and nuanced strategy, informed by the complexities encountered by India, is imperative for Indonesia to consider in its pursuit of effectively safeguarding its cultural heritage.

The author recommends a *sui generis* approach that adopts a complementary approach by combining two key approaches, defensive and positive approaches. Peru's approach can serve as a basis for Indonesia to enhance its legal protection of KIK. In addition, their more advanced regulations should also be considered to be adopted for more comprehensive protection. The government cannot be satisfied with protecting assets from theft, but must also prepare infrastructure so that the long-term financial aspects can bring fair benefits. These include access and benefit sharing,<sup>76</sup> clarifying the rules on prior informed consent, and a more detailed classification to distinguish between the secret and the non-secret ones.<sup>77</sup> Philippine regulations also offer insights to formulate more specific rules on KIK ownership, covering aspects like the ownership period.

In addition to strengthening protection through the *sui generis* approach by adding a positive protection perspective with the issuance of relevant regulations, negative protection efforts must also be much more serious by the Government. Firstly, there is still a lack of an "active" perspective by the relevant parties charged with inventorying obligations.<sup>78</sup> Secondly, there is no clear division of authority, especially Local Governments with a comprehensive understanding of the region's characteristics and potential. Third, there is no measurable agenda and framework at the national level. This is necessary so that each Regional Government with its Work Unit (SKPD) can be encouraged to create its own framework, starting from data collection, pre-registration assistance, to consistent guidance. The existence of specific targets at the national and regional levels allows the application of "carrot and stick"<sup>79</sup>, especially with regard to budget allocation.

---

76 Anissa Rizkytia, "Analisis Yuridis Perlindungan Defensif Atas Kekayaan Intelektual Komunal (KIK) di Indonesia Dalam Kaitannya Dengan Pembangunan Nasional (Studi Kasus Pusat Data Nasional KIK)". The distribution of benefits in connection with providing access to parties that will utilise KIK can be in the form of: (i) monetary; (ii) non-monetary, i.e. improving conditions in the area of origin of the KIK, and (iii) transfer of knowledge. This should be in line with regulations on the rights of indigenous peoples and regional autonomy.

77 WIPO IGC, *Tiered and Differentiated Approach to Traditional Knowledge*. In addition to the classification approach taken by Peru, there are several other forms of classification that can be done. First, distinguishing KIK that has the potential to be commercialised and those that are not non-commercial. Second, the tiered or different approach introduced by the WIPO Intergovernmental Committee (IGC), which includes: *sacred*, *secret*, *narrowly diffused*, and *widely diffused*. In addition, there are also those who divide it into *secret*, *sacred*, *publicly access*, and *public domain*. There are also those who add one criterion to TK, namely *closely hand*. This classification is important in Indonesian law, to clarify the essential position and protection for each KIK.

78 PP KIK, Article 3(3). This includes Ministers, ministers/ministers/heads of non-ministerial government agencies, and/or Regional Governments.

79 "Carrot and stick" is a system where you are rewarded for certain actions and threatened with punishment for others.

Defensive Approach	Positive Approach
<ul style="list-style-type: none"> <li>• Foster an "active" perspective among relevant parties responsible for inventorying obligations.</li> <li>• Establish a clear division of authority, emphasizing the role of Local Governments (and its Work Unit) with a comprehensive understanding of regional characteristics and potential.</li> <li>• Implement a measurable agenda and framework at both the national and local levels to enhance effectiveness and accountability.</li> </ul>	<p>Issue relevant regulations to integrate the positive approach into Indonesia's legal framework, with some arrangements to consider:</p> <ul style="list-style-type: none"> <li>• Access and benefit sharing; government prepares long-term financial infrastructure.</li> <li>• More detailed classification.</li> <li>• Period of ownership.</li> <li>• Prior informed consent.</li> </ul>

Table 2. Recommendations for Indonesia's Sui Generis Approach

#### D. Closing

As a country with extraordinary cultural diversity, Indonesia is blessed with extensive KIK that can become one of the pillars of the national economy, and also foster the nation branding of Indonesia. However, the protection is still ineffective due to the lack of clarity of the responsible parties; the absence of an active participation perspective from the parties charged with the obligations, especially the Regional Government; absence of a measurable agenda and framework, both at the central and regional levels.

Furthermore, various countries adopt different approaches regarding the protection of KIK. India, which has similarly embraced such an approach, illustrates the challenges associated with documenting oral cultures. In addition, the Indian government also stated that defensive protection through data collection alone is not enough. Therefore, the establishment of *sui generis* KIK protection in Indonesia by combining defensive and positive approaches is considered essential by the author. The purpose is to uphold the rights of indigenous peoples, as stipulated by the 1945 Constitution of the Republic of Indonesia. Through a comparative analysis of the approaches taken by Peru and the Philippines, it is recommended that the Government consider adopting a positive protection approach through legal frameworks. The author recommends incorporating several regulatory elements from both countries, including ensuring fair benefits to indigenous communities (benefit sharing and royalty payments), introducing a more detailed classification system to differentiate between secret and non-secret information, and establishing clear guidelines for the duration of ownership of KIK.

## Bibliography

### A. Books

- Adam, Fadjar, *Hak Atas Kekayaan Intelektual* (Palu: Yayasan Masyarakat Indonesia Baru Pers, 2002).
- Lutviansori, Atvi, *Hak Cipta dan Perlindungan Folklore di Indonesia* (Yogyakarta: Graha Ilmu, 2010).
- Ministry of Law and Human Rights, *Inventarisasi Kekayaan Intelektual Komunal: Buku Panduan* (Kupang: Ministry of Law and Human Rights of East Nusa Tenggara, 2019).
- WIPO, *Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions* (Geneva: WIPO, 2020).
- WIPO, *Traditional Knowledge and Intellectual Property* (Geneva: WIPO, 2015).

### B. Paper/Article/Proceeding/Research Result

- Aggarwal, Rashmi, "Branding of Geographical Indications in India: A Paradigm to Sustain Its Premium Value," *International Journal of Law and Management* Vol. 56 (2014).
- Aragon, Lorraine, "Copyrighting Culture for the Nation? Intangible Property Nationalism and the Regional Arts of Indonesia," *International Journal of Cultural Property* Vol. 19 (2014).
- Asri, Dyah, "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Journal of Intellectual Property* Vol. 1, No.1 (2018).
- Blakeney, Michael, "Geographical Indications and Environmental Protection," *Frontiers of Law in China* Vol. 12 (2017).
- Bustani, Simona, "Perlindungan Hak Komunal Masyarakat Adat Dalam Perspektif Kekayaan Intelektual Tradisional Di Era Globalisasi: Kenyataan Dan Harapan," *Jurnal Hukum Prioris* Vol. 6, No. 3 (2018).
- Bustani, Simona, "Urgensi Pengaturan Ekspresi Budaya (Folklore) Masyarakat Adat," *Jurnal Hukum Prioris* Vol. 2, No. 4 (2016).
- Clark, Susanna E., Isabel Lapeña and Manuel Ruiz, "The Protection of Traditional Knowledge in Peru: A Comparative Perspective," *Washington University Global Studies Law Review* Vol. 3, Iss. 3 (2004).
- Effida, Dara, "Tinjauan Yuridis Indikasi Geografis Sebagai Hak Kekayaan Intelektual Non-Individual (Komunal)," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* Vol. 3, No. 2 (2019).
- Febriaharini, Mahmuda, "Eksistensi Hak Atas Kekayaan Intelektual Terhadap Hukum Siber," *Serat Acitya* Vol. 5, No. 1 (2016).

- Fredriksson, Martin, "Balancing Community Rights And National Interests In International Protection Of Traditional Knowledge," *Third World Quarterly* Vol. 43, No. 2 (2022).
- Hilty, Reto M., Pedro Henrique D. Batista and Suelen Carls, "Traditional Knowledge, Databases and Prior Art," *Max Planck Institute for Innovation and Competition Research Paper* No. 21-23 (2022).
- Mahila, Syarif, "Keberadaan Hak Kekayaan Intelektual Seni Batik Jambi Di Kota Jambi," *Universitas Batanghari Jambi* Vol. 18, No. 3 (2018).
- Masrur, Devica, "Upaya Perlindungan Sumber Daya Genetik Berdasarkan Undang-Undang Nomor 13 Tahun 2016 Tentang Paten," *Jurnal Jurisprudence* Vol. 8, No. 2 (2019).
- Nuraeni and Rona Ikram Putri, "The International Dimension Of Communal And Traditional Intellectual Property Rights Protection In Indonesia," *Intermestic: Journal of International Studies* Vol. 2, No. 1 (2017).
- Putri, Yunita, "Perlindungan Bagi Hak Kekayaan Intelektual Komunal," *Jurnal Hukum De'Rechsstaat* Vol. 7, No. 2 (2021).
- Ramadhan, Muhammad Citra and Fitri Yanni Dewi Siregar, "Protecting Communal Intellectual Property In Indonesia," *Kanun Jurnal Ilmu Hukum* Vol. 24, No. 3, (2022).
- Rohaini and Nenny Dwi Ariani, "Positive Protection: Protecting Genetic Resources Related to Traditional Knowledge in Indonesia," *Fiat Justisia Jurnal Ilmu Hukum* Vol. 11 No. 2 (2017).
- Sari, Nuzulia and Dinda Mawaradah, "Sistem Pendataan Kebudayaan Terpadu Alternatif Perlindungan Hukum Ekspresi Budaya Tradisional," *Jurnal Legislasi Indonesia* Vol. 18, No. 3 (2021).
- Septarina, Muthia, "Perlindungan Hukum Pengetahuan Tradisional Dalam Konsep Hukum Kekayaan Intelektual," *Al'Adl* Vol. 8, No. 2 (2016).
- Simatupang, Taufik H., "Initiating The Concept of *Sui Generis* of The Legal Protection Of Communal Intellectual Property in the Philosophy of Science Perspective," *Jurnal De Jure* Vol. 22 No. 2 (2022).
- Suparman, Eman, "Perlindungan Hukum Kekayaan Intelektual Masyarakat Tradisional," *Jurnal Pengabdian Masyarakat* Vol. 2, No. 7 (2018).
- Widyanti, Yenny, "Protection of Indonesian Traditional Cultural Expressions in the *Sui Generis* System," *Arena Hukum* Vol. 13, No. 3 (2020).
- Widyanti, Yenny, "The Urgency Of *Sui Generis* Protection Of Communal Intellectual Property In Indonesia: A Comparative Study in Philippines," *Jurisdictie: Jurnal Hukum dan Syariah* Vol. 13 No. 1 (2022).

### C. Internet

- Chandanam, Poorvika, "Intellectual Property Rights and Traditional Form of Expressions," IP Matters, <https://www.theipmatters.com/post/intellectual-property-rights-and-traditional-form-of-expressions> (accessed 20 April 2023).
- Chowdhary, Juhi, "Intellectual Property and Traditional Knowledge," Legal Service India, <https://www.legalserviceindia.com/article/I98-Intellectual-Property-and-Traditional-knowledge.html> (accessed 20 April 2023).
- DJKI, "DJKI: Belum Memiliki Kedaulatan Kekayaan Intelektual Komunal, Kebudayaan Indonesia Rawan Dicuri," Ministry of Law and Human Rights, <https://www.dgip.go.id/artikel/detail-artikel/djki-belum-memiliki-kedaulatan-kekayaan-intelektual-komunal-kebudayaan-indonesia-rawan-dicuri?kategori=ki-komunal> (accessed 27 April 2023).
- DJKI, "PP Nomor 56 Tahun 2022 Disahkan, Inventarisasi Kekayaan Intelektual Komunal Akan Semakin Digeber," Ministry of Law and Human Rights, <https://www.dgip.go.id/artikel/detail-artikel/pp-nomor-56-tahun-2022-disahkan-inventarisasi-kekayaan-intelektual-komunal-akan-semakin-digeber> (accessed 20 April 2023).
- Humas OJK, "Prospek Hak Kekayaan Intelektual (HKI) sebagai Jaminan Utang," Otoritas Jasa Keuangan, <https://www.ojk.go.id/ojk-institute/id/capacitybuilding/upcoming/1110/prospek-hak-kekayaan-intelektual-hki-sebagai-jaminan-utang> (accessed 9 November 2023).
- Mahotsav, Azadi Ka Amrit, "Cabinet Approves Widening Access Of The Traditional Knowledge Digital Library (TKDL) Database To Users, Besides Patent Offices," PIB Delhi, <https://pib.gov.in/PressReleasePage.aspx?PRID=1852528> (accessed 20 April 2023).
- MoFA, "Kain Endek Bali Warnai Koleksi Christian Dior Spring/Summer 2021," <https://kemlu.go.id/paris/id/news/8677/kain-endek-bali-warnai-koleksi-christian-dior-springsummer-2021> (accessed 10 November 2023).
- Rianti, Reny, "Urgensi Perlindungan HKI Komunal," Badan Penelitian & Pengembangan Provinsi Kalimantan Barat, <https://litbang.kalbarprov.go.id/artikel/artikel/urgensi-perlindungan-hki-komunal> (accessed 20 April 2023).
- WIPO, "Intergovernmental Committee On Intellectual Property And Genetic Resources, Traditional Knowledge And Folklore" [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_5/wipo\\_grtkf\\_ic\\_5\\_12.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_5/wipo_grtkf_ic_5_12.pdf) (accessed 20 April 2023).
- WIPO, "Patent Cooperation Treaty (PCT)," WIPO, <https://www.wipo.int/treaties/en/registration/pct/> (accessed 20 April 2023).
- WIPO, *Traditional Knowledge and Intellectual Property: Background Brief No. 1* (Geneva: WIPO, 2012), p. 2; Ken & Krishme, "Traditional Knowledge," <https://kankrishme.com/service/traditional-knowledge/> (accessed 20 April 2023).

#### **D. Regulations**

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Undang-Undang Nomor 13 Tahun 2016 Tentang Paten

Undang-Undang Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis

Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta

Peraturan Pemerintah Nomor 56 Tahun 2022 Tentang Kekayaan Intelektual Komunal

Peru, Law 27811 of 24 July 2002

The Philippines, Indigenous People Rights Act No. 8371

United Nations Declaration on the Rights of Indigenous Peoples



## Curriculum Vitae of the Author

**Bryan Eduardus Christiano**, a distinguished graduate from the Faculty of Law at Universitas Indonesia, has attained the notable position of 3rd Runner-up of the Most Outstanding Student, ranking within the top 4 among a cohort of 700+ individuals. Throughout his academic journey, Bryan has demonstrated exemplary leadership qualities and actively contributed to various social, educational, and legal initiatives. His noteworthy roles include acting as the Chairman of the National Law Debate Community Indonesia in 2021.

Furthermore, Bryan has showcased his international acumen by excelling in numerous competitions, most notably securing victory in the International Tribunal for the Law of the Sea Moot Court in 2020. Notably, he holds the distinction of being the youngest Paper Presenter at the University of Leeds' International Workshop on "*Decolonizing Gender & Climate Change*" and served as an Indonesian delegate to the Regional Conference of Youth-Asia and the Pacific.

In addition to his achievements, Bryan has authored several articles in English, including "*Indonesian Health Workers' Legal Protection Towards WHO Charter Amidst COVID-19*," published in ALSA Law Review Magazine Volume 9 No. 2, and "*Implications of Job Creation Law to the Establishment of Village-Owned Enterprises As A Legal Entity*," featured in Indonesian Law Journal Volume 14 No. 2.

## COMMUNAL INTELLECTUAL PROPERTY IN THE DIGITAL AGE: EXPLORING THE RELEVANCE, REGULATION, AND IMPACT OF CREATIVE COMMONS LICENSES

Muhammad Iqbal

Southwest University of Political Science and Law

Author's e-mail: [muhammadiqbal4006@gmail.com](mailto:muhammadiqbal4006@gmail.com)

### ABSTRACT

This paper explores communal intellectual property, focusing on shared ownership and collective control, contrasting it with traditional individual ownership in the digital era. It analyses existing literature and legal frameworks, focusing on characteristics that facilitate communal intellectual property and compliance with copyright laws, as well as protecting creators' and users' rights. It emphasizes the need to regulate technology to safeguard privacy and security. Specifically, it discusses Creative Commons licenses (which enable standardized sharing of creative works while retaining selective rights), open licensing models, and their relationship with each other and the copyright laws. The paper briefly examines the Indonesian laws in this context. It also examines the impact of AI and blockchain on copyright and open licensing, as well as the Indonesian stance on them. The paper concludes by acknowledging the need for an evolving legal framework required for accommodating these licensing models.

**Keywords:** Communal Intellectual Property, Open Licensing, Creative Commons, AI, Blockchain, Copyright Law

### A. Introduction

As opposed to the traditional concept of intellectual property, communal intellectual property is the application and realization of a system where intellectual property is collectively owned and managed by a community or group of individuals.<sup>1</sup> Communal intellectual property and the traditional concept of intellectual property represent two different approaches, even though there may be significant overlap between the two – the primary difference between them lies in the emphasis on ownership.<sup>2</sup> While traditional intellectual property emphasizes individual ownership and control over creative works, communal intellectual property emphasizes shared ownership and collective control in an

---

1 David W Opderbeck, 'The Penguin's Paradox: The Political Economy of International Intellectual Property and the Paradox of Open Intellectual Property Models' (2007) 18 Stan Law & Policy Review 101, 102.

2 Tiki Dare & Harvey Anderson, 'Passport Without A Visa: Open-Source Software Licensing and Trademarks' (2009) 1(2) JOLTS <<https://www.jolts.world/index.php/jolts/article/view/11>> accessed 14 June 2023.

attempt to encourage collaboration, open access, and the free flow of information, with an emphasis on the community or collective benefit rather than individual ownership.<sup>3</sup>

The need for communal intellectual property becomes highly relevant in the contemporary state of affairs, where the digital world has transcended geographical boundaries regarding information sharing.<sup>4</sup> In the borderless digital environment of today, technology such as online platforms, decentralized systems, and blockchain, can enable the creation, distribution, and management of communal intellectual property assets.<sup>5</sup>

Therefore, with the gradual realization and implementation of communal intellectual property, there arises a need to analyze the primary characteristics of what facilitates this form of intellectual property sharing. This ensures that the processes and systems used to further communal IP comply with existing copyright laws, intellectual property rights, and other relevant legal frameworks. It also helps in protecting the rights of creators, users, and other stakeholders who are a part of the communal intellectual property ecosystem.<sup>6</sup>

The role of communal intellectual property is also extremely relevant for protecting indigenous communal property rights. United Nations has defined indigenous knowledge as – “*a form of rational and reliable knowledge developed through generations of intimate contact by native people with their lands.*”<sup>7</sup> The need to protect these rights and this branch of knowledge comes from the understanding that cultural objects have a special protected status, owing to the intangible legacy value for people, as it symbolizes of their identity.<sup>8</sup>

Concerning Indonesia, a culturally megadiverse country, protecting communal intellectual property plays a significant role. The custodians of such communal intellectual property perceive it more as a deposit from the ancestors, as opposed to a benefit granted to them from an economic point of view.<sup>9</sup>

However, such Indonesian communal property has been vulnerable to acts of misappropriation and illegal commercialization.<sup>10</sup> There have been several claims of violation of the traditional cultural expression (which is a part of Indonesia’s communal

- 
- 3 E.S. Nwauche, ‘The Emerging Right to Communal Intellectual Property’ (2015) 19 (2) *Marquette Intellectual Property Law Review* <<http://scholarship.law.marquette.edu/ipplr/vol19/iss2/4>> accessed 14th June 2023.
  - 4 Greg R Vetter, ‘Open Source Licensing and Scattering Opportunism in Software Standards’ (2007) 48 *BC L Rev* 225, 225.
  - 5 Balazas Bodo and Daniel Gervais and Joao Pedro Quintais, ‘Blockchain and Smart Contracts: The Missing Link in Copyright Licensing’ (2018) 26 *Int’l JL & Info Tech* 311.
  - 6 Philips Sandner, Jonas Gross and Robert Richter, ‘Convergence of Blockchain, IoT, and AI’, (2020) 3 *Frontiers in Blockchain* <<https://www.frontiersin.org/articles/10.3389/fbloc.2020.522600/full>> accessed on 16<sup>th</sup> June, 2023.
  - 7 UNEP, *Report of the Fourth Meeting of the Conference of the Parties to the Convention on Biological Diversity* (UNEP/CBD/COP/4/27).
  - 8 E. Campfens, ‘Whose Cultural Objects? Introducing Heritage Title for Cross-Border Cultural Property Claims’ (2020) 67 *Neth Int Law Rev LQR* 257–295.
  - 9 Antons C, *Intellectual Property Law in Indonesia* (Kluwer Law International 2000)
  - 10 Y. M., Putri, R. W., & Tisnanta, H. S., ‘Communal Rights as the Hegemony in Third World Regime: An Indonesian Perspective’ (2020) 19(2) *Indonesian Journal of International Law LQR* 289-315.

intellectual property) by foreign parties – in an advertisement on the Discovery Channel in Enigmatic Malaysia, the dance forms of Pendet, Wayang, and Reog Ponorogo have been wrongly shown in Malaysian tourism advertisements.<sup>11</sup>

As per the 1945 Constitution, the government of Indonesia is obligated to – “*promote Indonesia’s national culture in the midst of world civilization by guaranteeing the freedom of the people to maintain and develop their cultural values, and the state respects and preserves local languages as national cultural treasures.*”<sup>12</sup> Thus, the ethnic and cultural diversity, which has given birth to the intangible cultural heritage as part of traditional cultural expression in Indonesia, must be protected, preserved, and developed by the state as a communal intellectual property right.<sup>13</sup>

Accordingly, there is a need to regulate the technology used in the communal intellectual property space, as it often involves the collection, storage, and sharing of sensitive data – which includes personal information, intellectual property assets, as well as the cultural, anthropological heritage and history of diverse cultures.<sup>14</sup> Hence, regulation helps establish guidelines and safeguards to protect the privacy, security of individuals, their creative works, as well as traditional cultural heritage. It ensures that data handling practices adhere to legal requirements and industry standards, reducing the risks of unauthorized access, data breaches, or misuse of personal and intellectual property-related information.<sup>15</sup>

One such framework to implement the same within community intellectual property is open licensing models.<sup>16</sup> Open licensing models are closely related to communal intellectual property, as they provide a legal mechanism to enable the sharing, reuse, and remixing of creative works within a community or collective context, thus allowing creators to grant permissions to others for the use, adaptation, and distribution of their creative works.<sup>17</sup>

These licenses are designed to facilitate the sharing and collaboration of intellectual property, promoting a more open and inclusive approach to creative expression.<sup>18</sup> By

- 
- 11 Yenny Eta Widyanti, ‘Perlindungan Ekspresi Budaya Tradisional Indonesia Dalam Sistem Yang Sui Generis’ (2020) 13(3) Arena Hukum LQR 388-415.
  - 12 The 1945 Constitution of Indonesia, 1945, 32(1),(2); M. Citra Ramadhan, ‘Protecting Communal Intellectual Property In Indonesia: Constraints Faced By The Directorate General For Intellectual Property,’ (2022) 24,3 Kanun Jurnal Ilmu Hukum, 267, 268
  - 13 Taufik H. Simatupang, ‘Initiating The Concept Of Sui Generis Of The Legal Protection F Communal Intellectual Property In The Philosophy Of Science Perspective’ (2022) 22(2) Jurnal Penelitian Hukum De Jure
  - 14 Huang-Chih Sung, ‘Prospects and Challenges Posed by Blockchain Technology on the Copyright Legal System’ (2019) 9 Queen Mary J Intell Prop 430.
  - 15 *ibid.*
  - 16 Catharina Maracke, ‘Copyright Management for Open Collaborative Projects - Inbound Licensing Models for Open Innovation’ (2013) 10 SCRIPTed 140, 141.
  - 17 Dennis K. Kennedy, ‘A Primer on Open-Source Licensing Legal Issues: Copyright, Copyleft and Copyfuture’ (2001) 20 (2) Saint Louis University Public Law Review. <<https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1393&context=plr>> accessed 14 June, 2023.
  - 18 David W Opderbeck, ‘The Penguin’s Paradox: The Political Economy of International Intellectual Property and the Paradox of Open Intellectual Property Models’ (2007) 18 Stan L & Pol’y Rev 101, 102.

choosing open licenses, creators contribute to the communal intellectual property ecosystem by allowing others to use their works in ways that benefit the community or society as a whole, while also overcoming the limitations of traditional copyright, which often restricts access, stifles collaboration, and impedes imaginative creation.<sup>19</sup> Open licensing models promote a culture of sharing, openness, and collective participation in the creative process, aligning with the goals of communal intellectual property to foster collaboration, innovation, and access to knowledge and culture.<sup>20</sup>

One such open licensing model is Creative Commons, an organization that provides a framework of open licensing options for creators to share their works with the public while retaining selective rights.<sup>21</sup> These licenses enable creators to signal their intentions regarding the use, adaptation, and distribution of their works. They are designed in such a way as to support the principles of communal intellectual property by promoting collaboration, access to knowledge, and cultural diversity.<sup>22</sup> These licenses are designed to have a consistent structure, which makes it easier for creators and users to understand and apply the licenses.<sup>23</sup>

The licenses combine four main elements – attribution, non-commercial use, share-alike, and no derivatives.<sup>24</sup> These elements can be combined to form six different licenses, each with a different set of permissions and restrictions, and can be customized as per each individual need.<sup>25</sup> This is further complimented by their compatibility with other open licensing frameworks and public domain dedications. This allows for the seamless integration and interoperability of works licensed under different open licenses, thus facilitating collaboration and remixing within the communal intellectual property ecosystem.<sup>26</sup>

In terms of accessibility, Creative Commons licenses are designed to be machine-readable, thus quickly processed by computers and search engines and enabling automatic identification, filtering, and attribution of licensed content.<sup>27</sup> In terms of application, these licenses are designed to be internationally applicable, considering the variations in copyright

---

19 Zachary Katz, 'Pitfalls of Open Licensing: An Analysis of Creative Commons Licensing' (2006) 46 IDEA 391.

20 *ibid.*

21 Creative Commons, <<https://creativecommons.org/licenses/#:~:text=This%20license%20lets%20others%20distribute,and%20use%20of%20licensed%20materials.>> accessed 14 June 2023 (hereinafter, "**Creative Commons**"); Lynn M. Forsythe & Deborah J. Kemp, 'Creative Commons: For the Common Good' (2009) 30 U La Verne L Rev 346.

22 Creative Commons; Michal Koscik & Jaromir Savelka, 'Dangers of over-Enthusiasm in Licensing under Creative Commons' (2013) 7 Masaryk U JL & Tech 201.

23 Creative Commons; Jessica Coates, 'Creative Commons - The Next Generation: Creative Commons Licence Use Five Years on' (2007) 4 SCRIPTed 72, 72.

24 Creative Commons; Mira T. Sundara Rajan, 'Creative Commons: America's Moral Rights' (2011) 21 Fordham Intell Prop Media & Ent LJ 905

25 Creative Commons.

26 Tony Simmonds, 'Common Knowledge? The Rise of Creative Commons Licensing' (2010) 10 LIM 162.

27 Creative Commons; Michael W Carroll, 'Creative Commons and the New Intermediaries' (2006) 2006 Mich St L Rev 45, 45.

laws across different jurisdictions and providing a globally recognized framework for sharing and using intellectual property.<sup>28</sup>

At the first glance, these characteristics may come across as establishing open licensing models as the better option in comparison to traditional licensing, as traditional individual intellectual property licenses often impose strict restrictions on access and sharing, limiting the dissemination of imaginative creation. Further, traditional individual intellectual property licenses can be complex and challenging to navigate, especially for individuals without legal expertise.<sup>29</sup>

However, when seen from a legal standpoint and from the perspective of regulation and implementation of intellectual property rights, especially in the context of the recent advent of the digitization of information sharing and access, certain aspects of discussion come to the forefront which, require analysis of open licensing and the challenges of a borderless digital environment. These include the impact and effectiveness of open licensing models and potential legal implications, as well as exploring emerging trends and future perspectives in the same field, such as the role of open licensing in emerging technologies, including AI and blockchain.

Accordingly, the purpose of this paper is to explore the concepts pertaining to communal intellectual property, as juxtaposed against traditional intellectual property. This paper will highlight the relevance of communal intellectual property in the digital age, particularly in safeguarding cultural heritage. It shall also examine open licensing models, specifically Creative Commons, and their legal implications. In this regard, it will also discuss emerging technologies and the need for their regulation.

## **B. Research Method**

This research aims to examine the emergence and impact of open licensing models, specifically focusing on Creative Commons, as a response to the challenges and opportunities presented by the traditional intellectual property regime. The research methodology involves a comprehensive analysis of existing literature and legal frameworks to provide a thorough understanding of the subject matter.

The research will adopt a qualitative approach, utilizing a literature review as the primary method of data collection. A systematic review of scholarly articles, legal documents, and reports will be conducted to gather relevant information on the prominence of open licensing models and their relationship with copyright law. The literature review will help identify key themes, theoretical frameworks, and debates surrounding open licensing and its impact on knowledge sharing and creativity.

---

28 Tony Simmonds, 'Common Knowledge? The Rise of Creative Commons Licensing' (2010) 10 LIM 162.

29 *ibid.*

In addition to the literature review, legal analysis will be employed to examine the legal frameworks governing open licensing, focusing on the Creative Commons licenses. This analysis will involve an in-depth study of copyright laws, licenses, and case law to understand the legal implications and enforceability of open licenses.

Furthermore, the research will utilize a case study approach, with a specific focus on the Creative Commons organization. This will involve analyzing the development, evolution, and impact of Creative Commons licenses in facilitating the sharing and accessibility of creative works. The case study will include an examination of the licenses' structure, permissions, and restrictions, as well as their compatibility with copyright law.

Multiple sources of data will be utilized to ensure the reliability and validity of the research findings. Findings will be integrated from the literature review, legal analysis, and case study to provide a comprehensive and well-rounded understanding of open licensing models. Proper citation and attribution will be ensured to respect intellectual property rights, and any limitations or restrictions on the use of data or sources will be acknowledged. The research findings will be analyzed thematically – key patterns, trends, and implications related to the prominence and impact of open licensing models shall be identified. The results will be presented in a clear and coherent manner, supported by evidence from the literature review, legal analysis, and case study.

## C. Discussions

### 1. The Emergence of Open License Models, and the Evolution of Creative Commons

The prominence of open licensing models can be contributed to the emergence of the digital world and can be considered a response to the challenges and opportunities presented by the traditional intellectual property regime of the individual.<sup>30</sup> The rise of the internet and sophisticated application of technology has facilitated the easy sharing and distribution of exclusive creations, leading to a need for alternative approaches to traditional copyright frameworks.<sup>31</sup> This need has slowly been recognized with the difficulty in the application and implementation of the traditional copyright framework to content in a borderless digital environment, as well as knowledge-sharing to promote and further creativity and easy access to user content while also accessing some degree of ownership to the same.<sup>32</sup>

The advent of open-source software can be traced back to frameworks such as the GNU General Public License (“**GPL**”), which was released in 1989 by the Free Software

---

30 *ibid.*

31 Open Source Licensing: Virus or Virtue?, 10 TEx. INTELL. PROP. L.J. 349, 352 (2002)

32 GNU General Public License, Preamble, < <https://www.gnu.org/licenses/gpl-3.0.en.html>>, accessed on 15<sup>th</sup> June, 2023.

Foundation to ensure that software remains free and open to use, modify, and distribute.<sup>33</sup> As it used copyright law to enforce the freedom of the use of software, it is often referred to as is often referred to as a 'copyleft license'.<sup>34</sup> It played an important role in promoting the principles of free software and furthering the principles of collaboration and innovation within the open-source software ecosystem, and many popular software projects, such as the Linux operating system, use the GPL as their license.<sup>35</sup>

The characteristics of this license can be compared to the Creative Commons licensing framework, as they differed majorly in terms of freedom, distribution, and compatibility.<sup>36</sup> The GPL allows anyone to use the software for any purpose, whether personal, commercial, or non-profit.<sup>37</sup> Further, it grants the users the right to study, modify, and adapt the software according to their needs, including the ability to access and modify the source code of the software.<sup>38</sup> Any such modification is required to be distributed under the same GPL terms, ensuring that the freedom of the software is preserved and the evolution of the software is shared without prejudice to further access to this knowledge.<sup>39</sup>

Moreover, the GPL includes a copyleft provision that ensures that any derivative works or modifications of the software are also licensed under the GPL, thus including its derivatives under the shelter of free access.<sup>40</sup> Further, much like Creative Commons, it is designed to be compatible with other open-source licenses, allowing developers to combine GPL-licensed software with software under different open-source licenses across jurisdictions.<sup>41</sup>

It can be evinced that the GPL furthers open licensing in the intellectual property regime.<sup>42</sup> Its copyleft had a profound impact on the growth of open-source licensing and thus sparked a ripple effect, where open-source values and licensing principles permeate various domains outside of software and into creative domains like art, literature, and music.<sup>43</sup> Through its licensing requirements and community-driven development process,

---

33 Open Source, <<https://opensource.org/licenses-old/gpl-license-html/>> accessed 15 June, 2023.

34 GNU General Public License, Preamble, < <https://www.gnu.org/licenses/gpl-3.0.en.html>>, accessed on 15<sup>th</sup> June, 2023.

35 Linux Kernel Licensing Rules, <<https://www.kernel.org/doc/html/v4.16/process/license-rules.html>>, accessed 16 June, 2023.

36 GNU General Public License, Basic Permissions, <<https://www.gnu.org/licenses/gpl-3.0.en.html>>, accessed 16 June, 2023.

37 *ibid.*

38 *ibid.*

39 Dennis K. Kennedy, 'A Primer on Open-Source Licensing Legal Issues: Copyright, Copyleft and Copyfuture' (2001) 20 (2) Saint Louis University Public Law Review. <<https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1393&context=plr>> accessed 14 June, 2023.

40 Open Source, <<https://opensource.org/licenses-old/gpl-license-html/>> accessed 15 June, 2023.

41 GPL-Compatible Free Software Licenses, < <https://www.gnu.org/licenses/license-list.en.html#GPLCompatibleLicenses>> accessed 16 June, 2023.

42 Sapna Kumar, 'Enforcing the GNU GPL' (2006) 2006 U Ill JL Tech & Pol'y 1, 1.

43 Robert W Gomulkiewicz, 'Open Source License Proliferation: Helpful Diversity or Hopeless Confusion' (2009) 30 Wash U J L & Pol'y 261, 261.



the GPL has cultivated an environment where individuals freely contribute, build upon, and improve upon existing software.<sup>44</sup>

Thus, Creative Commons licenses are a direct response to this need for open collaboration, offering a flexible and standardized framework that enables creators to share their works with specific permissions and restrictions.<sup>45</sup> However, one of the most important contributions of GPL to the emergence and realization of open licensing is the eventual advent of frameworks such as Creative Commons. It sets the precedent for a robust legal framework that can protect and promote open-source ideals, thus enabling developers to confidently contribute and share their work to a degree of their own comfort without having to conform to stringent requirements of regular copyright in case they want to license their work.<sup>46</sup>

Creative Commons, founded in 2001, played a crucial role in standardizing open licensing practices and raising awareness of the possibilities for sharing creative pursuits in art, music, and literature while also ensuring the legal protection of such work.<sup>47</sup> The organization sought to simplify the licensing process by providing a suite of standardized licenses that creators could easily apply to their works.<sup>48</sup> As opposed to a traditional copyright framework, Creative Commons licenses are designed to be user-friendly, enabling creators to communicate their intentions regarding the permissions and restrictions they wished to associate with their works.<sup>49</sup> The licenses offered a balanced approach, giving creators the ability to retain certain rights, while granting others the freedom to use and build upon their work.<sup>50</sup>

Creative Commons licenses have evolved over time to accommodate the diverse needs of creators and users in different creative domains. The license suite offers a range of options that allow creators to specify their desired permissions and restrictions.<sup>51</sup> These licenses are expressed through a combination of four core elements – Attribution (BY), ShareAlike (SA), NonCommercial (NC), and No Derivatives (ND). The elements cover the different degrees of sharing capacities which a creator may wish to pursue.<sup>52</sup>

---

44 Michael A Einhorn, 'Open Source and Innovative Copyright' (2004) 22 IPL News 30, 30.

45 Mark A Lemley and Ziv Shafir, 'Who Chooses Open-Source Software' (2011) 78 U Chi L Rev 139, 139.

46 GNU General Public License, Preamble, < <https://www.gnu.org/licenses/gpl-3.0.en.html>>, accessed on 15th June, 2023.

47 Chunyan Wang, 'Creative Commons Licence: An Alternative Solution to Copyright in the New Media Arena' in Brian Fitzgerald, Fuping Gao, Damien O'Brien Shi, Xiaoxiang Samsung (eds), *Copyright Law, Digital Content and the Internet in the Asia-Pacific* (Sydney University Press 2008)

48 Creative Commons; Michael W Carroll, 'Creative Commons and the New Intermediaries' (2006) 2006 Mich St L Rev 45, 45.

49 Creative Commons; Frank Polcino, 'The Creative Commons: A Supplement to Copyright in Today's Technological Culture' (2012) 2 Pace Intell Prop Sports & Ent LF 210

50 *ibid.*

51 Creative Commons; Eli Greenbaum, 'The Non-Discrimination Principle in Open Source Licensing' (2016) 37 Cardozo L Rev 1297, 1297.

52 *ibid.*

The Attribution (BY) element requires that users of the licensed work give appropriate credit to the original creator.<sup>53</sup> When using a work under a Creative Commons license with the BY element, users must attribute the creator by acknowledging their name or the provided attribution information.<sup>54</sup>

The ShareAlike element requires any adaptations or modifications to the original work to be shared under the same license terms. This provision helps to foster a culture of collaboration by ensuring that derivative creations remain open and freely accessible to others.<sup>55</sup>

For creators who prefer that their work remains non-commercial in nature, the NonCommercial (NC) element restricts the use of the licensed work for commercial purposes. When a Creative Commons license includes the NC element, users are prohibited from using the work in a way that generates revenue, directly or indirectly.<sup>56</sup>

Finally, if the creators would prefer that their original content is not used for any derivative work, the No Derivatives (ND) element prohibits the creation of derivative works based on the original licensed work. Under a Creative Commons license with the ND element, users are not allowed to modify, adapt, or remix the creation.<sup>57</sup>

The growth of open licensing models, such as Creative Commons, has raised important legal and policy considerations due to its variance from traditional frameworks.<sup>58</sup> The application and enforceability of open licenses vary across jurisdictions, and legal frameworks continue to evolve to accommodate these new licensing models.<sup>59</sup> Questions regarding the relationship between open licenses and copyright law, the scope of license terms, and the legal implications of license violations have been subjects of legal debates and court cases.<sup>60</sup> This will be analyzed in detail in the next section.

---

53 Creative Commons; H Ward Classen, 'Open Source Licensing and Its IP Considerations' (2005) 14 Bus L Today 9, 9.

54 Christian H Nadan, 'Open Source Licensing: Virus or Virtue' (2002) 10 Tex Intell Prop LJ 349, 349.

55 Heather N. Kjos, 'The Statutory Damages Regime of Copyright Law: The Non-Commercial User and Capitol Records, Inc. v. Thomas-Rasset' (2010) 1 Cybaris Intell Prop L Rev 174

56 *ibid.*

57 Creative Commons License Code, < <https://creativecommons.org/licenses/by/3.0/legalcode>> accessed 14 June 2023 (hereinafter, "**Creative Commons License Code**"); Joe Mutschelknaus, 'Spillover Effect: Investigating Patent Implications to Open-Source Software Copyright Licensing' (2010) 19 Fed Cir BJ 409, 409.

58 Ahrash N. Bissell, 'Permission granted: open licensing for educational resources, Open Learning: The Journal of Open, Distance and e-Learning', (2009) 24, 1.

59 Melanie Dulong de Rosnay, 'Creative Commons: Open Content Licenses to Govern Creative Works', European Journal for the Informatics Professional, (2006) 7,3.

60 O'Reilly, Legal Impacts of Open Source and Free Software Licensing, <<https://www.oreilly.com/library/view/understanding-open-source/0596005814/ch06.html>> accessed 16 June, 2023.

## 2. Relationship between Open Licenses and Copyright Law in the case of Creative Commons

Copyright law automatically grants creators exclusive rights over their original works. These rights include the right to reproduce, distribute, display, and create derivative works based on the original work.<sup>61</sup> By default, any use of a copyrighted work requires permission from the copyright holder. Thus, the concept of open licenses relies on using the protection granted by trademark law to ensure permission to others for use.

Creative Commons licenses function as legal instruments that allow creators to grant permissions to others in a standardized and easily understandable manner.<sup>62</sup> These licenses are based on copyright law, and are designed to work within its framework, following the 'copyleft' principle. They specify the permissions granted by the copyright holder, outlining the conditions under which others can use the work.<sup>63</sup>

Creative Commons licenses define the terms and conditions under which the licensed works can be used.<sup>64</sup> These licenses may include requirements for attribution, share-alike, non-commercial use, and restrictions on creating derivative works.<sup>65</sup> By specifying these terms, the licenses provide clarity to both creators and users regarding the permissions granted and the obligations that accompany the use of the work.<sup>66</sup> Therefore, as open licenses operate within the realm of copyright law, Creative Commons licenses are legally enforceable agreements that rely on copyright law for their enforcement. When users comply with the terms of a Creative Commons license, they are granted the permissions specified by the license. If someone violates the terms of the license, they can be held legally accountable for copyright infringement.<sup>67</sup>

An analysis of the Creative Commons Legal Code ("**the Code**") gives an interesting overview of the interface between copyright law and open licensing. The Code provides for fair dealing rights, which states that the Creative Commons license does not limit or restrict any uses that are already permitted under copyright law or other applicable laws.<sup>68</sup> Therefore, these licenses operate completely within the realm of copyright law and find their legal mandate through the same.

---

61 Dennis K. Kennedy, 'A Primer on Open-Source Licensing Legal Issues: Copyright, Copyleft and Copyfuture' (2001) 20 (2) Saint Louis University Public Law Review.

62 *ibid.*

63 *ibid.*

64 Creative Commons; Stefano Leucci, 'Preliminary Notes on Open Data Licensing' (2014) 2 J Open Access L 1, 1.

65 *ibid.*

66 Creative Commons; Jason Schultz and Jennifer M Urban, 'Protecting Open Innovation: The Defensive Patent License as a New Approach to Patent Threats, Transaction Costs, and Tactical Disarmament' (2012) 26 Harv J L & Tech 1, 1.

67 Creative Commons License Code; Michael W Carroll, 'Creative Commons and the New Intermediaries' (2006) 2006 Mich St L Rev 45, 45.

68 Creative Commons License Code; Severine Dusollier, 'The Master's Tools v. the Master's House: Creative Commons v. Copyright' (2006) 29 Colum JL & Arts 271

Further, as per the Code, the licensor grants the licensee a worldwide, royalty-free, non-exclusive, perpetual license to exercise rights such as reproduction, incorporation, and distribution of the licensed work as well as adaptations.<sup>69</sup> Thus, when these two rules are read together, it can clearly be seen how copyright law is used to propagate the free access and sharing of creative product.

An important aspect of copyright law – royalties – is a requirement and a diversion from usual copyright contracts, as multiple people across jurisdictions use the creative product worldwide. Thus, the Code clarifies the status of royalties in three situations – (i) in jurisdictions where the right to collect royalties cannot be waived, the Licensor reserves the right to collect such royalties;<sup>70</sup> (ii) in jurisdictions where royalties can be waived, the licensor waives the right to collect them,<sup>71</sup> and (iii) in voluntary license schemes, the licensor waives the right to collect royalties.<sup>72</sup>

It is also relevant to note the effects of the restrictions which are mentioned in the Code. In furtherance of the copyleft principle, the Code prohibits the imposition of any additional restrictions on the work that contradicts the license<sup>73</sup> to preserve the spirit of open licensing and free access and sharing, and to ensure that individuals do not misuse the product of open licensing. In a similar vein, it is further mandated that such work is not sublicensed.<sup>74</sup> The Code also clarifies that this license does not create any additional rights under the applicable law.<sup>75</sup>

Thus, it can safely be concluded while open licenses operate within the boundaries of copyright law, they expand user rights by granting permissions beyond what copyright law typically allows. They provide a legal framework that allows creators to share their works while maintaining some control and specifying conditions for use. Open licenses are a valuable tool in a borderless digital environment for promoting openness and facilitating the sharing of creative works within the constraints of copyright law, as can be seen in the case study of Creative Commons.

It is interesting to note that Indonesia amended its copyright law in 2014, specifically

---

69 Creative Commons License Code; Herkko A. Hietanen, 'A License or a Contract, Analysing the Nature of Creative Commons Licenses' (2007) NIPLR 1, accessed 17<sup>th</sup> June 2023.

70 Creative Commons License Code; Brian L. Fyre, 'A License to Plagiarize' (2020) UALR L. Rev. 51, 43.

71 Creative Commons License Code; Timothy K. Armstrong, 'Shrinking the Commons: Termination of Copyright Licenses and Transfers for the Benefit of the Public' (2010) Harv. J. on Legis 47, 359.

72 Creative Commons License Code; Margoni, Thomas and Peters, Diane, Creative Commons Licenses: Empowering Open Access <<http://dx.doi.org/10.2139/ssrn.274604>> accessed 16 June, 2023.

73 Creative Commons License Code; Herkko Hietanen, 'Creative Commons Olympics: How Big Media is Learning to License from Amateur Authors', (2011) Intell. Prop. Info. Tech. & Elec. Com. L. 2, 50.

74 Creative Commons License Code; Lydia Pallas Loren, 'Building a Reliable Semicommons of Creative Works: Enforcement of Creative Commons Licenses and Limited Abandonment of Copyright', (2006) Geo. Mason L. Rev. 271 14, 271.

75 Creative Commons License Code; Axel Metzger, 'The Right of the Author to Grant Licenses for Non-Commercial Use', (2015) J. Intell. Prop. Info. Tech. & Elec. Com. L. 6, 11.

the provisions on license recordation. As per Article 83 of Law Number 28 of 2014, the term “*license recordation*” refers to the obligation for licensors, including those who publish works under Creative Commons, to inform the Indonesian Copyright Office about their licenses. Failure to comply with this requirement renders the applied license ineffective and unenforceable against third parties.<sup>76</sup> This requirement raised concerns for the operation of Creative Commons and other open licenses.

The Creative Commons Indonesia team (an affiliate in Indonesia as per Law No. 28 of 2014, which provides Indonesian translations of Creative Commons licenses in compliance with Indonesian copyright law)<sup>77</sup> engaged with the Indonesian Copyright Office to request an exception for open licenses. After discussions and providing written explanations, the Indonesian Copyright Office agreed to exclude Creative Commons licenses from the license recordation mandate.<sup>78</sup>

### **3. Impact of Technological Advancements on Copyright Law and Open Licensing**

Another important aspect for consideration is the rapid development of artificial intelligence and blockchain technology, which presents both novel challenges and transformative opportunities for copyright frameworks and open licensing.

#### **a. Artificial Intelligence**

The advent of artificial intelligence technologies such as Open AI has created a paradigm shift in creativity, where such programs can generate original and creative content in fields of literature, music, art, etc. AI can assist in generating and curating content that is openly licensed.<sup>79</sup> Through natural language processing and machine learning algorithms, AI systems can analyze vast amounts of data, identify patterns, and generate new content, which expands the pool of openly licensed works available for use and adaptation by others.<sup>80</sup> AI can also prove to be an immaculate creative assistant, supporting artist, writer, and creator for creative processes and content creation, thus empowering the very rationale of open licensing. AI-powered tools can provide suggestions, generate ideas, and aid in developing creative works.<sup>81</sup> By augmenting human creativity, AI can enable more individuals to participate in open licensing by providing them with the tools and resources to produce high-quality and original content.<sup>82</sup>

---

76 Law Number 28 of 2014, Indonesia

77 Creative Commons Indonesia, <<https://creativecommons.or.id/tentang.html>>, accessed 20 June, 2023

78 Creative Commons Indonesia, <<https://creativecommons.org/2016/11/28/making-creative-commons-licensing-work-indonesia/>>, accessed 20 June 2023

79 Victor M Palace, ‘What If Artificial Intelligence Wrote This: Artificial Intelligence and Copyright Law’ (2019) 71 Fla L Rev 217, 220.

80 *ibid.*

81 *ibid.*, 221.

82 *ibid.*, 222.

Tracking the usage of openly licensed works can be a complex task. Yet, AI systems can automate license verification, attribution, and tracking, ensuring compliance with open licensing requirements.<sup>83</sup> This simplifies the licensing process for creators and users, making sharing and collaborating on creative output easier.

Further, in terms of content marketing, AI algorithms can analyze user preferences, behavior, and content characteristics to provide personalized content recommendations.<sup>84</sup> By leveraging AI, open licensing platforms can offer users a tailored experience which can help them discover relevant, openly licensed works that align with their interests.<sup>85</sup> This promotes the dissemination and accessibility of openly licensed content to a broader audience.

AI can also provide for widening of opportunities for open licensing in the nascent stages of copyright as understanding copyright and open licensing can be challenging for individuals and organizations.<sup>86</sup> AI can assist in educating users about copyright laws, open licensing models, and proper attribution practices.<sup>87</sup> AI-powered chatbots or virtual assistants can provide guidance, answer questions, and raise awareness about the benefits and requirements of open licensing, fostering a culture of compliance and responsible use.<sup>88</sup> AI translation tools can break down language barriers and enhance the accessibility of openly licensed works.<sup>89</sup> By automatically translating content into different languages, AI expands the reach of open licensing initiatives, allowing individuals from diverse linguistic backgrounds to access and contribute to the open knowledge ecosystem.<sup>90</sup>

Finally, when it comes to addressing quality concerns, AI can assist in identifying and flagging potential instances of plagiarism, ensuring that works shared under open licenses are original and properly attributed.<sup>91</sup> AI-powered algorithms can compare content against vast databases, providing a valuable tool for quality control within the open licensing community.<sup>92</sup>

Therefore, it cannot be denied that AI offers numerous benefits to open licensing. However, it is important to address ethical considerations, as well as ensure that AI systems

---

83 Michael Hatfield, 'Professionally Responsible Artificial Intelligence' (2019) 51 Ariz St LJ 1057, 1092.

84 Ananya Mohapatra, 'Artificial Intelligence and Privacy of Digital Consumers' (2021) 24 Supremo Amicus [344]

85 *ibid.*

86 Muñoz Ferrandis, Carlos and Duque Lizarralde, Marta, 'Open Sourcing AI: Intellectual Property at the Service of Platform Leadership' < SSRN: <https://ssrn.com/abstract=4018413>> accessed 17 June, 2023.

87 Hackernoon, Using Open Source Licensing to Resolve the AI Copyright Debate: AI as Derivative Works, <https://hackernoon.com/using-open-source-licensing-to-resolve-the-ai-copyright-debate-ai-as-derivative-works>, accessed 17 June, 2023.

88 *ibid.*

89 *ibid.*

90 *ibid.*

91 Michael Hatfield, 'Professionally Responsible Artificial Intelligence' (2019) 51 Ariz St LJ 1057, 1092.

92 *ibid.*

are designed and deployed in a manner that respects intellectual property rights, as well as promotes fairness and inclusivity. This is because while AI holds great potential to enhance the relevance of open licensing, it also presents challenges and potential problems that need to be carefully addressed.<sup>93</sup>

An important aspect that comes into play is the need for proper attribution of the original creators in open licensing.<sup>94</sup> AI-generated content may not always provide clear attribution or acknowledgment to the original sources. This raises concerns about transparency and fairness in giving credit to creators. As AI algorithms can analyze and process large amounts of data, this can lead to unintentional copyright infringement when AI systems generate or use content that is protected by copyright.<sup>95</sup> Without proper safeguards and human oversight, AI can inadvertently violate copyright laws, undermining the principles of open licensing.<sup>96</sup> Thus, AI systems need to be designed to ensure that attribution requirements are met when generating or using content under open licenses.<sup>97</sup>

The integration of AI into the open licensing framework can also raise complex legal questions on determining liability in cases of AI-generated copyright infringement or attribution, as existing copyright laws across the world may not adequately address the issue of AI-generated content.<sup>98</sup> This requires policymakers and legal experts to navigate this evolving landscape and adapt regulations accordingly.

Particularly, Indonesia has recognized the importance of AI and its potential societal impact. The Ministry of Communication and Informatics issued the National Strategy on Artificial Intelligence in 2020, outlining the country's vision and roadmap for AI development.<sup>99</sup> The Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions addresses certain aspects of AI, including data protection and privacy considerations.<sup>100</sup> Further, the Personal Data Protection Law 2022, aims to establish comprehensive data protection regulations, including provisions related to AI and automated decision-making processes.<sup>101</sup>

---

93 The Federalist Society, *The Problem with AI Licensing & an 'FDA for Algorithms'*, <https://fedsoc.org/commentary/fedsoc-blog/the-problem-with-ai-licensing-an-fda-for-algorithms> accessed 17 June, 2023.

94 *ibid.*

95 Yavar Bathaee, 'Artificial Intelligence Opinion Liability' (2020) 35 Berkeley Tech LJ 113

96 Victor M Palace, 'What If Artificial Intelligence Wrote This: Artificial Intelligence and Copyright Law' (2019) 71 Fla L Rev 217.

97 Special Committee on Artificial Intelligence in a Digital Age, 'Challenges and limits of an open source approach to Artificial Intelligence', <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662908/IPOL\\_STU\(2021\)662908\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662908/IPOL_STU(2021)662908_EN.pdf)> accessed 17 June, 2023.

98 Daniel Seng & Stephen Mason, 'Artificial Intelligence and Evidence' (2021) 33 SAclJ 241.

99 AISCI (2020) 'Artificial Intelligence Strategy for Indonesia: Building Trust in AI for Societal Progress', <<https://s899a9742c3d83292.jimcontent.com/download/version/1610650061/module/8284006463/name/AISCI-2020-Indonesia.pdf>>, accessed on 20 June 2023

100 Peraturan Menteri Perdagangan Nomor 1 Tahun 2020 tentang Ketentuan Ekspor dan Impor Teknologi Informasi dan Komunikasi, 2020, Peraturan Menteri Perdagangan Republik Indonesia, <https://jdih.kemendag.go.id/peraturan/download/2453/3>, accessed 20 June 2023

101 Personal Data Protection Law, Act No. 27 of 2022

To address the challenges posed by AI, it is crucial to develop robust frameworks and guidelines for AI use in the context of open licensing. This includes promoting transparency in AI-generated content, ensuring proper attribution mechanisms, implementing safeguards against copyright infringement, and actively addressing bias and discrimination in AI algorithms.<sup>102</sup>

Moreover, collaboration between AI developers, legal experts, and open licensing communities is essential to navigate these challenges, as well as preserve the integrity and relevance of open licensing in the era of artificial intelligence.<sup>103</sup>

## **b. Blockchain Technology**

The emergence of blockchain technology presents new possibilities for open licensing models. Blockchain provides a decentralized and transparent ledger that records all transactions and activities related to open licensing.<sup>104</sup> By leveraging blockchain technology, open licensing platforms can ensure transparency in licensing agreements, content usage, and attribution. This enables creators and users to easily verify the authenticity and ownership of works, fostering trust and accountability within the open licensing ecosystem.

Blockchain's immutability ensures that copyright registrations and licenses cannot be tampered with or altered.<sup>105</sup> This feature can strengthen the protection of creators' rights and prevent unauthorized modifications to licensed works. By recording copyright information on the blockchain, creators can establish a secure and tamper-proof record of their ownership, enabling efficient enforcement of their rights.<sup>106</sup>

Blockchain-based smart contracts can automate licensing agreements and streamline the licensing process. By utilizing smart contracts, creators can establish licensing terms, automate royalty payments, and enforce licensing conditions in a transparent and efficient manner.<sup>107</sup> This reduces the need for intermediaries, lowers transaction costs, and facilitates the broader adoption of open licensing.

Blockchain enables the traceability of content usage and ensures proper attribution, and each transaction or use of a licensed work can be recorded on the blockchain, creating

---

102 Xavier Ferrer, "Bias and Discrimination in AI: A Cross-Disciplinary Perspective" (2021) <https://technologyandsociety.org/bias-and-discrimination-in-ai-a-cross-disciplinary-perspective/> accessed 17 June, 2023.

103 James Manyika, Jake Silberg, & Brittany Presten, Harvard Business Review Home, 'What Do We Do About the Biases in AI?' <<https://hbr.org/2019/10/what-do-we-do-about-the-biases-in-ai>> accessed 17 June, 2023.

104 Huang-Chih Sung, 'Prospects and Challenges Posed by Blockchain Technology on the Copyright Legal System' (2019) 9 Queen Mary J Intell Prop 432

105 *ibid.*

106 *ibid.*

107 Balazs Bodo, Daniel Gervais & Joao Pedro Quintais, 'Blockchain and Smart Contracts: The Missing Link in Copyright Licensing' (2018) 26 Int'l JL & Info Tech 311



an auditable trail of its usage history.<sup>108</sup> This facilitates the tracking of content distribution, attribution of works to their original creators, and fair compensation for their contributions.

Blockchain's decentralized architecture ensures that open licensing platforms are not controlled by a single authority or entity.<sup>109</sup> This resilience to centralized control makes it difficult for governments or external parties to censor or restrict access to openly licensed content. By utilizing blockchain, open licensing can promote freedom of expression, access to knowledge, and protect against censorship attempts.<sup>110</sup>

Thus, by providing transparency, accountability, traceability, and automation, blockchain can revolutionize licensing processes, protect creators' rights, and foster collaboration within the open licensing community.<sup>111</sup> With continued advancements and thoughtful implementation, blockchain can contribute to the growth and sustainability of open licensing in the digital era.

However, this technology is still evolving, and scalability, energy consumption, and user experience are areas that require further development and thus, poses area of concern. Blockchain technology is complex and requires technical expertise to understand and implement.<sup>112</sup> The intricacies of blockchain protocols, smart contracts, and decentralized systems can be daunting for individuals without technical knowledge and thus may discourage creators and users from adopting blockchain-based open licensing platforms, limiting the reach and accessibility of open licensing initiatives.<sup>113</sup> Further, blockchain's immutability, which is one of its characteristic features, acts a double-edged sword in the context of open licensing.<sup>114</sup> While it furthers the goals of open licensing, once a licensing agreement or transaction is recorded on the blockchain, it becomes virtually irreversible.<sup>115</sup>

From a very holistic perspective, blockchain networks, particularly public blockchains like Bitcoin and Ethereum, face scalability challenges and consume significant amounts of energy.<sup>116</sup> As open licensing platforms grow and attract more users, the scalability limitations of blockchain technology may hinder the efficient processing of licensing transactions. Additionally, the energy consumption associated with blockchain networks has raised

---

108 Samuel N. Weinstein, 'Blockchain Neutrality' (2021) 55 Ga L Rev 499

109 *ibid.*

110 Annabel Tresise, Jake Goldenfein & Dan Hunter, "What Blockchain Can and Can't Do for Copyright" (2018), 28 Australian Intellectual Property Journal 144.

111 Samuel N. Weinstein, 'Blockchain Neutrality' (2021) 55 Ga L Rev 499

112 Walid Al-Saqaf & Nicolas Seidler, 'Blockchain technology for social impact: opportunities and challenges ahead' (2017) Journal of Cyber Policy 2,3, 338-354.

113 *ibid.*

114 Clohessy, T., Acton, T., Rogers, N. (2019) 'Blockchain Adoption: Technological, Organisational and Environmental Considerations,' <[https://doi.org/10.1007/978-3-319-98911-2\\_2](https://doi.org/10.1007/978-3-319-98911-2_2)> accessed 17 June, 2023.

115 *ibid.*

116 Europa Environment Agency, Blockchain and the environment, <<https://www.eea.europa.eu/publications/blockchain-and-the-environment>> accessed 16 June, 2023.

concerns about its environmental impact, which may affect the sustainability and viability of blockchain-based open licensing initiatives.<sup>117</sup>

Therefore, while blockchain technology offers potential benefits for open licensing, it also presents challenges that need to be carefully addressed. Overcoming technical barriers, clarifying legal frameworks, ensuring flexibility, addressing privacy concerns, improving scalability, enhancing user experience, establishing effective governance, and achieving interoperability are key areas that require attention.<sup>118</sup> By addressing these challenges, blockchain technology can contribute to the growth and relevance of open licensing in a sustainable and inclusive manner.

In Indonesia, the intersection of blockchain, open licensing, and copyright is an area of law that is still developing. However, there is a growing recognition of the potential of this technology to promote innovation and collaboration. As blockchain technology continues to evolve, it is likely that Indonesian copyright law will need to be adapted to ensure that the rights of copyright holders are protected while also promoting innovation.<sup>119</sup>

#### **D. Closing**

Basis the discussions in this paper, it can be concluded that open licensing models like Creative Commons have emerged as responses to the challenges posed by traditional intellectual property frameworks in the digital era. The GNU GPL has played a significant role in promoting collaboration and free software. Creative Commons has standardized open licensing practices, providing creators with a flexible framework to specify permissions and restrictions. These licenses operate within copyright law, granting permissions and defining usage terms. Open licenses, including Creative Commons, foster collaboration, innovation, and knowledge accessibility. However, their application and enforceability vary across jurisdictions, necessitating ongoing legal adaptation, including Indonesia.

The upcoming advancements in the global world, specifically the rise of artificial intelligence and blockchain technology, present both opportunities and challenges for traditional copyright frameworks and open licensing models. Adapting copyright frameworks to accommodate AI-generated works, addressing legal personhood concerns, and leveraging blockchain technology for transparent and efficient open licensing are essential steps for governments across the world, including Indonesia.

---

117 *ibid.*

118 GNU General Public License, Preamble, < <https://www.gnu.org/licenses/gpl-3.0.en.html>>, accessed on 15th June, 2023.

119 Abeba N. Turi, *Technologies for Modern Digital Entrepreneurship: Understanding Emerging Tech at the Cutting-Edge of the Web 3.0 Economy* (Apress, 2020)

Policymakers, legal experts, and stakeholders must collaborate to navigate these evolving landscapes and strike a balance between protecting rights and fostering innovation in the borderless digital age. The proactive consideration and thoughtful adaptation of copyright and licensing frameworks will be vital to facilitate the responsible and effective use of AI and blockchain technologies while ensuring the preservation of creativity and intellectual property rights.

## Bibliography

### A. Books

- Antons C. *Intellectual Property Law in Indonesia* (Kluwer Law International 2000).
- Turi, Abeba N. *Technologies for Modern Digital Entrepreneurship: Understanding Emerging Tech at the Cutting-Edge of the Web 3.0 Economy* (Apress, 2020).
- Wang, Chunyan. *Creative Commons Licence: An Alternative Solution to Copyright in the New Media Arena* in Brian Fitzgerald, Fuping Gao, Damien O'Brien Shi, Xiaoxiang Samsung (eds), *Copyright Law, Digital Content and the Internet in the Asia-Pacific* (Sydney University Press 2008).

### B. Paper/Article

- Al-Saqaf, Walid and Nicolas Seidler. "Blockchain technology for social impact: opportunities and challenges ahead". *Journal of Cyber Policy* (2017).
- Armstrong, Timothy K. "Shrinking the Commons: Termination of Copyright Licenses and Transfers for the Benefit of the Public". *Harv. J. on Legis* (2010).
- Bissell, Ahrash N. "Permission granted: open licensing for educational resources". *Open Learning: The Journal of Open, Distance and e-Learning* (2009).
- Bathae, Yavar. "Artificial Intelligence Opinion Liability". *Berkeley Tech LJ* (2020).
- Bodo, Balazas, etc. "Blockchain and Smart Contracts: The Missing Link in Copyright Licensing". *Int'l JL & Info Tech* (2018).
- Campfens, E. "Whose Cultural Objects? Introducing Heritage Title for Cross-Border Cultural Property Claims". *Neth Int Law Rev LQR* (2020).
- Carroll, Michael W. "Creative Commons and the New Intermediaries". *Mich St L Rev* 45 (2006).
- Classen, Ward. "Open Source Licensing and Its IP Considerations" *Bus L Today* (2005).
- Dare, Tiki and Harvey Anderson. "Passport Without A Visa: Open-Source Software Licensing and Trademarks". *JOLTS* (2009).
- de Rosnay, Melanie Dulong. "Creative Commons: Open Content Licenses to Govern Creative Works", *European Journal for the Informatics Professional* (2006).
- Dusollier, Severine. "The Master's Tools v. the Master's House: Creative Commons v. Copyright". *Colum JL & Arts* (2006).
- Einhorn, Michael A. "Open Source and Innovative Copyright". *IPL Newsl* (2004).
- Fyre, Brian L. "A License to Plagiarize" *UALR L. Rev.* 51 (2020).
- Hatfield, Michael. "Professionally Responsible Artificial Intelligence". *Ariz St LJ* (2019).
- Katz, Zachary. "Pitfalls of Open Licensing: An Analysis of Creative Commons Licensing". *IDEA* (2006).

- Kennedy, Dennis K. "A Primer on Open Source Licensing Legal Issues: Copyright, Copyleft and Copyfuture". *Saint Louis University Public Law Review* (2001).
- Kjos, Heather N. "The Statutory Damages Regime of Copyright Law: The Non-Commercial User and Capitol Records, Inc. v. Thomas-Rasset". *Cybaris Intell Prop L Rev* (2010).
- Lemley, Mark A and Ziv Shafir, "Who Chooses Open-Source Software". *U Chi L Rev* (2011).
- Maracke, Catharina. "Copyright Management for Open Collaborative Projects - Inbound Licensing Models for Open Innovation". *SCRIPTed* (2013).
- Mohapatra, Ananya. "Artificial Intelligence and Privacy of Digital Consumers". *Supremo Amicus* (2021).
- Mutschelknaus, Joe. "Spillover Effect: Investigating Patent Implications to Open-Source Software Copyright Licensing". *Fed Cir BJ* (2010).
- Nadan, Christian H. "Open Source Licensing: Virus or Virtue?". *Texas Intellectual Property Law Journal* (2002).
- Nwauche, E.S. "The Emerging Right to Communal Intellectual Property". *Marquette Intellectual Property Law Review* (2015).
- Opderbeck, David W. "The Penguin's Paradox: The Political Economy of International Intellectual Property and the Paradox of Open Intellectual Property Models". *Stan L & Pol'y Rev* 101 (2007).
- Palace, Victor M. "What If Artificial Intelligence Wrote This: Artificial Intelligence and Copyright Law". *Fla L Rev* 217 (2019).
- Putri, R. W. and Tisnanta, H. S. "Communal Rights as the Hegemony in Third World Regime: An Indonesian Perspective". *Indonesian Journal of International Law Vol 19 No. 2* (2020).
- Ramadhan, Citra. "Protecting Communal Intellectual Property In Indonesia: Constraints Faced By The Directorate General For Intellectual Property". *Kanun Jurnal Ilmu Hukum* (2022).
- Schultz, Jason and Jennifer M Urban, "Protecting Open Innovation: The Defensive Patent License as a New Approach to Patent Threats, Transaction Costs, and Tactical Disarmament". *Harv J L & Tech* (2012).
- Seng, Daniel and Stephen Mason, "Artificial Intelligence and Evidence". *SAClJ* (2021).
- Simatupang, Taufik H. "Initiating The Concept Of Sui Generis Of The Legal Protection F Communal Intellectual Property In The Philosophy Of Science Perspective". *Jurnal Penelitian Hukum De Jure* (2022).
- Simmonds, Tony. "Common Knowledge? The Rise of Creative Commons Licensing". *LIM* (2010).
- Sung, Huang-Chih. "Prospects and Challenges Posed by Blockchain Technology on the Copyright Legal System". *Queen Mary J Intell Prop* (2019).

- Tresise, Annabel, etc. "What Blockchain Can and Can't Do for Copyright". *Australian Intellectual Property Journal* (2018).
- Vetter, Greg R. "Open Source Licensing and Scattering Opportunism in Software Standards" *BC L Rev* (2007).
- Weinstein, Samuel N. "Blockchain Neutrality" *Ga L Rev* (2021).
- Widyanti, Yenny Eta. "Perlindungan Ekspresi Budaya Tradisional Indonesia Dalam Sistem Yang Sui Generis". *Arena Hukum LQR* Vo. 13 No. 3 (2020).

### C. Internet

- AISCI, "Artificial Intelligence Strategy for Indonesia: Building Trust in AI for Societal Progress", <https://s899a9742c3d83292.jimcontent.com/download/version/1610650061/module/8284006463/name/AISCI-2020-Indonesia.pdf>, (accessed on 20 June 2023)
- Clohessy, T., Acton, T., Rogers, N. "Blockchain Adoption: Technological, Organisational and Environmental Considerations", [https://doi.org/10.1007/978-3-319-98911-2\\_2](https://doi.org/10.1007/978-3-319-98911-2_2), (accessed 17 June 2023)
- Creative Commons License Code, <https://creativecommons.org/licenses/by/3.0/legalcode>, (accessed 14 June 2023)
- Creative Commons License Code, Fair Dealing Rights, <https://creativecommons.org/licenses/by/3.0/legalcode>, (accessed 16 June, 2023).
- Creative Commons License Code, License Grant, <https://creativecommons.org/licenses/by/3.0/legalcode>, (accessed 16 June, 2023).
- Creative Commons License Code, License Grant, Non-Waivable Compulsory License Schemes, <https://creativecommons.org/licenses/by/3.0/legalcode>, (accessed 16 June, 2023).
- Creative Commons License Code, Miscellaneous, <https://creativecommons.org/licenses/by/3.0/legalcode>, (accessed 16 June, 2023)
- Creative Commons License Code, Restrictions, <https://creativecommons.org/licenses/by/3.0/legalcode>, (accessed 16 June, 2023).
- Creative Commons, <https://creativecommons.org/about/cclicenses/>, (accessed 14 June 2023).
- Creative Commons, <https://creativecommons.org/share-your-work/>, (accessed 14 June 2023).
- Creative Commons, <https://creativecommons.org/licenses/#:~:text=This%20license%20lets%20others%20distribute,and%20use%20of%20licensed%20materials>, (accessed 14 June 2023).
- Creative Commons, License Design and Rationale, <https://creativecommons.org/licenses/#:~:text=This%20license%20lets%20others%20distribute,and%20use%20of%20licensed%20materials>. (accessed 14 June 2023).

- Creative Commons, The Licenses. <https://creativecommons.org/licenses/#:~:text=This%20license%20lets%20others%20distribute,and%20use%20of%20licensed%20materials>. (accessed 14 June 2023).
- Creative Commons, Three Layers of Licences, <https://creativecommons.org/licenses/#:~:text=This%20license%20lets%20others%20distribute,and%20use%20of%20licensed%20materials>. (accessed 14 June 2023).
- Creative Commons Indonesia, <https://creativecommons.or.id/tentang.html>, (accessed 20 June 2023).
- Creative Commons Indonesia, <https://creativecommons.org/2016/11/28/making-creative-commons-licensing-work-indonesia/>, (accessed 20 June 2023).
- Europa Environment Agency, Blockchain and the environment, <https://www.eea.europa.eu/publications/blockchain-and-the-environment>, (accessed 16 June 2023).
- GNU General Public License, Basic Permissions, <https://www.gnu.org/licenses/gpl-3.0.en.html>, (accessed 16 June 2023).
- GNU General Public License, Preamble, <https://www.gnu.org/licenses/gpl-3.0.en.html>, (accessed on 15 June 2023).
- GPL-Compatible Free Software Licenses, <https://www.gnu.org/licenses/license-list.en.html#GPLCompatibleLicenses>, (accessed 16 June 2023).
- Hackernoon, Using Open Source Licensing to Resolve the AI Copyright Debate: AI as Derivative Works, <https://hackernoon.com/using-open-source-licensing-to-resolve-the-ai-copyright-debate-ai-as-derivative-works>, (accessed 17 June 2023)
- Manyika, James. etc. Harvard Business Review Home, “What Do We Do About the Biases in AI?”, <https://hbr.org/2019/10/what-do-we-do-about-the-biases-in-ai>, (accessed 17 June 2023).
- Linux Kernel Licensing Rules, <https://www.kernel.org/doc/html/v4.16/process/license-rules.html>, (accessed 16 June 2023).
- Muñoz Ferrandis, Carlos and Duque Lizarralde, Marta, “Open Sourcing AI: Intellectual Property at the Service of Platform Leadership”, SSRN: <https://ssrn.com/abstract=4018413>, (accessed 17 June 2023).
- O’Reilly, “Legal Impacts of Open Source and Free Software Licensing”, <https://www.oreilly.com/library/view/understanding-open-source/0596005814/ch06.html>, (accessed 16 June 2023).
- Open Source, <https://opensource.org/licenses-old/gpl-license-html/>, (accessed 15 June 2023).
- Special Committee on Artificial Intelligence in a Digital Age, “Challenges and limits of an open source approach to Artificial Intelligence”, [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662908/IPOL\\_STU\(2021\)662908\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662908/IPOL_STU(2021)662908_EN.pdf), (accessed 17 June 2023).

#### **D. Regulations**

Law Number 28 of 2014, Indonesia

Personal Data Protection Law, Act No. 27 of 2022

Regulation of The Minister of Trade of The Republic of Indonesia Number 1 of 2020,  
concerning Provisions for the Export and Import of Information and Communication  
Technology.

The 1945 Constitution of Indonesia

UNEP, *Report of the Fourth Meeting of the Conference of the Parties to the Convention on  
Biological Diversity*



## Curriculum Vitae of Author

**Muhammad Iqbal** works as a paralegal and a lawyer in District Court, Punjab, Pakistan. He was a legal intern in Duan & Duan International Law Firm, Chongqing, China since 01 September 2021 until 30 October 2021. He finished his Bachelor of Law in University of the Punjab, Pakistan, then got his LLM in University of Essex, England in 2023, and now he is studying International Law for his PhD in Southwest University of Political Science and Law, China.

## BALANCING TRADITION AND INNOVATION: LEGAL FRAMEWORK FOR PROTECTING COMMUNAL INTELLECTUAL PROPERTY IN THE BORDERLESS AGE

Aji Baskoro<sup>1</sup>, Annisa Hafizhah<sup>2</sup>

<sup>1</sup>Pusat Studi dan Konsultasi Hukum UIN Sunan Kalijaga Yogyakarta

<sup>2</sup>Fakultas Hukum Universitas Sumatera Utara

<sup>1</sup>Baskoro.ajibas@gmail.com

<sup>2</sup>annisahafizhah1999@gmail.com

### ABSTRACT

The existence of communal intellectual property goes along with the presence of indigenous communities and local societies. Traditional cultural expressions represent one of the four categories of communal intellectual property. As a multicultural nation, Indonesia possesses diverse communal intellectual property. Unfortunately, communal intellectual property rights violations, such as unilateral claims, are prevalent. Given the challenges surrounding communal intellectual property in Indonesia and the rapid advancement of information technology, the author's interest is sparked in conducting an in-depth investigation and analysis of the legal protection of these issues. This study adopts a descriptive normative legal approach, utilizing primary and secondary literature sources for analysis and examination. Through this research, identifying problems leads to a thorough problem analysis and the developing of problem-solving strategies. The findings reveal that the Indonesian government employs a positive and defensive legal framework to protect traditional cultural expressions. Logical justifications for legal protection include societal benefits, national identity and sovereignty, preservation of ancestral heritage, and economic considerations. These measures are crucial in the borderless era, characterized by potential claims, theft, and other forms of infringement.

**Keywords:** communal intellectual property, indigenous communities, legal protection, traditional cultural expression.

### A. Introduction

The current era is characterized by extensive and intensified interactions with the international community, spanning various domains such as politics, social affairs, economics, business, culture, telecommunications, etc. Interactions among nations occur across various sectors, encompassing various domains.<sup>1</sup> These interactions highlight

---

1 Ariesani Hermawanto and Melaty Anggraini, *Globalisasi, Revolusi Digital dan Lokalitas: Dinamika Internasional dan Domestik di Era Borderless World*, (Yogyakarta: LPPM Press UPN Veteran Yogyakarta, 2020), 1.

the significance of the 21st century as a pivotal period in global development. The advancements in transportation, telecommunications, the internet, and digital technology have fundamentally facilitated widespread and massive global connectivity. Particularly in the digital realm, the impact of technology is pervasive, touching nearly every aspect of life through information and communication technology. Hence, this era is commonly referred to as the digital age.

The internet, along with the rapid progression of information and communication technology, is a cornerstone of the digital era, leading to a shrinking world where national boundaries are becoming less rigid.<sup>2</sup> As a result, the concept of a borderless society has emerged, enabling countries to establish instantaneous connections and allowing information to be disseminated swiftly between nations. National borders have become less rigid, transforming the world into a borderless place.<sup>3</sup> Consequently, the scope of societal interactions and the exchange of information has expanded significantly, transcending the constraints of space and time. This phenomenon has led to the characterization of the present era as the borderless era.

The evolution of human creations parallels the advancements in information technology. The internet and digitalization have revolutionized the nature of physical creations, transforming them into intangible digital forms. The swift progress of information and communication technology has brought about a profound transformation in traditional creations, converting them into digital formats that no longer possess physical manifestations. These immaterial creations manifest as digital works or digital content.<sup>4</sup> These digital creations encompass various formats compatible with software applications and hardware devices such as smartphones, laptops, tablets, and others.

However, alongside the positive transformations brought about by information technology, there are negative consequences and risks associated with the existence of intellectual creations. The ease of altering, modifying, distributing, and commercializing digital creations without the original creators' permission has led to widespread copyright infringement and violations. The rapid dissemination of information through the internet has contributed to the proliferation of intellectual property-related infringement of intellectual property.<sup>5</sup> Failure to address these issues adequately can result in substantial losses for copyright holders, companies, and nations.

Therefore, as a sovereign nation governed by the rule of law, Indonesia must harness the potential of intellectual creations while safeguarding them against illegal exploitation

---

2 *Ibid.*, 80.

3 Kenichi Ohmae, *The Next Global Stage Challenges and Opportunities in Our Borderless World*, (New Jersey: Wharton School Publishing, 2005), 20.

4 Khwarizmi Maulana Simatupang, "Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital." *Jurnal Ilmiah Kebijakan Hukum* 10, no. 1 (2021), 68.

5 *Ibid.*

by other countries. Intellectual property rights, commercialization, and legal protection have emerged as significant concerns within the international economic framework.<sup>6</sup> Consequently, the need to establish legal protection framework for intellectual creation has become an imperative.

As a multicultural country characterized by diverse customs, cultures, and local wisdom, Indonesia possesses a wealth of communal intellectual property. The existence of communal intellectual property in Indonesia is intricately linked to traditional communities, which continue to thrive across the archipelago. Recognizing the substantial economic, social, and cultural value inherent in communal intellectual property, it becomes essential for the state to undertake the inventorying and protection of these valuable assets. Leveraging traditional cultural expressions as national resources holds tremendous potential within creative industries and tourism.

However, the protection of communal intellectual property in Indonesia faces recurring challenges, often manifested through unilateral claims made by other nations. For instance, cases such as the unauthorized use of Indonesia's traditional song "Rasa Sayange" from the Maluku community in promotional videos for Visit Malaysia without the consent of the Maluku community or Indonesia exemplify these issues. Additionally, motifs such as batik parang, Reog Ponorogo, angklung, and the Pendhet dance have been subject to unilateral claims by neighboring countries (re: Malaysia).<sup>7</sup>

Moreover, the violation of communal intellectual property rights also leads to economic losses for traditional artisans in Jepara and Bali as well. Jepara furniture craftsmen are compelled to produce furniture carvings for the foreign company PT. Harrison & Grill-Java. Similarly, foreign individuals residing both within and outside of Indonesia assert copyright ownership over motifs such as batun timun, batun poh, parta ulanda, kuping guling, and jawan, which are integral to Bali's silver carving culture.<sup>8</sup> The existence of patents granted by the United States for cholesterol-lowering tempe and by Japan for tempe with antioxidant compounds<sup>9</sup> serves as concrete evidence of the inadequate safeguarding of communal intellectual property in Indonesia.

These infringements lead to economic losses for traditional artisans in Jepara and Bali and threaten the preservation of Indonesia's cultural heritage. Addressing these challenges strengthening legal protections are paramount to safeguarding communal intellectual property from unauthorized exploitation and infringement.

---

6 Dorvinando Bonanta Simarmata and Albertus Sentot Sudarwanto. "Perlindungan Hukum Karakteristik Ekspresi Budaya Tradisional Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta." *Jurnal Privat Law* 9, no. 2 (2021): 309-318, <https://jurnal.uns.ac.id/privatlaw/article/viewFile/60039/34998>

7 KholisRoisah, "Perlindungan ekspresi budaya tradisional dalam sistem hukum kekayaan intelektual." *Masalah-Masalah Hukum* 43, no. 3 (2014): 372-379. DOI: 10.14710/mmh.43.3.2014.372-379

8 *Ibid.*

9 Sulasi Rongiyati, "Hak Kekayaan Intelektual Atas Pengetahuan Tradisional." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 2, no. 2 (2016): 213-238, DOI: 0.22212/jnh.v2i2.214

Given the challenges surrounding communal intellectual property in Indonesia and the rapid advancement of information technology, the author's interest is sparked in conducting an in-depth investigation and analysis of the legal protection of these issues. Specifically, the focus will be on exploring the legal protection of Traditional Cultural Expressions (TCEs), considering their immense value regarding social, cultural, and historical significance. By employing a theoretical legal protection framework, this study aims to provide a comprehensive analysis that sheds light on the complexities and implications of safeguarding TCEs in the digital age.

However, the existing legal framework for safeguarding communal intellectual property in Indonesia remains insufficient, contributing to rampant violations and unilateral claims by foreign entities. The absence of a visible legal structure intensifies the challenges faced in preserving communal intellectual property against unauthorized exploitation. This research aims to bridge this critical gap by conducting an in-depth examination of the legal protection afforded to Traditional Cultural Expressions (TCEs) within the context of Indonesia's digital age. Emphasizing their significant social, cultural, and historical value, this study will employ a theoretical legal protection framework to analyze and propose strategies aimed at reinforcing the defense mechanisms for communal intellectual property.

## **B. Research Method**

This written work utilizes a normative or doctrinal legal research methodology. The research is conducted primarily through a comprehensive review of existing literature, including primary and secondary legal sources.<sup>10</sup> Relevant documents such as legislation, scholarly articles, and other materials related to legal protection, intellectual property rights, communal intellectual property, indigenous communities, and similar topics are collected and examined as reference materials.

This study gathered all information on individuals, phenomena, specific groups, and other relevant aspects to uncover factual evidence (fact-finding). The objective of this research is to identify problem areas (problem finding) that lead to problem identification, enabling the formulation of solutions to address the underlying issues (problem-solving).<sup>11</sup> The collected data is subsequently analyzed using qualitative methods, with a particular focus on a statutory approach as the chosen framework.

---

10 Peter Mahmud Marzuki. *Penelitian Hukum*, (Jakarta : Kencana Prenada Media Group, 2015), 55.

11 Sri Mamudji, Hang Rahardjo, Agus Supriyanto *et.all.* *Metode Penelitian dan Penulisan Hukum*. (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia (2005).

## C. Discussions

### 1. The Presence of Indigenous Communities and Communal Intellectual Property

The existence of communal intellectual property in Indonesia is intricately linked to the presence of indigenous communities. These communities are traditional groups that firmly adhere to their customary values, culture, and local wisdom. It is imperative for the state to safeguard its existence, as underscored by Article 5 of the United Nations Declaration on the Rights of Indigenous Peoples. This provision emphasizes the recognition, protection, and fulfillment of the rights of indigenous communities in political, legal, economic, social, and cultural domains.<sup>12</sup>

Historically, the recognition of indigenous communities in Indonesia can be traced back to the colonial era when the Dutch colonial government held sway. During this period, the Dutch government acknowledged customary law, largely influenced by the critiques of Cornelis van Vollenhoven, an anthropologist. Van Vollenhoven's criticisms, rooted in Savigny's theory, prompted the Dutch colonial government to incorporate customary law as applicable to indigenous communities, alongside the law governing the European population.<sup>13</sup>

Nevertheless, in the early years of the Republic of Indonesia, there was a regression in the acknowledgment of customary law. This phase was characterized by the national uniformity of laws, which resulted in the neglect of customary law.<sup>14</sup> Following the reform era, a paradigm shift occurred from centralized governance to autonomous governance, forming a new basis for developing and protecting indigenous communities in Indonesia. Additionally, the Constitutional Court Decision number 97/PUU-XIV/2016<sup>15</sup> reaffirmed the presence of indigenous communities and local groups within Indonesia.<sup>16</sup>

The presence of indigenous communities in Indonesia is inseparable from their customs, culture, and esteemed values. Their existence aligns with the rich tapestry of cultures they possess, giving rise to diverse cultural expressions that constitute an integral part of their identity. Upon closer scrutiny, the lives and cultures of indigenous communities harmoniously coexist with nature. Environmental degradation resulting from scientific and technological progress can be mitigated by harnessing traditional wisdom.<sup>17</sup> Notably, lands

---

12 Ilham Yuli Isdiyanto and Deslaely Putranti. "Perlindungan Hukum atas Ekspresi Budaya Tradisional dan Eksistensi Masyarakat Hukum Adat Kampung Pitu." *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 231-256, DOI: <http://dx.doi.org/10.30641/kebijakan.2021.V15.231-256>, 235-236.

13 *Ibid.*

14 *Ibid.*, 37.

15 Putusan Mahkamah Konstitusi Nomor 97/PUU-XIV/2016.

16 Muhammad Yusrizal Adi Syaputra, and Mirza Nasution. "Legal protection of the constitutional rights of the indigenous faith believers in Indonesia." (2020), <https://dupakdosen.usu.ac.id/bitstream/handle/123456789/3866/Fulltext.pdf?sequence=1&isAllowed=y>

17 Nuraeni and Rona Ikram Putri. "The International Dimension of Communal and Traditional Intellectual

managed by indigenous communities demonstrate eco-friendly practices and adhere to sustainable principles.<sup>18</sup>

Over time, customary practices and culture, as embodiments of traditional indigenous heritage, have engendered the concept of communal intellectual property (CIP) that is rooted in group-based dynamics. The emergence of CIP represents a departure from the individual-centric approach to intellectual property protection prevalent in the Western paradigm. Communal intellectual property encompasses diverse elements, encompassing cultural expressions, traditional knowledge, genetic resources, and geographical indications.

## 2. Regulation of Intellectual Property, Communal Intellectual Property, and Traditional Cultural Expressions in Indonesia

Communal intellectual property is a newly developed concept derived from the individualistic nature of intellectual property. It has emerged particularly in developing countries characterized by diverse customary practices and creative works within their societies. There exists a contrast between the highly individualistic nature of intellectual property in Western concepts and the communal intellectual property concept rooted in local indigenous communities. This disparity arises because intellectual property originating from developed nations (the West) aims to value individual creativity and monopolize their creations, whereas communal or collective wealth in developing countries is based on natural resources and emphasizes shared solidarity and collective well-being.<sup>19</sup>

Therefore, discussing communal intellectual property cannot be separated from intellectual property itself. Intellectual property is the result of an individual's creative work, encompassing arts and literature, including written works such as books, computer programs, databases, technical reports, manuscripts, architecture, maps, translations, and cultural appreciation through visual arts, among others.<sup>20</sup> These intellectual works are considered the products of an individual's creativity and possess economic value, granting the creator exclusive rights over their creations. This is because something that can be seen, heard, read, or utilized from an individual's creative work holds commercial value that

---

Property Rights Protection in Indonesia." *Intermestic: Journal of International Studies* 2, no. 2 (2017): 1, DOI: <http://dx.doi.org/10.24198/intermestic.v2n1.6>, 77.

- 18 Robinson, Jake M., Nick Gellie, Danielle MacCarthy, Jacob G. Mills, Kim O'Donnell, and Nicole Redvers. "Traditional ecological knowledge in restoration ecology: a call to listen deeply, to engage with, and respect Indigenous voices." *Restoration Ecology* 29, no. 2 (2021): 133-41. DOI: <https://doi.org/10.1111/rec.13341>.
- 19 Dewi Sulistianingsih, Yuli Prasetyo Adhi, and Pujiono Pujiono. "Digitalisasi Kekayaan Intelektual Komunal di Indonesia: Digitalization of Communal Intellectual Property in Indonesia." In *Seminar Nasional Hukum Universitas Negeri Semarang*, vol. 7, no. 2, pp. 645-656. 2021. DOI: <https://doi.org/10.15294/snhunnes.v7i2.723>, 650.
- 20 Nita Triana, "Menggagas Hak Kekayaan Intelektual Perspektif Hukum Islam ke dalam Hukum Nasional." *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 2 (2018): 177-192. DOI: <https://doi.org/10.24090/mnh.v12i2.1747>.

the creator can monopolize. Hence, based on these grounds, individuals have rights over their intellectual property.<sup>21</sup>

### a. Intellectual Property

The concept of intellectual property rights emerged from Anglo-Saxon law. Intellectual property is rooted in a strong moral connection between the creator and their creations. This is because intellectual property relies on the creative capacity and ingenuity of the creator. Consequently, appropriating someone's creative work without providing compensation is considered an unethical and irresponsible action. Such a moral foundation is known as the philosophical basis of natural law in legal theory, as it prohibits the unauthorized acquisition of what rightfully belongs to others.<sup>22</sup>

The significance of intellectual property rights cannot be dissociated from the globalization of world trade, exemplified by international conventions and the establishment of global trade organizations like the World Trade Organization (WTO). The concept of intellectual property rights encompasses:<sup>23</sup>

- 1) Ownership rights over intellectual creations, which are inherent, permanent, and exclusive to the owner.
- 2) Rights obtained by others with the owner's permission (temporary in nature), such as the right to disclose, reproduce, utilize specific products, or produce specific goods.

On a global scale, intellectual property rights are categorized into two domains:<sup>24</sup>

- 1) Industrial rights, encompassing patents (including utility patents), trade secrets, trademarks, industrial designs, plant variety protection, integrated circuit layout designs, geographical indications, and indications of origin.
- 2) Copyright.

In the Indonesian context, the regulation of intellectual property is underscored by the country's ratification of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This document logically follows from Indonesia's adherence to the Agreement Establishing the World Trade Organization, which includes provisions on intellectual property. Consequently, in 1994, Indonesia ratified the Agreement Establishing the World Trade Organization (WTO) through Law No. 7 of 1994, officially known as the

---

21 Ropei, Ahmad. "Formulasi Hukum Perlindungan Hak Kekayaan Intelektual Dalam Kerangka Maqoshid As-Syari'ah." *Jurnal Hukum Ekonomi Syariah* 4, no. 02 (2020): 165-179. DOI: <https://doi.org/10.26618/j-hes.v4i02.4259>, 169.

22 Nita Triana, "Menggagas Hak Kekayaan Intelektual Perspektif Hukum Islam ke dalam Hukum Nasional." *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 2 (2018): 177-192. DOI: <https://doi.org/10.24090/mnh.v12i2.1747>, 179.

23 Sulasi Rongiyati, "Hak Kekayaan Intelektual Atas Pengetahuan...", 217.

24 Sulasi Rongiyati, "Hak Kekayaan Intelektual Atas Pengetahuan...", 218.



Ratification of the Agreement Establishing The World Trade Organization (Agreement on the Establishment of the World Trade Organization).<sup>25</sup>

Furthermore, Indonesia has several regulations pertaining to intellectual property. In 2000, three regulations were established: Republic of Indonesia Law Number 29 of 2000 on Plant Variety Protection, Republic of Indonesia Law Number 30 of 2000 on Trade Secrets, and Republic of Indonesia Law Number 32 of 2000 on Integrated Circuit Layout Designs. In 2014, Indonesia enacted Law Number 28 of 2014 on Copyright, followed by Republic of Indonesia Law Number 13 of 2016 on Patents and Republic of Indonesia Law Number 20 of 2016 on Trademarks and Geographical Indications in 2016.<sup>26</sup>

Law No. 28 Year 2014 on copyright is the latest regulation of Law No. 19 Year 2002. If traced to the previous copyright law, there are many articles that tend to be interpreted in multiple interpretations, thus not ensuring legal certainty. In addition, this law also does not clearly describe the protection of economic rights and moral rights for creators and related rights holders. In addition, there are new aspects and innovations in society that need to be included in the revision of the Copyright Law.<sup>27</sup> At least there are differences between Law No. 19 of 2002 and the 2014 Copyright Law as follows:

*Firstly*, Longer Copyright Protection, The application of the duration of copyright protection is the focus of attention in the context of a comparison between the 2002 Copyright Act and the 2014 Copyright Act. In the 2002 Copyright Act, the copyright protection period was set for 50 (fifty) years after the death of the creator. However, the 2014 Copyright Law extends the protection period to 70 (seventy) years. The reason behind this extension is to further honour and protect the creators. By providing a longer period of protection, the creator has a greater opportunity to enjoy his/her economic rights. *Secondly*, Better Protection of Economic Rights, which provides better protection of the economic rights of the creators and/or owners of related rights. This includes restrictions on the transfer of economic rights in the form of sold flat. *Third*, Effective Dispute Resolution where the Copyright Act 2014 provides an effective dispute resolution mechanism through mediation, arbitration, or court processes. In addition, the application of the offence of complaint was introduced for criminal prosecution.<sup>28</sup>

---

25 Hari Sutra Disemadi and Cindy Kang. "Tantangan Penegakan Hukum Hak Kekayaan Intelektual dalam Pengembangan Ekonomi Kreatif di Era Revolusi Industri 4.0." *Jurnal Komunikasi Hukum (JKH)* v, no. 1 v1-0ε : (2021). DOI: <https://doi.org/10.23887/jkh.v7i1.31457>, 60.

26 Agung Dwi Prabowo, "Aktualisasi Hak Asasi Budaya Dalam Pelindungan Hukum Dan Pelestarian Kekayaan Intelektual Komunal Dikaitkan Dengan Upaya Pemajuan Kebudayaan (Studi Kasus Ekspresi Budaya Tradisional Masyarakat Jawa Timur)." Tesis, Universitas Gadjah Mada, 2020.

27 Trias Palupi Kurnianingrum, "Materi Baru Dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta (The New Material on Copyright Act Number 28 Year 2014)." *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 6, no. 1 (2016): 93-106. DOI: <https://doi.org/10.22212/jnh.v6i1.249>

28 *Ibid.*

Moreover, the importance of protection of traditional cultural expressions is emphasised in greater detail in the Copyright Act 2014. This update was initiated in response to the need to carefully regulate aspects related to traditional cultural expressions and copyright of works whose creators are unknown. Previously, despite being mandated by Article 10 of the Copyright Act 2002, its implementation was felt to be suboptimal. This is due to the absence of implementing regulations required by Article 10 paragraph (4) of the 2002 Copyright Law, which until now has not been issued by the Government. With a more detailed explanation in the 2014 Copyright Law, the main objective is to provide more effective protection to traditional cultural expressions. This effort is necessary as previously, this aspect has not received adequate attention from the Government. This update reflects the realisation of the importance of preserving and protecting the diversity of traditional cultural heritage that is the identity of society. Although Article 10 of the 2002 Copyright Law has contained related provisions, the reality is that its implementation has not been able to be optimal due to the absence of implementing regulations. Therefore, the 2014 Copyright Law seeks to fill this gap by regulating in more detail and comprehensively, creating a stronger legal foundation to protect traditional cultural expressions and related copyrights. This is in line with the spirit of ensuring that traditional cultural property is maintained and respected in an era of technological development and globalisation.

In addition, The first *sui generis* regulation for intellectual property protection in Indonesia was the law concerning plant varieties. This regulation, officially enacted in 2000 as Republic of Indonesia Law Number 29 of 2000 on Plant Variety Protection, is of particular significance in Indonesia due to its agricultural nature and tropical climate, which harbor vast diversity and richness of plant varieties. Varieties encompass various characteristics, including form, leaves, flowers, fruits, seeds, genotypes, and others, that serve as distinguishing features of a group of plants.

Regarding trade secrets, they are regulated under Republic of Indonesia Law Number 30 of 2000 on Trade Secrets. This regulation is a consequence of Indonesia's membership in the World Trade Organization (WTO). According to the aforementioned law, trade secrets refer to information not publicly known in the fields of technology and/or business, possessing economic value for commercial activities, and safeguarded as confidential by the owner of the trade secret.<sup>29</sup> Examples of trade secrets include production, processing, and sales methods or other economically valuable information in the technology and/or business domain that is not publicly disclosed.<sup>30</sup>

There are seven principles to be protected in relation to trade secrets:<sup>31</sup>

---

29 Pasal 1 Undang-Undang RI Nomor 30 Tahun 2000 Tentang Rahasia Dagang.

30 Pasal 2 Undang-Undang RI Nomor 30 Tahun 2000 Tentang Rahasia Dagang.

31 Mila Bunga Hardani, "Perlindungan Hukum Kekayaan Intelektual Komunal Di Jawa Tengah," Skripsi, Fakultas Hukum Universitas Negeri Semarang 2020, 24-25.

- 1) The protected information must be in the fields of technology and business, not publicly known, possess economic value, and be kept confidential.
- 2) Protection under this regime does not require registration.
- 3) Trade secrets have no time limit of protection.
- 4) Exclusive rights to trade secrets can be transferred to heirs through inheritance, grants, wills, written agreements, and other legally authorized means.
- 5) Violations occur when someone intentionally discloses a trade secret and breaches written or unwritten agreements to maintain its confidentiality.
- 6) District Courts have jurisdiction over trade secret disputes.
- 7) Criminal provisions related to trade secrets fall under private prosecution.

During the same year, Indonesia introduced regulations pertaining to integrated circuit layout design, specifically the enactment of Law No. 32 of 2000 on Integrated Circuit Layout Design. Integrated circuit layout design refers to a finalized or partially completed product that contains various interconnected elements, with at least one of these elements being active, and is integrated within a semiconductor material to facilitate electronic functionality.<sup>32</sup>

The regulations encompass nine key principles, including:<sup>33</sup>

- 1) Legal protection is contingent upon registration.
- 2) Each registration application is intended for a single design.
- 3) The primary requirement is the originality of the design.
- 4) Due to rapid advancements, the granted protection extends for a period of 10 years.
- 5) Designs that contravene existing laws, public order, religion, or morality are ineligible for registration.
- 6) Cancellation of integrated circuit layout design registration can be initiated by the rights holder or through legal proceedings.
- 7) The Commercial Court possesses jurisdiction over cases involving integrated circuit layout design.
- 8) Rights holders have the option to pursue alternative dispute resolution mechanisms, such as arbitration, to settle legal conflicts.
- 9) The Integrated Circuit Layout Design Law includes provisions for criminal offenses that require a formal complaint.

Additionally, copyright regulations are outlined in Law No. 28 of 2014 on Copyright, which serves as the foundational legislation for copyright regulation in Indonesia. Copyright, as defined in Article 1, Paragraph 1 of the aforementioned law, refers to the automatic

---

32 Pasal 1 Undang-Undang RI Nomor 30 Tahun 2000 Tentang Desain Tata Letak Sirkuit Terpadu

33 Mila Bunga Hardani, "Perlindungan Hukum Kekayaan...", 22-23.

and declarative exclusive rights of creators upon the tangible manifestation of their work, subject to limitations specified by relevant statutes and regulations.<sup>34</sup>

Those exclusive rights encompass both moral and economic rights.<sup>35</sup> Copyright protection applies to three categories of creations, namely:<sup>36</sup>

- 1) All creations and related rights products by Indonesian citizens, residents, and legal entities.
- 2) All creations and related rights products by individuals or legal entities who are not Indonesian citizens, residents, or legal entities, but have their work first published in Indonesia.
- 3) All creations and/or related rights products and users of creations and/or related rights products by individuals or legal entities who are not Indonesian citizens, residents, or legal entities, provided that:
  - a) Their country has a bilateral agreement with the Republic of Indonesia regarding copyright and related rights protection, or
  - b) Their country and the Republic of Indonesia are parties or participants in the same multilateral agreement concerning copyright and related rights protection.

Moreover, the Copyright Law not only addresses individual creations but also communal creations. It specifically regulates the safeguarding of copyright for expressions of traditional cultural heritage. Article 38 stipulates the following:<sup>37</sup>

- 1) The State holds the copyright for traditional cultural expressions.
- 2) The State is obligated to inventory, preserve, and protect traditional cultural expressions as outlined in paragraph (1).
- 3) The utilization of traditional cultural expressions mentioned in paragraph (1) must consider the prevailing societal values within the respective cultural context.
- 4) Further provisions concerning the State's copyright over traditional cultural expressions specified in paragraph (1) are detailed in Government Regulations.

In the year 2016, Indonesia enacted Law No. 13 of 2016 concerning Patents. According to the first article, first paragraph of the aforementioned law, a patent is defined as an exclusive right granted by the state to an inventor for a specific period of time, allowing them to exploit their technological invention independently or authorize others to do so.<sup>38</sup>

The regulation categorizes patents into two types:<sup>39</sup> regular patents and simple patents. Regular patents are granted for novel inventions that involve an inventive step and have

---

34 Pasal 1 ayat (1) Undang-Undang Nomor 28 tahun 2014 tentang Hak Cipta.

35 Pasal 4 Undang-Undang Nomor 28 tahun 2014 tentang Hak Cipta.

36 Pasal 2 Undang-Undang Nomor 28 tahun 2014 tentang Hak Cipta.

37 Pasal 38 Undang-Undang Nomor 28 tahun 2014 tentang Hak Cipta.

38 Pasal 1 ayat (1) Undang-Undang RI Nomor 13 Tahun 2016 tentang Paten.

39 Pasal 2 Undang-Undang RI Nomor 13 Tahun 2016 tentang Paten.

industrial applicability. On the other hand, simple patents are granted for new developments or improvements of existing products or processes that can be applied in industry. In this context, an invention refers to the innovative solution devised by an inventor to address specific technological problems, manifesting as a product, process, or enhancement.<sup>40</sup>

Moving on to trademarks, Indonesia has already established legislation in the form of Law No. 20 of 2016 concerning Trademarks and Geographical Indications. A trademark is defined in the first article, the first paragraph of the aforementioned law as a “graphically representable sign such as an image, logo, name, word, letter, number, color arrangement, two-dimensional or three-dimensional form, sound, hologram, or a combination thereof, used to differentiate goods and/or services produced by individuals or legal entities engaged in commercial activities.” The law encompasses both trademarks and service marks.<sup>41</sup>

Additionally, the same legislation governs geographical indications<sup>42</sup>, which are signs indicating the origin of a product and specific qualities, reputation, or characteristics associated with the product, primarily resulting from its geographical environment, including natural and human factors or their combination. The TRIPs controls geographical indicator protection as a separate intellectual property rights regime, whereas the TRIPs empowers member states to amend the laws relating to geographical indications in terms of quantity and quality of protection.<sup>43</sup>

The definition of geographical indications in Indonesia is contained in Article 1 point 6 of Law Number 20 Year 2016 on Trademarks and Geographical Indications. Furthermore, specifically Article 70, stipulates the requirement for the central and/or local government to be active in protecting geographical indications. This signifies the importance of the government’s role in maintaining the authenticity and quality of products originating from a particular region, in line with the characteristics of the geographical environment and human factors that give the product its distinctive identity.

While the law provides a clear definition and protection for marks as “signs that can be displayed graphically” to distinguish goods and/or services, as well as geographical indications that indicate the region of origin of a good or product, it is important to look at how these aspects may interact with traditional cultural expressions. In the case of marks, while the definition includes elements such as images, logos and names, it is yet to be seen to what extent the law contextually accommodates marks associated with traditional cultural expressions. For example, do marks that reflect the traditional symbols or motifs

---

40 Pasal 1 ayat (2) Undang-Undang RI Nomor 13 Tahun 2016 tentang Paten.

41 Pasal 2 ayat (2) Undang-Undang RI Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis.

42 Pasal 1 ayat (6) Undang-Undang RI Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis.

43 Purnama Hadi Kusuma and Kholis Roisah. “Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal.” *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 107-120. DOI: <https://doi.org/10.14710/jphi.v4i1.107-120>.

of a community receive appropriate protection? Further development in this regard can help protect and maintain the cultural heritage embodied in traditional brands. In addition, regarding geographical indications, although the law provides a comprehensive definition, it is still necessary to consider the extent to which the aspects of sustainability and preservation of traditional cultural expressions are reflected in the arrangement.

## **b. Communal Intellectual Property**

The concept of communal intellectual property appears to diverge from the Western notion of intellectual property.<sup>44</sup> Intellectual property, as traditionally understood, is closely associated with the principles of TRIPS, emphasizing exclusive rights for exploiting copyrighted works. In contrast, the concept of communal intellectual property arises from a sense of collective spirit within a community regarding their creative works. The creative works present within the community are considered communal assets that can be used for the collective welfare and other shared objectives. Consequently, the concept of communal intellectual property fundamentally contradicts the principles and legal framework of intellectual property.<sup>45</sup>

This discrepancy can be attributed to the interconnectedness of intellectual property law with various supporting factors. These factors encompass human rights law, natural resources law, environmental law, and the intellectual property legal framework itself. These elements act as catalysts for the emergence of communal intellectual property law. In other words, the establishment of communal intellectual property law does not easily align with the existing intellectual property legal framework. Communal intellectual property stems from the collective creative works of specific local communities, granting them rights based on shared interests and perspectives, commonly referred to as collective rights.<sup>46</sup>

Collective intellectual property rights are a natural consequence of shared knowledge and collaborative creative works. The knowledge and creative works of a community hold immeasurable value, and their utilization aims to benefit the collective in terms of well-being, identity, and other invaluable aspects. Furthermore, the knowledge and creative works of these communities often exhibit a harmonious relationship with the natural environment.

The characteristics of communal intellectual property within a community or locality can be identified as follows:<sup>47</sup>

- 1) Recognition of collective rights by the local or indigenous community over intellectual property.

---

44 J. Janewa OseiTutu, "A sui generis regime for traditional knowledge: the cultural divide in intellectual property law." *Marq. Intell. Prop. L. Rev.* 15 (2011): 147. SSRN: <https://ssrn.com/abstract=1574996>

45 Agung Dwi Prabowo, "Aktualisasi Hak Asasi Budaya...", 36.

46 *Ibid.*, 37-38.

47 *Ibid.*, 36.

2) Shared ownership involving collective participation in the management and utilization of intellectual property.

3) Preservation and safeguarding through traditional practices.

In the context of communal intellectual property, four main types can be distinguished:<sup>48</sup>

1) Traditional knowledge

Traditional knowledge encompasses scientific and technological knowledge that forms an integral part of the cultural heritage inherited by traditional communities. This includes technical skills, concepts, learning, discoveries, and common practices that shape the way of life of traditional societies, including knowledge of ecology, agriculture, traditional medical practices related to healing, and knowledge of genetic resources.

2) Traditional cultural expressions

Traditional cultural expressions refer to various forms of cultural expression, whether tangible or intangible, including written forms, that embody distinctive characteristics of traditional cultural heritage passed down from generation to generation. Traditional cultural expressions are entrusted to the authority and/or custodians of the traditional community residing in a particular area, with a shared social value aimed at protecting, preserving, and developing them through traditional and intergenerational means.

3) Genetic resources

The regulation of genetic resources was initially addressed in the international Convention on Biological Diversity (CBD) in 1992. Genetic resources encompass tangible or potential genetic material found in plant germplasm, animals, and other organisms.

4) Geographical indications

Geographical indications refer to the origin or sign indicating that a product is originating from a specific geographical area. Factors such as geographical environment, natural resources, human factors, or their combination contribute to the distinct characteristics, reputation, quality, and other attributes of the produced goods.

The regulations concerning the various types of intellectual property mentioned above are found in multiple legislations. For instance, Article 38 of Law Number 28 of 2014 on Copyright explicitly addresses traditional cultural expressions. More recently, the Indonesian government issued Government Regulation Number 56 of 2022 on Communal Intellectual Property, which specifically governs communal intellectual property in Indonesia. This regulation provides a definition of communal intellectual property as intellectual property characterized by communal ownership and possessing economic value, while maintaining

---

48 Taufik H. Simatupang, "Initiating the Concept of Sui Generis of the Legal Protection of Communal Intellectual Property in the Philosophy of Science Perspective." *Jurnal Penelitian Hukum De Jure* 22, No. 2 (2022): 243-256, <https://dx.doi.org/10.30641/dejure.2022.V22.243-256>, 247-248.

the high moral, social, and cultural values of the nation.<sup>49</sup>

Regarding the specific types, the aforementioned regulation covers a range of communal intellectual property, including traditional cultural expressions, traditional knowledge, genetic resources, geographical indications, and potential geographical indications.<sup>50</sup> The responsibility for their management is bestowed upon the state, which has the authority to inventory, safeguard, and preserve these assets. Consequently, the state bears the obligation to fulfill its duties towards intellectual property. The entities entrusted with this mandate include the Minister, non-ministerial government agencies, and/or Regional Governments.<sup>51</sup>

### c. Traditional Cultural Expression

The regulation concerning traditional cultural expressions is enshrined in Law Number 28 of 2014 on Copyright. Specifically, Article 38 of the aforementioned law explicitly governs traditional cultural expressions. The provision stipulates the following:<sup>52</sup>

- (1) The State holds the copyright over traditional cultural expressions.
- (2) The State is obligated to inventory, safeguard, and preserve traditional cultural expressions, as outlined in paragraph (1).
- (3) The utilization of traditional cultural expressions, as described in paragraph (1), must be mindful of the prevailing values within the developing society.
- (4) Further regulations regarding State-held copyright over traditional cultural expressions, as mentioned in paragraph (1), are established through Government Regulation.

Additionally, Law Number 28 of 2014 provides an explanation of Traditional Cultural Expressions within the elucidation of Article 38, paragraph (1). Traditional cultural expressions encompass various forms of cultural expression, either individually or in combination. The identified forms are as follows:

- 1) Verbal-textual expressions, encompassing both oral and written formats, such as prose and poetry, with diverse thematic and content compositions, including literary works and informative narratives.
- 2) Music, which includes vocal, instrumental, or combined forms.
- 3) Movement, which encompasses dance.

---

49 Pasal 1 ayat (1) Peraturan Pemerintah Republik Indonesia Nomor 56 Tahun 2022 Tentang Kekayaan Intelektual Komunal

50 Pasal 4 Peraturan Pemerintah Republik Indonesia Nomor 56 Tahun 2022 Tentang Kekayaan Intelektual Komunal.

51 Pasal 3 Peraturan Pemerintah Republik Indonesia Nomor 56 Tahun 2022 Tentang Kekayaan Intelektual Komunal.

52 Pasal 38 Undang-Undang Nomor 28 tahun 2014 tentang Hak Cipta.



- 4) Theatre, covering performances such as wayang (shadow puppetry) and folk plays.
- 5) Visual arts, including both two-dimensional and three-dimensional creations made from a wide range of materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, or their combinations.
- 6) Traditional rituals and ceremonies.

The World Intellectual Property Organization (WIPO) recognizes traditional cultural expressions held by community groups. At the national level, legal protection is regulated through various guidelines, including Law Number 28 of 2014 on Copyright. Hence, legal instruments remain an integral part of the copyright system, with the State bearing the responsibility of preserving all traditional wealth sources, as well as exploring and safeguarding their existing potential. It is emphasized that the State's responsibility for traditional cultural expressions, as stipulated in Article 38 of the Copyright Law, stems from the need to respect, preserve, and safeguard them while upholding customary values. The article also addresses additional provisions concerning State copyright over traditional cultural expressions, which are regulated by government regulations.

Furthermore, the Indonesian government has enacted government regulations concerning communal intellectual property, which encompass provisions regarding traditional cultural expressions. Article 1, paragraph (2), defines traditional cultural expressions<sup>53</sup> as all forms of creative works, tangible or intangible, individually or in combination, that signify the existence of a traditional culture held collectively and across generations.

An entity can be classified as a traditional cultural expression if it exhibits distinctive characteristics. The aforementioned government regulation also specifies the defining criteria of traditional cultural expressions, including:<sup>54</sup>

- 1) They embody traditional values, perspectives, and forms that are developed, preserved, and evolved within and beyond the traditional context.
- 2) They are collectively embraced and upheld by indigenous customary law communities and/or local communities as their original community.
- 3) They undergo continuous development by the original community in response to the environment, nature, and historical factors.
- 4) They are preserved, utilized, and transmitted across generations.
- 5) They promote a sense of identity, continuity, and respect for cultural diversity and creativity.

---

53 Pasal 1 ayat (2) Peraturan Pemerintah Republik Indonesia Nomor 56 Tahun 2022 Tentang Kekayaan Intelektual Komunal

54 Pasal 6 Peraturan Pemerintah Republik Indonesia Nomor 56 Tahun 2022 Tentang Kekayaan Intelektual Komunal

## 1. The Concept of Legal Protection for Traditional Cultural Expressions in the Borderless Era in Indonesia

Legal safeguarding serves as a protective mechanism for the rights of individuals that may be infringed upon by others or entities, resulting in potential harm to the rightful owners, as stipulated by the prevailing legislative framework. Hence, the effectiveness of legal safeguarding relies on the presence of well-defined regulations that clearly delineate the parameters of rights violations perpetrated by external parties. This imperative stems from the overarching goal of legal safeguarding, which revolves around the preservation of individuals' rights and the prevention of legal transgressions. Consequently, the state assumes a pivotal role in ensuring the robustness of legal safeguards for its citizenry.

Categorically, legal protection safeguarding encompasses two primary modalities: repressive and preventive. Repressive legal safeguarding encompasses measures that impose sanctions or penalties upon those found guilty of contravening the law. Such punitive actions aim to instill a sense of deterrence among potential offenders, thereby curbing infringements on the rights of others. In contrast, preventive legal safeguarding adopts a proactive and precautionary stance. It involves the establishment of regulations that proactively demarcate boundaries on individual conduct, aiming to preclude instances of legal violations, conflicts, and disputes.<sup>55</sup>

Within the realm of legal protection for communal intellectual property, with a particular focus on traditional cultural expressions, a combined approach of positive and defensive legal safeguarding strategies is deployed. Positive legal safeguarding signifies the enactment of legislation that unambiguously regulates the legal parameters surrounding this subject matter.<sup>56</sup> By doing so, it fortifies the assurance against infringements upon the rights of others. Complementary to this, defensive legal safeguarding adopts a non-binding or non-legal character, which complements the overall legal framework and amplifies the effectiveness of legal protection measures.<sup>57</sup>

Defensive measures are employed to safeguard cultural expressions and prevent unilateral claims over traditional cultural heritage. The World Intellectual Property Organization (WIPO) employs the term misappropriation to denote the illegal use of intangible cultural assets, information, or ideas, that cannot be created, collected, or disseminated by an organization, with the aim of gaining competitive advantages or benefits without fair competition or the recognition of exclusive rights to such cultural works whose creators

---

55 Anak Agung Sinta Paramisuari and Sagung Putri ME Purwani. „Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta.“ Kertha Semaya: Journal Ilmu Hukum 7, no. 1 (2019): 1-16. DOI: <https://doi.org/10.24843/KM.2018.v07.i01.p04>.

56 Wilsen Patrick Tuuk, “Perlindungan Hak Kekayaan Intelektual (HKI) terhadap pengetahuan dan teknologi tradisional menurut Undang-Undang Nomor 13 Tahun 2016 tentang Paten.” *Lex Privatum* 0, no. 0 ,(2017) 8.

57 *Ibid.*

remain unidentified.<sup>58</sup>

Moreover, the enactment of specific legislation in Indonesia governing traditional cultural expressions signifies a proactive legal framework for their protection. This framework provides mechanisms through which the diverse array of indigenous cultural works can be shielded, ensuring the continuous preservation of their cultural heritage. This is due to the collective ownership nature of traditional cultural expressions, wherein communal ownership takes precedence over individual ownership.

As a regulatory entity, the state assumes a vital role not only as an arbiter but also as a facilitator. It strives to strike a balance between various societal interests, demonstrating its commitment as a guardian.<sup>59</sup> This commitment is underscored by the provision in Article 38 of the Copyright Law, which designates the state as the holder of legal protection for traditional cultural expressions. Consequently, the state bears the responsibility of inventorying, safeguarding, and conserving the rich tapestry of traditional cultural expressions that exist within the Indonesian context.

Through this discourse, from the author's standpoint, there exist several cogent rationales for the legal safeguarding of traditional cultural expressions, as follows:

#### 1) Utility and Public Benefit

The establishment of legal protections for traditional cultural expressions, whether through positive or defensive modalities, constitutes an endeavor rooted in the consideration of utility and the common good. This aspect assumes heightened significance for indigenous or local communities who coexist alongside these traditional works or creations. Indeed, it stands as a pivotal and imperative rationale, for the unilateral appropriation of their daily works or creations by irresponsible parties would engender adverse repercussions on their sustenance. This circumstance is especially critical within the present epoch of borderless interconnectedness, where national boundaries blur, rendering the prospect of claims, theft, and other forms of infringement exceedingly susceptible.

#### 2) Identity and National Sovereignty

Regulatory frameworks pertaining to traditional cultural expressions effectively delineate Indonesia's distinctive identity, setting it apart from other nations. The rich diversity that characterizes its cultural fabric must be harnessed, protected, and preserved as a momentous national hallmark. Moreover, the Indonesian government's commitment to safeguarding traditional cultural expressions is a tangible manifestation of safeguarding national sovereignty. This holds profound significance as a preventive and punitive measure

---

58 Diah Imaningrum Susanti, "Eksplorasi Perlindungan Kekayaan Intelektual Komunal Berbasis Hak Asasi Manusia." (2022).

59 Fathoni. "Paradigma Hukum Berkeadilan Dalam Hak Kekayaan Intelektual Komunal." *Jurnal Cita Hukum* 7, no. 2 (2014). DOI: 10.15408/jch.v1i2.1469, 292.

in light of the legal protection of traditional cultural expressions within the current borderless milieu.

### 3) Ancestral Heritage Preservation

Yet another imperative for the imperative of legal safeguards surrounding traditional cultural expressions lies in the preservation of ancestral heritage, steeped in timeless life values. Works emanating from cultural traditions do not emerge in a vacuum; they embody the profound cultural values and sagacity of indigenous or local communities. Hence, the cultural values held dear by the Indonesian nation must not wane in the face of the relentless onslaught of globalization and the digital era. By regulating traditional cultural expressions, the preservation of ancestral heritage is fostered, thus ensuring its legacy to future generations.

### 4) Economic Instrumentality

Traditional cultural expressions possess the potential to serve as a fount of national revenue through the avenue of the creative economy. This consonant with the contemporary recognition of local wisdom as an economic asset brimming with value. Hence, as the custodian of communal intellectual wealth, the state can harness traditional cultural expressions to drive the creative economy, engendering financial gain and ameliorating the welfare of local indigenous communities.

Within the present digital epoch, heightened endeavors are requisite to safeguard traditional cultural expressions. The government can institute a digitally grounded data system to comprehensively catalog traditional cultural expressions across Indonesia. This strategic endeavor assumes paramount importance given the chequered trajectory of communal intellectual wealth within the Indonesian context. Furthermore, the government actively strives to safeguard and transmit collective spiritual wealth within the nation, pursuing further exploration, development, innovation, and layering of extant public intellectual wealth amid the constant evolution of technology. The resultant database not only furnishes vital information regarding the management of Indonesia's cultural wealth or heritage but also serves as an impervious bulwark against the potential abuse or claims asserted by foreign entities over intellectual property in Indonesia.

The current legal protection of cultural expressions in Indonesia reflects serious efforts to understand and protect the rich diversity of cultural heritage in the country. The 2014 Copyright Law has taken a positive step in recognising the importance of protecting traditional cultural expressions by providing more detailed provisions. However, there are still some aspects that require further attention and improvement.

*Firstly*, the implementation of legal protection of cultural expressions is still faced with practical challenges. Although the legal framework has been established, its effectiveness in

practice is often hampered by a lack of resources, legal knowledge at the community level, and the role of law enforcement agencies. Strengthening the legal and social infrastructure and increasing the capacity of relevant institutions are crucial steps.

*Secondly*, there is a need to further explore and accommodate types of cultural expressions that are not yet fully covered by the existing legal framework. In the context of globalisation and technological development, some forms of cultural expression may not be adequately accommodated, so policy review and updates may be required. Furthermore, raising public awareness on the importance of protecting cultural expressions needs to be a focus. Education on cultural rights and legal protection efforts undertaken by the government can help address the lack of awareness among communities about their cultural heritage.

*Finally*, cooperation between the government, local communities, and the private sector needs to be enhanced. This collaboration can create synergies to protect and preserve cultural expressions more effectively. With the active participation of various parties, it can be expected that the legal protection of cultural expressions in Indonesia will become more comprehensive and efficient. Through these updates and improvements, Indonesia can continue to maintain cultural diversity as a valuable asset that enriches national identity.

#### **D. Closing**

Traditional cultural expressions encompass various forms of creative works, whether tangible or intangible, or a combination thereof, that signify the collective and intergenerational preservation of traditional culture. They represent a communal intellectual wealth distinct from the individualistic nature of intellectual property. The regulation of traditional cultural expressions is indispensable, given their embodiment of ancestral heritage and cultural values.

Indonesia has enacted several legal frameworks pertaining to traditional cultural expressions. The Copyright Law Number 28 of 2014 explicitly acknowledges and governs the realm of traditional cultural expressions. The state assumes a pivotal role and responsibility in safeguarding these expressions. Furthermore, the Republic of Indonesia Government Regulation Number 56 of 2022 on Communal Intellectual Wealth encompasses provisions addressing traditional cultural expressions. Thus, the actions undertaken by the Indonesian government manifest a positive legal protection framework. Moreover, both proactive (preventive) and defensive (protective) measures are employed. The rational grounds for legal protection include considerations of utility, public benefit, national identity, sovereignty, ancestral preservation, and economic potential. These measures are of utmost significance in the contemporary borderless era, wherein the potential for claims, theft, and other violations becomes increasingly pronounced.

However, there are still some aspects that require further attention and improvement. First, the implementation of legal protection of cultural expressions is still faced with practical challenges. Its effectiveness in practice is often hampered by a lack of resources, legal knowledge at the community level, and the role of law enforcement agencies. Strengthening legal and social infrastructure and increasing the capacity of relevant institutions are crucial steps. Secondly, the need to further explore and accommodate types of cultural expressions has not been fully covered by the existing legal framework. Finally, co-operation between the government, local communities and the private sector needs to be enhanced.

## Bibliography

### A. Books

Mahmud Marzuki, Peter, *Penelitian Hukum*, (Jakarta : Kencana Prenada Media Group, 2015).

### B. Paper/Article/Proceeding/Research Result

Bonanta Simarmata, Dorvinando and Albertus Sentot Sudarwanto. „Perlindungan Hukum Karakteristik Ekspresi Budaya Tradisional Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta.“ *Jurnal Privat Law* 9, no. 2 (2021): 309-318, <https://jurnal.uns.ac.id/privatlaw/article/viewFile/60039/34998>

Bunga Hardani, Mila, "Perlindungan Hukum Kekayaan Intelektual Komunal Di Jawa Tengah," Skripsi, Fakultas Hukum Universitas Negeri Semarang 2020.

Dwi Prabowo, Agung, "Aktualisasi Hak Asasi Budaya Dalam Pelindungan Hukum Dan Pelestarian Kekayaan Intelektual Komunal Dikaitkan Dengan Upaya Pemajuan Kebudayaan (Studi Kasus Ekspresi Budaya Tradisional Masyarakat Jawa Timur)." Tesis, Universitas Gadjah Mada, 2020.

Fathoni. "Paradigma Hukum Berkeadilan Dalam Hak Kekayaan Intelektual Komunal." *Jurnal Cita Hukum* 2, no. 2 (2014). DOI: 10.15408/jch.v1i2.1469.

Hari Sutra Disemadi and Cindy Kang. "Tantangan Penegakan Hukum Hak Kekayaan Intelektual dalam Pengembangan Ekonomi Kreatif di Era Revolusi Industri 4.0." *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 54-71. DOI: <https://doi.org/10.23887/jkh.v7i1.31457>.

Hermawanto, Ariesani and Melaty Anggraini, *Globalisasi, Revolusi Digital dan Lokalitas: Dinamika Internasional dan Domestik di Era Borderless World*, (Yogyakarta: LPPM Press UPN Veteran Yogyakarta, 2020).

Kurnianingrum, Trias Palupi,. "Materi Baru Dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta (The New Material on Copyright Act Number 28 Year 2014)." *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 6, no. 1 (2016): 93-106. DOI: <https://doi.org/10.22212/jnh.v6i1.249>

Kusuma, Purnama Hadi, and Kholis Roisah. "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 107-120. DOI: <https://doi.org/10.14710/jphi.v4i1.107-120>.

Mamudji, Sri, Hang Rahardjo, Agus Supriyanto et.all. *Metode Penelitian dan Penulisan Hukum*. (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia (2005).

Maulana Simatupang, Khwarizmi "Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital." *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021).

- Nuraeni and Rona Ikram Putri. "The International Dimension of Communal and Traditional Intellectual Property Rights Protection in Indonesia." *Intermestic: Journal of International Studies* 2, no. 1 (2017), DOI: <http://dx.doi.org/10.24198/intermestic.v2n1.6>.
- Ohmae, Kenichi, *The Next Global Stage Challenges and Opportunities in Our Borderless World*, (New Jersey: Wharton School Publishing, 2005).
- OseiTutu, J. Janewa. "A sui generis regime for traditional knowledge: the cultural divide in intellectual property law." *Marq. Intell. Prop. L. Rev.* 15 (2011): 147. SSRN: <https://ssrn.com/abstract=1574996>
- Paramisuari, Anak Agung Sinta and Sagung Putri ME Purwani. "Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta." *Kertha Semaya: Journal Ilmu Hukum* 7, no. 1 (2019): 1-16. DOI: <https://doi.org/10.24843/KM.2018.v07.i01.p04>.
- Robinson, Jake M., Nick Gellie, Danielle MacCarthy, Jacob G. Mills, Kim O'Donnell, and Nicole Redvers. "Traditional ecological knowledge in restoration ecology: a call to listen deeply, to engage with, and respect Indigenous voices." *Restoration Ecology* 29, no. 4 (2021): e13381. DOI: <https://doi.org/10.1111/rec.13381>.
- Roisah, Kholis, "Perlindungan ekspresi budaya tradisional dalam sistem hukum kekayaan intelektual." *Masalah-Masalah Hukum* 43, no. 3 (2014): 372-379. DOI: 10.14710/mmh.43.3.2014.372-379
- Rongiyati, Sulasi, "Hak Kekayaan Intelektual Atas Pengetahuan Tradisional." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 2, no. 2 (2016): 213-238, DOI: 0.22212/jnh.v2i2.214
- Ropei, Ahmad. "Formulasi Hukum Perlindungan Hak Kekayaan Intelektual Dalam Kerangka Maqoshid As-Syari'ah." *Jurnal Hukum Ekonomi Syariah* 4, no. 02 (2020): 165-179. DOI: <https://doi.org/10.26618/j-hes.v4i02.4259>, 169.
- Simatupang, Taufik H., "Initiating the Concept of Sui Generis of the Legal Protection of Communal Intellectual Property in the Philosophy of Science Perspective." *Jurnal Penelitian Hukum De Jure* 22, No. 2 (2022): 243-256. [://dx.doi.org/10.30641/dejure.2022.V22.243-256](http://dx.doi.org/10.30641/dejure.2022.V22.243-256),
- Sulistianingsih, Dewi, Yuli Prasetyo Adhi, and Pujiono Pujiono. "Digitalisasi Kekayaan Intelektual Komunal di Indonesia: Digitalization of Communal Intellectual Property in Indonesia." In *Seminar Nasional Hukum Universitas Negeri Semarang*, vol. 7, no. 2, pp. 645-656. 2021. DOI: <https://doi.org/10.15294/snhunnes.v7i2.723>, 653.
- Susanti, Diah Imaningrum, "Eksplorasi Perlindungan Kekayaan Intelektual Komunal Berbasis Hak Asasi Manusia." (2022).
- Triana, Nita, "Menggagas Hak Kekayaan Intelektual Perspektif Hukum Islam ke dalam Hukum Nasional." *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 2 (2018): 177-192. DOI: <https://doi.org/10.24090/mnh.v12i2.1747>.



Tuuk, Wilsen Patrick, "Perlindungan Hak Kekayaan Intelektual (HKI) terhadap pengetahuan dan teknologi tradisional menurut Undang-Undang Nomor 13 Tahun 2016 tentang Paten." *Lex Privatum* 5, no. 4 (2017).

Yuli, Ilham Isdiyanto and Deslaely Putranti. "Perlindungan Hukum atas Ekspresi Budaya Tradisional dan Eksistensi Masyarakat Hukum Adat Kampung Pitu." *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 231-256, DOI: <http://dx.doi.org/10.30641/kebijakan.2021.V15.231-256>, 235-236.

YusrizalAdi Syaputra, Muhammad and Mirza Nasution. "Legal protection of the constitutional rights of the indigenous faith believers in Indonesia." (2020), <https://dupakdosen.usu.ac.id/bitstream/handle/123456789/3866/Fulltext.pdf?sequence=1&isAllowed=y>

### **C. Regulations**

Undang-Undang RI Nomor 30 Tahun 2000 Tentang Rahasia Dagang.

Undang-Undang RI Nomor 30 Tahun 2000 Tentang Desain Tata Letak Sirkuit Terpadu

Undang-Undang Nomor 28 tahun 2014 tentang Hak Cipta.

Undang-Undang RI Nomor 13 Tahun 2016 tentang Paten.

Undang-Undang RI Nomor 20 Tahun 2016 Tentang Merek dan Indikasi Geografis.

Peraturan Pemerintah Republik Indonesia Nomor 56 Tahun 2022 Tentang Kekayaan Intelektual Komunal.

Putusan Mahkamah Konstitusi Nomor 97/PUU-XIV/2016.

## Curriculum Vitae of Author

**Aji Baskoro** holds a Bachelor of Laws degree from the Faculty of Sharia and Law at UIN Sunan Kalijaga Yogyakarta. He actively participates in various activities and organizations, notably contributing to the Center for Legal Studies and Consultation (Pusat Studi dan Konsultasi Hukum). Aji Baskoro has made substantial contributions to legal discourse, particularly in the realm of the rights of believers in Indonesia, as evidenced by his written works.

**Annisa Hafizhah** has established herself as an accomplished legal writer since 2018. In 2019, she co-founded the Forum for Islamic Scientific Studies (Forum Studi Ilmiah Islam), catering to the academic needs of law students at the Faculty of Law, Universitas Sumatera Utara. Currently serving as a lecturer at the Faculty of Law, USU, Annisa Hafizhah is pursuing her Ph.D. in Law, specializing in her field of expertise. Her scholarly pursuits and dedication to legal research exemplify her commitment to academic excellence and intellectual growth.



# STUDY OF THE IMPLICATIONS OF THE GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA NUMBER 56 OF 2022 CONCERNING COMMUNAL INTELLECTUAL PROPERTY IN INDONESIA

**Marcellino Gonzales,**

Trenggalek District Court, East Java, Indonesia

Jl. Dewi Sartika Nomor 1, Kabupaten Trenggalek, East Java, 66315

E-mail: [marcel261081@gmail.com](mailto:marcel261081@gmail.com), phone: +62 81321118477

## ABSTRACT

Indonesia is a country that has cultural diversity. It is the fruit of the customs expression, values from beliefs, morals, and habits, as well as the people knowledge and skills in adapting to their natural environment and interacting in their social life. The Government Regulation 56 of 2022 concerning Communal Intellectual Property (PP KIK) was born to protect it. In particular, it has mandated the governments to act as inventors, protectors, custodian, also users of communal intellectual property. However, the main issues are: First, is PP KIK sufficient to accommodate legal protection for communal intellectual property? Furthermore, what are the implications of implementing PP KIK for indigenous communities in the future? The method used in this paper is qualitative research with normative juridical methods. From the discussions, it can conclude that PP KIK just has contained provisions related to communal intellectual property inventory mechanism, which prioritizes digital data collection processes, as well as communal intellectual property management, utilization, maintenance mechanisms themselves with the existence of these provisions. However, in the author's opinion, it is not sufficient to accommodate the need to protect communal intellectual property itself, also the implications of implementing PP KIK yet to be able to have the maximum positive impact.

**Keywords:** Communal Intellectual Property, Intellectual Property Rights, Indonesia, Indigenous Community

## A. Introduction

Intellectual Property Rights (IPR) were born because of human creativity, and products resulting from intellectual creativity are attached to two rights: economic and moral rights. These economic rights are often called commercial rights, which will provide economic (financial) benefits for creators/inventors/designers. This economic right rewards the intellectual activity carried out by creators/inventors/designers. The moral rights granted to owners of intellectual property rights are inherent rights of the creator/inventor/designer.

This moral right cannot be removed even if the creator/inventor/designer has passed away. The principle is that every owner of intellectual property rights will enjoy the advantages and benefits of these two rights, namely economic and moral rights.

The development of a knowledge-based economy is a trend of the millennium where intellectual property is not only an aspect of legal protection but has an impact on the macro-economy of a country, among others, that can be used to increase exports of a quality product (through global, national brands), promote technological progress and encourage research and development, carry out product development as a local and national identity and provide awards as well as recognition for one's creativity and innovation. Intellectual works that become assets of a country must be protected and managed effectively. These assets will affect the development of a country, both economic development and technological development.

The economic development of a country is closely related to protecting its Intellectual Property. The more open a country's economic system is, the more Intellectual Property protection will support its economic development.<sup>1</sup> It is related to increasing the economic potential for the national development of a nation. Intellectual Property Protection as a right becomes part of economic activity. In other words, Intellectual Property cannot be separated from economic problems because Intellectual Property is synonymous with commercializing intellectual work. Intellectual Property Protection is an acknowledgment of the property by the state and the general public. Protection of intellectual property rights for a certain period so that the owner of the right has the right to enjoy or exploit the property himself. During the legal protection period, other people can enjoy or use or exploit these rights with the right holders' permission. Intellectual Property Rights are currently a necessary aspect and need attention.

The era of globalization and free competition has opened extensive trade by penetrating national borders. Trade is not only local and national but also international. Violations did not only occur in the local and national sectors but also the international sector. It is a concern for intellectual property rights owners, so taking good care of their rights is essential. The concept of protecting intellectual property rights has resurfaced and has been enforced to ensure legal certainty for intellectual property rights owners. The importance of legal protection for intellectual property rights owners is a central point for a balanced life in trade and harmony in society both locally, nationally, and internationally. Legal protection is a central issue in intellectual property rights, but it is necessary to pay attention to what and whose interests this legal protection is. Some interests clash until it becomes a polemic of the conflict of interests between developed and developing countries.

---

1 Sinaga, N. A., Pentingnya Perlindungan Hukum Kekayaan Intelektual Bagi Pembangunan Ekonomi Indonesia (*The Importance of Intellectual Property Legal Protection for Indonesia's Economic Development*), (Jurnal Hukum Sasana, 2020, <https://doi.org/10.31599/sasana.v6i2.385>), 144–165, (accessed 21 May 2023)

Indonesia is a country that has an abundant wealth of living and non-living natural resources. Not infrequently, some of them have uniqueness or characteristics that are not found in other places (endemic). However, it is not limited to that; Indonesia also has cultural diversity, which has been maintained for generations and has become its group identity. Cultural diversity is the fruit of the expression of customs, values from beliefs, morals, and habits, as well as the knowledge and skills of the people in adapting to their natural environment and interacting in their social life. This cultural diversity is then maintained and passed on to the next generation, becoming a communal identity.

Some forms of cultural expression include regional languages, dances, traditional clothes, and ceremonies. Local wisdom is in the form of knowledge and skills, including the ability of the community to utilize and mix natural materials into medicines, process food products, and craft products. The local wisdom of the people in adapting to their environment can also be seen in the characteristics of house buildings and the community's traditions in managing their natural environment. However, communal wealth, which has become the identity of local Indonesian people, has been claimed to be the culture of other countries. As is known, in 2009, Malaysia once claimed and patented the *Pendet Dance*<sup>2</sup> originating from the island of Bali as the original culture of its country. Before that, the *Rasa Sayange Song* was also recognized by Malaysia as a cultural fruit of the Malay family from the Archipelago (Malay Archipelago). They used this song to promote Malaysian tourism entitled *Truly Asia*. This neighboring country has also done the same with batik, *Reog Ponorogo* dance, and *angklung* music.<sup>3</sup>

A Japanese company has also carried out the case of patenting Indonesian traditional knowledge. This traditional Indonesian medicinal herb was also patented by the Japanese company Shiseido, but then 2002,<sup>4</sup> Shiseido revoked it.<sup>5</sup> Not only that, Indonesia's natural products were once recognized as products from foreign countries. Toraja Arabica coffee, grown in Toraja, South Sulawesi, is managed and registered as a Japanese company Key Coffe Co. trademark. It resulted in Toraja Arabica Coffee not being sold internationally except by the Japanese company Key Coffe Co. Besides that, Gayo Coffee,<sup>6</sup> made from

---

2 Yohan Rubiyantoro, *Malaysia Klaim Tari Pendet, Indonesia Kirim Nota Protes, (Malaysia Claims Pendet Dance, Indonesia Sends Protest Note)*, <https://nasional.kontan.co.id/news/malaysia-klaim-tari-pendet-indonesia-kirim-nota-protes--2>. (accessed 25 May 2023)

3 *Ibid.*

4 Inayah Rohmah, *Perlindungan Varietas Tanaman dalam Penerapan Paten Bagi Inventor Asing, (Protection of Plant Variety in the Application of Patents for Foreign Inventors)* <https://www.kompasiana.com/inayahrohmah/584e96f3749373375dc894e2/perlindungan-varietas-tanaman-dalam-penerapan-paten-bagi-inventor-asing?page=all>. (accessed 25 May 2023)

5 Tri Destanto, *Hubungan Antara Paten Dan Pengetahuan Tradisional Berdasarkan Dengan UU No. 14 Tahun 2001 Tentang Paten (The Relationship Between Patents And Traditional Knowledge According To Law No. 14 of 2001 concerning Patents)*, May 2023, 1

6 Editor Kompas, *Paten Kopi Gayo Milik Belanda Toraja Milik Jepang (Gayo Coffee Patent Owned by the Netherlands Toraja Owned by Japan)*, <https://nasional.kompas.com/read/2008/05/28/15421243/paten.kopi.gayo.milik.belanda.toraja.milik.jepang>, (accessed 19 May 2023)

one of the best varieties of Arabica coffee beans, only grows in the highlands of Aceh as a trademark of the company Holland Coffe B.V. from the Netherlands, which officially registered and claimed Gayo coffee on April 28, 2010.<sup>7</sup>

Given these cases, the Government of Indonesia has paid particular attention to communal intellectual property in its territory. The government considers Indonesia's cultural diversity and natural wealth in the form of traditional cultural expressions, traditional knowledge, genetic resources, indications of origin, and potential geographical indications are a form of Communal Intellectual Property as the essential capital of national development. The Indonesian government feels the need to inventory, safeguard and maintain communal intellectual property. These considerations underlie the promulgation of Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property as a follow-up to Law Number 28 of 2014 concerning Copyright that has not explicitly regulated communal intellectual property.

The Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property (PP KIK) shows the seriousness of the Indonesian government in responding to polemics in society regarding the protection of cultural diversity, which has been maintained for generations by its groups in particular and the identity of the Indonesian state in general.<sup>8</sup>

The government's role is immense in this PP KIK, from inventorying and managing to protecting and maintaining communal intellectual property. The central and regional governments have an enormous burden to manage from upstream to downstream the collective intellectual property data that will be and has been registered. The first homework that needs to be done at this time by the government is to record how many cultural expressions of indigenous peoples exist in Indonesia, considering there are so many indigenous communities in Indonesia. It, of course, will encounter obstacles when implementing PP KIK.

For the record, in Indonesia, there were 2,161 indigenous communities as of August 9, 2022, of which the majority, or 750 indigenous communities, are in Kalimantan. A total of 649 indigenous communities live in Sulawesi. Then, there are 349 indigenous communities located in Sumatra. There are also 175 indigenous communities in Maluku. A total of 139 indigenous communities are located in Bali and Nusa Tenggara. In Papua, there are 54 indigenous communities. Meanwhile, 45 indigenous communities are located in Java.<sup>9</sup>

---

7 *Ibid.*

8 It is located in consideration of The Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property.

9 Monavia Ayu Rizaty, *Ada 2.161 Komunitas Adat di Indonesia, Berikut Sebarannya (There are 2,161 Indigenous Communities in Indonesia, Here's Their Distribution)*, <https://dataindonesia.id/varia/detail/ada-2161-komunitas-adat-di-indonesia-berikut-sebarannya>, (accessed on May 7<sup>th</sup>, 2023)

Seeing this description of conditions, PP KIK is the only basis for the government to manage communal intellectual property. With the rapid development of technology in the last decade and with the constraints previously described, the government's burden will undoubtedly increase unless it formulates other regulations that can support the implementation of PP KIK in a comprehensive and detailed manner. Especially in the current digitalization era, legal provisions that can provide complete protection and legal certainty for indigenous peoples will become very urgent. Moreover, that should be reflected in the government's provision of tangible benefits to the indigenous peoples.

However, in the existing PP KIK, it turns out that there is no fundamental government role in protecting Communal Intellectual Property itself. PP KIK only regulates six matters: Types of Communal Intellectual Property, Inventory of Communal Intellectual Property, Safeguarding and Maintenance of Communal Intellectual Property, Indonesian KIK Information System, Utilization of Communal Intellectual Property, and Funding. Of the six things that are regulated, the rights and obligations of the stakeholders are not described in detail but only prioritize the mechanism for collecting data on communal intellectual property.

In particular, the PP KIK has mandated the Central and Regional Governments to act as inventors, providers of protection, and maintenance of the communal intellectual property, as previously mentioned, including using the joint intellectual property itself. Article 29 mention, which states:

*Maintenance of the collective intellectual property by the Minister, ministers/heads of non-ministerial government institutions, and/or Regional Governments as referred to in Article 3 section (2) can be carried out through:*

- a. *education;*
- b. *literacy;*
- c. *outreach and promotion; and/or*
- d. *utilization of communal intellectual property, which provides benefits for the Community of Origin.*

However, the PP KIK does not explain in detail what forms of commercial benefits can be obtained by the indigenous communities, especially the benefits derived from the commercial use of communal intellectual property. In addition, it does not contain a mechanism for providing help from commercial use to indigenous communities or the government. PP KIK in terms of utilizing the communal intellectual property just only mentioned in Article 33 section (3):

*Using communal intellectual property for commercial purposes must obtain a permit per the provisions of laws and regulations.*



And in section (4) states:

*The use of communal intellectual property for commercial purposes, as referred to in section (3), shall be carried out by taking into account the agreed benefit sharing under the provisions of the laws and regulations.*

Finally, section (5) states:

*The forms and procedures for obtaining permits, as referred to in section (3), and the distribution of benefits in section (4) shall be stipulated by the Minister and ministers/ heads of non-ministerial government institutions under their respective powers.*

These facts are interesting to discuss; reflecting on these, next, the author will try to analyze and describe more about discussing the application of the Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property and its implications for society. The main issues that need to be discussed are: First question is, Has PP KIK adequately accommodated the need for legal protection for communal intellectual property itself? In addition, the question is what are the implications of implementing PP KIK for indigenous communities in Indonesia in the future?

## **B. Methodology**

This paper's research type is qualitative research using normative juridical methods. Legal research with a normative juridical approach or doctrinal study looks at the purpose of the law, values of justice, analysis of legal rules, legal concepts, and legal norms, and provides an accurate description.

This study uses a statutory approach, namely an approach using legislation and regulations that are carried out by examining a statutory law relating to intellectual property rights.<sup>10</sup>The source of legal material used in this study is a combination of primary legal materials consisting of statutes, official records or treatises on making laws and decisions of judges and secondary legal materials in the form of all publications on the law which are not official documents related to intellectual property rights. Publications on law include textbooks, legal dictionaries, and commentaries on court decisions about communal intellectual property.

The collection of legal materials consists of the following 1) the study of statutory regulations is an attempt to examine and understand the statutory rules governing the formulation of the problem in this study. 2) Literature study used to look for conceptions, theories, and opinions related to the formulation of the problem in this study. From the legal material that has been collected, an analysis is carried out by first identifying legal facts and setting aside irrelevant matters to determine the content of the law to be resolved. Second,

---

10 Peter Mahmud Marzuki, *Penelitian Hukum (Legal Research)*, (Kencana Prenadamedia Group, Jakarta: 2016), 44.

collecting relevant legal materials and including non-legal materials. Third, to study the issues based on the collected legal materials. Fourth, conclude in the form of arguments that answer legal matters. Fifth, provide the ideas that have been built in conclusion. The conclusion is based on the analysis of the main problem.

### **C. The Implication of the implementation of the Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property (PP KIK)**

#### **1. General Introduction of Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property (PP KIK)**

Communal intellectual property has the characteristic of being together in the sense that the prioritized profits and interests are the interests of many people. Communal intellectual property comprises traditional knowledge, cultural expressions, and geographical indications. Meanwhile, the personal intellectual property consists of copyrights; patents; brands; industrial design; integrated circuit layout design; trade secrets, and protection of plant varieties. The state's role is strategic in fulfilling cultural rights because the state has the functional completeness to uphold these rights as part of rights on a legal basis.<sup>11</sup>

Cultural aspects are essential in contributing to the development of communal intellectual property in Indonesia. It is because communal intellectual property is generally based on the culture of Indonesian society. Therefore, the role of the state and society is needed in developing culture in Indonesia so that it can give birth to valuable intellectual property and can become an asset for the Indonesian state. Protection of communal intellectual property must be provided to provide economic benefits to the community and prevent misuse, and protective measures are carried out to respect values, respect, and meet the actual needs of local communities. The purpose of legal protection for intellectual property is intended so that those who have the right can exploit their wealth with a sense of security and comfort. That sense of security and comfort creates a climate that allows the person to work by producing further creations or inventions.<sup>12</sup>

Intellectual property law in Indonesia accommodates private rights and regulates collective or communal intellectual property rights. There are four types of communal intellectual property in Indonesia, namely Traditional Cultural Expressions: Traditional

- 
- 11 K. Sofyanto, *Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional terhadap Perolehan Manfaat Ekonomi (Legal Protection of Intellectual Property Rights over Traditional Knowledge for Obtaining Economic Benefits.)*. (Kanun Jurnal Ilmu Hukum, 2018, <https://doi.org/10.24815/kanun.v20i1.9832>), 149–162, (accessed 18 May 2023)
- 12 Atmadja, *Urgensi Perlindungan Hak Kekayaan Intelektual (The Urgency of Protecting Intellectual Property Rights)*, (Lex Journalica, 2015). 13

Knowledge, Genetic Resources, and Geographical Indications. Communal intellectual property in Indonesia, if continuously developed and guaranteed legal protection, will have a very high economic value, undoubtedly encouraging economic growth in Indonesia. It is an excellent opportunity for Indonesia to exploit the potential value of this communal intellectual property.

Many people consider that Communal Intellectual Property in Indonesia is still not sovereign. This opinion was expressed by several other countries voicing their people to register all intellectual property owned. The State of Indonesia also needs to provide a national data center that is integrated and easily accessible to the public. The cultural heritage database is still scattered, making it difficult for the community.<sup>13</sup> This database is essential to do in the concept of digitizing communal intellectual property in Indonesia. The technological aspect (besides the cultural aspect) is also a dominant factor in developing and protecting Intellectual Property Rights. The rapid development of information technology today has made the world feel small. The Information can be easily and quickly spread to all places of the world. In the circumstances like this, the Indonesian government needs to protect communal intellectual property as part of Intellectual Property Rights, one of which is digitizing communal intellectual property.

This fact is one of the reasons for the Government Regulation of the Republic of Indonesia Number 56 of 2022 Concerning Communal Intellectual Property (PP KIK) existed. PP KIK itself specifically regulates six matters, viz.:<sup>14</sup>

1. Types of Communal Intellectual Property
2. Inventory of Communal Intellectual Property
3. Safeguarding and Maintenance of Communal Intellectual Property
4. Indonesian KIK Information System
5. Utilization of Communal Intellectual Property
6. Funding

Communal Intellectual Property in PP KIK includes Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources, Indications of Origin, and Potential Geographical Indications.<sup>15</sup> In the general provisions of PP KIK, it has defined each type of Communal Intellectual Property. The general provisions explaining Traditional Cultural Expressions are all forms of expression of copyrighted works, either in the form of objects or intangibles or a combination of both. It shows the existence of a traditional culture held communally

---

13 R. Adawiyah, *Pengaturan Hak Kekayaan Intelektual Dalam Masyarakat Komunal Di Indonesia (Regulation of Intellectual Property Rights in Communal Society in Indonesia)*, 2021. <https://doi.org/10.28946/rpt.v10i1.672>, 10, (accessed 21 May 2023)

14 These matters are completely listed in the six chapters of the Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property, specifically in Chapters III to Chapter VI.

15 Article 4 of PP KIK

and across generations.<sup>16</sup> In addition, what is meant by Traditional Knowledge is all ideas and ideas in society, which contain local values as a result of authentic experiences in interacting with the environment, developed continuously, and passed on to the next generation.<sup>17</sup> The definition of *genetic resources* is genetic material originating from plants, animals, or microorganisms that contain units that function as carriers of hereditary traits that have actual or potential value.<sup>18</sup> Indication of Origin is a characteristic of the origin of goods and/or services not directly related to natural factors protected as signs indicating the correct origin of goods and/or services used in trade.<sup>19</sup> At the same time, Potential Geographical Indications are goods and/or products which, due to geographical and environmental factors including natural factors, human factors, or a combination of these two factors, give a particular reputation to the goods and/or products produced, which have the potential to be protected by geographical indications and has not been registered as a geographical indication.<sup>20</sup>

Ongoing the definition of the types of communal intellectual property, then PP KIK also regulates the mechanism for inventorying communal intellectual property as a form of legal protection measures for the communal intellectual property itself. In Chapter III, PP KIK explicitly regulates the recording of communal intellectual property and integration of the communal intellectual property data. The provisions of Chapter III state that it is the government, in this case, the Minister, ministers/heads of non-ministerial government agencies, and/or Regional Governments, who have the authority to register communal intellectual property electronically based on an application for the communal intellectual property registration from interested parties.<sup>21</sup> Whereas those entitled to register are customary law communities and/or local communities that produce, protect, maintain, and/or develop the communal intellectual property communally and across generations, including the supportive community, which in PP KIK is known as the original community.<sup>22</sup> In addition to the original community, those who are also allowed to register KIK are local/regional governments where applications are submitted to the Minister or ministers/heads of non-ministerial government agencies.

Furthermore, the Minister, ministers/heads of non-ministerial government agencies, or Local/Regional Governments will review the data and requests and then record them based on the results of the studies that have been made.<sup>23</sup> Furthermore, in Chapter III, it has also been stated that all data that has been registered with the Minister, ministers/heads of non-

---

16 Article 1 (2) of PP KIK

17 Article 1 (3) of PP KIK

18 Article 1 (4) of PP KIK

19 Article 1 (5) of PP KIK

20 Article 1 (6) of PP KIK

21 Article 13 of PP KIK

22 Article 1 (7) of PP KIK

23 Article 14 and Article 15 of PP KIK

ministerial government agencies, or Regional Governments will be inventoried in a system called the communal intellectual property information system. The government does it as a form of defensive protection for the communal intellectual property itself.<sup>24</sup>

Chapter III is related to Chapter V, which regulates the communal intellectual property information system. In this chapter, the government, through its apparatus, is authorized to manage the communal intellectual property information system, including recording, updating, and deleting communal intellectual property data contained in the system. The government deleting or updating the system in this chapter is based on the existence of an objection related to the case that KIK is not following the values, meaning, and identity of communal intellectual property and/or social institutions that apply in the Original Community. The community of origin can submit the objection or personally submits it as long as they are still part of the community of origin concerned. If an objection has been submitted and the authorized official has examined it and issued the results of an examination, the authorized official may take steps to delete or update the data in the communal intellectual property information system he manages.

In Chapter IV PP KIK focuses on safeguarding and maintaining communal intellectual property. In PP KIK Ministers, ministers/heads of non-ministerial government agencies or Regional Governments are then required to maintain KIK as referred to in Article 3 section (2) of PP KIK, namely through preventing the exploitation of communal intellectual property that is not following the values, meaning, identity of communal intellectual property, and/or social institutions that apply in the Community of Origin, mediation and/or advocacy on legal issues related to communal intellectual property; and/or diplomacy with other countries. Apart from the government and its institutions, the Community of Origin can also protect its own communal intellectual property by preventing the exploitation of communal intellectual property that is not following the values, meaning, and identity of communal intellectual property and/or the social institutions prevailing in the Community of Origin. In addition to this form of protection, the role of the government through its authorized apparatus is to maintain communal intellectual property itself. Based on the provisions of Article 29 PP KIK Maintenance of communal intellectual property by the Minister, ministers/heads of non-ministerial government agencies, and/or the Regional Government maintains communal intellectual property through the forms of education, literacy, outreach/promotion, and/or utilization of communal intellectual property that provide benefits to the Community of Origin.

Furthermore, in Chapter VI, PP KIK explicitly regulates the utilization of communal intellectual property. In this chapter, it requires that everyone who wants to take advantage

---

24 Article 27 of PP KIK

of the communal intellectual property must fulfil the following conditions:<sup>25</sup>

1. mention the origin of the communal intellectual property Origin Community;
2. maintaining the value, meaning, and identity of communal intellectual property; And
3. pay attention to the values that live in the bearer community.

In addition to containing these provisions, in this chapter, PP KIK has also required that in terms of communal intellectual property having sacred, secret, and/or upheld characteristics, the use of communal intellectual property must obtain permission from the Community of Origin. When the utilization is commercial, those wishing to utilize the communal intellectual property must obtain a permit under the applicable statutory provisions. Such commercial use must also consider the agreed benefit sharing under statutory provisions. The forms and procedures for obtaining permits and the subsequent distribution of benefits are determined by the Minister and ministers/heads of non-ministerial government institutions under their respective authorities.

From the general presentation of the chapters in PP KIK, it can be concluded that PP KIK has contained provisions related to the communal intellectual property inventory mechanism, which includes data collection and registration, which prioritizes digital data collection processes, as well as communal intellectual property management and utilization and maintenance mechanisms itself with the existence of these provisions. However, far from perfect, in the author's opinion, it is sufficient to accommodate the need to protect communal intellectual property, which is increasing daily.

## **2. The Implication of Government Regulation of the Republic of Indonesia Number 56 of 2022 concerning Communal Intellectual Property (PP KIK)**

Implementing PP KIK is a positive step for Indonesia, especially for indigenous peoples. The legal umbrella that protects intellectual property communal products is the answer to questions regarding the state's role as a protector for indigenous communities who so far feel they have yet to be protected optimally.

With this PP KIK, the government plays an essential role in processing and maintaining KIK in Indonesia. However, this critical role must also have the active support of the people in Indonesia who feel they own their communal intellectual property. The active role of Indonesian society or indigenous communities in the form of awareness about protecting communal intellectual property is crucial. Although in the provisions of PP KIK, the government has a role in facilitating data collection, the community does not just wait. However, it needs to immediately recognize communal intellectual property itself and start supporting the implementation of PP KIK by registering its communal intellectual property.

---

25 Article 33 of PP KIK

The government recognizes the existence of indigenous peoples and/or local communities in this PP KIK, known as the original community. The recognition of communal intellectual property rights owned by communities of origin by the Indonesian government is apparent in Article 5 PP KIK. It states that national cultural expressions, traditional knowledge, genetic resources, and indications of origin are inclusive moral rights that are carried out by original community who have economic benefits and is valid indefinitely, as well as the right to potential geographical indications. However, the rights to these potential geographic indications have different treatments, in the sense that to obtain such exclusive protection, these rights must be registered in advance based on the applicable laws and regulations.

In order to guarantee the existence of legal protection, as previously mentioned, for the community of origin, they must register as a first step in the inventory of communal intellectual property. With the inventory of communal intellectual property belonging to the communities of origin, the role of the government and the community of origin can be easier to maintain, maintain and process the communal intellectual property itself. However, reaching the awareness of indigenous peoples to register requires more effort from the government. Referring to the provisions of PP KIK, there is no obligation in any article, which requires the community of origin to register their communal intellectual property, but it is only voluntary. It is different from the emergence of the state's obligation under this PP KIK to inventory, safeguard and maintain the communal intellectual property itself.

In the author's opinion, it is indispensable for the government to emphasize further concrete steps to fulfill the data that will be inventoried as communal intellectual property in Indonesia. With so many indigenous communities in Indonesia, almost all of whom, on average, must own one or all of the forms of communal intellectual property required in the PP KIK, the government should, through its instruments, make an inventory directly apart from waiting for the application for registration of the KIK data collection itself. The concept of communal intellectual property itself is a concept of intellectual property law that is still unfamiliar to the Indonesian indigenous people. The Government of Indonesia itself must realize that the culture of traditional society in Indonesia does not recognize the concept of communal intellectual property rights.<sup>26</sup> The cultural values of the Indonesian people also do not recognize individual ownership of copyrighted works in the fields of science, literature, and art. Ownership tends to be social/communal, meaning that the family or the customary law community owns it. This situation can be seen in the appreciation of creativity and works of art in traditional societies. Original works of art are never imprinted

---

26 Martinu Jaya Halawa, etc., *Pelindungan Hukum Masyarakat Adat Terhadap Kekayaan Intelektual Komunal Nias (Legal Protection of Indigenous Peoples Against Communal Intellectual Property of Nias)*, Journal of Education, Humaniora, and Social Sciences (JEHSS) (Vol 5, No. 4, Universitas Medan Area:2023), 3094

with a name or other sign to identify the creator.<sup>27</sup> It, of course, has a very negative impact on the implications of PP KIK itself in the future. In the sense that this can certainly work, but to achieve the target of collecting data on communal intellectual property in Indonesia as a whole, it will take a very long time, or even run in place, especially for areas that can still be said to be relatively lagging. It is necessary for legislators also to consider the effectiveness of enforcing a regulation, as well as taking into account the targets to be achieved in the future so that in the future, these provisions are expected to minimize the emergence of polemics that arise in society.

In PP KIK, the government's role in the inventory of communal intellectual property itself is listed in Article 13, paragraph 6, and Article 15 of PP KIK; both articles include the term assessment. This study is one of the sources for recording communal intellectual property data; without any request from the public, the government can immediately study communal intellectual property. In particular, the author highlights the article's sound because it does not regulate the term assessment. It can lead to multiple interpretations, and the government's role in the communal intellectual property of the data collection process must be clarified. The study of the formulation of the article also needs to provide an overview of the obligations of government officials to act actively to record communal intellectual property.

The dark sound of the word "assessment" in the article gives the impression that this PP KIK prefers to position the community as having an active role in submitting applications for registering their communal intellectual property. It, of course, can eventually lead to the result that the collection of data on communal intellectual property in Indonesia as a whole could be better because the nature of the government is more to wait for the active role of the community. In the absence of words implying an obligation for the government to take strategic steps to collect data on communal intellectual property, in the end, the data collection will not occur in its entirety but again depends more on the seriousness of the indigenous peoples who have an interest in an area.

Apart from the data collection matter, another subject that needs to be underlined is the commercial use of communal intellectual property, as stated in Article 33, paragraph (3) and paragraph (4) of PP KIK. As Article 29 of PP KIK requires that the government can carry out the maintenance of intellectual property Communal activities by taking advantage of communal intellectual property by providing benefits to the community of origin, but Article 33 sections (3) and (4) of PP KIK itself does not include details about what form of benefit the origin community gets. In Article 33, sections (3) and (4) only regulates obtaining commercial utilization permits under statutory provisions (section 3), and such utilization

---

27 Budi, A. R., & Syamsudin, M., *Hak Kekayaan Intelektual dan Budaya Hukum (Intellectual Property Rights and Legal Culture)*. (PT. Raja Grafindo Persada:Jakarta, 2004), 45



is carried out with due regard to the agreed benefit sharing under statutory provisions (section 4).

Looking at these provisions, of course, in the future, it will again create confusion, especially for the communities of origin. Because when referring to this article, those who wish to take advantage of the communal intellectual property of a community must agree in advance regarding the provision of benefits to the community of origin (in this case, the intellectual property registered by the community of origin). Furthermore, apart from that, after an agreement has been made, the government grants utilization permits in accordance with their respective authorities, both from the central government and regional governments. With provisions that do not explain in detail the mechanism for transparently providing benefits, in the end, it will cause legal loopholes to arise, which will harm the community, both those who want to take advantage of them and the community of origin itself as the owner of communal intellectual property.

Apart from that, there is communal intellectual property arising from government studies, and it turns out that if, in the future, there are parties who wish to utilize the communal intellectual property for these assets commercially, then again, here, there will be a legal vacuum that occurs. In the PP KIK itself regarding the results of the assessment of the communal intellectual property by the government, if it wants to be used by other parties, it is not explicitly regulated, namely: regarding the party who uses it must apply for a permit to whom, and regarding what benefits will be provided later and to whom it will be handed over, and finally, who will get benefit from the utilization.

Thus regarding the implications of implementing PP KIK itself, according to the author as a conclusion in the discussion of point 1 earlier, the PP KIK has sufficiently accommodated the needs of indigenous peoples regarding the legal umbrella for their communal intellectual property. However, it could be better, as described in the paragraph discussion of point 2.

So that based on these explanations, in the opinion of the author of PP KIK, this does not yet reflect the existence of legal certainty, especially in the section on communal intellectual property through the review channel, and the second is related to the problem of utilizing the commercial communal intellectual property. The unpreparedness of human resources, especially from the community of origin itself, and the seriousness of the government and its apparatus in the regions will impact the implications of PP KIK itself. So that in the opinion of the author, to provide legal certainty, this PP KIK needs to be reviewed and perfected by taking into more in-depth consideration the interests of indigenous communities and cutting bureaucracy to facilitate the maintenance and utilization of communal intellectual property carried out by the government itself, in order to provide maximum benefit for the community, in this case, the indigenous communities in Indonesia.

However, PP KIK is a product of legislation that should be based on the principle of legal certainty, which the principle of legal certainty is closely related to legal positivism.

The common thread that connects the principle of legal certainty with positivism is the aim of clarifying positive law. The law in a positivistic stream requires “regularity” and “certainty” to support the functioning of the legal system properly and smoothly.<sup>28</sup> So that the goal of absolute legal certainty is to be achieved in order to protect the public interest (which also includes personal interests) with the function of being the main engine of upholding justice in society (order), upholding citizens’ trust in the authorities (government), and upholding the authorities’ authority in the eyes of people.<sup>29</sup>

We must understand that legal positivism creates a concrete law free from abstract conceptions that will create uncertainty. It is in line with the intent and purpose of the principle of legal certainty, which guarantees that justice seekers can use a definite and concrete, and objective law, without the involvement of speculations or subjective views. John Austin said that legal certainty is the ultimate goal of legal positivism, where to achieve legal certainty, it is necessary to separate law from morals to produce a logical, fixed, and closed system (closed logical system).<sup>30</sup>

In the author’s opinion, the principle of legal certainty is the biological child of positivist reasoning toward law. The purpose of legal positivism itself is to try to create an objective or written law made by the state to create an order for its people. With such a law, it will create what is said to be the principle of legal certainty, in which the community where the law exists is guaranteed that the law regulates what must be done and what must not be done. Therefore, this legal positivism extracts its value to create a clear law into the principle of legal certainty. Thus, the law is not based on mere subjective speculations, which will make it gray, and there is no clarity in it.

Referring to these opinions, PP KIK, as a legal product, should still prioritize the principle of legal certainty in each article. So that by prioritizing this principle, PP KIK will no longer contain a gray area that causes the loss of the essence of legal certainty and can provide comprehensive legal protection for indigenous peoples. With the improvement of PP KIK, of course, in the future, it will positively influence the implications in society.

#### **D. Conclusion**

From the discussion above, it can conclude that PP KIK has contained provisions related to the communal intellectual property inventory mechanism, which includes data collection and registration, which prioritizes digital data collection processes, as well as

---

28 Mirza Satria Buana, *Hubungan Tarik-Menarik Antara Asas Kepastian Hukum (Legal Certainpi) Dengan Asas Keadilan (Substantial Justice) Dalam Putusan-Putusan Mahkamah Konstltusi (The Relationship of Attraction Between the Principle of Legal Certainty and the Principle of Substantial Justice in Decisions of the Constitutional Court)*, Yogyakarta: Tesis Magister Ilmu Hukum Universitas Islam Indonesia, 2010, 34

29 A. Ridwan Halim, *Evaluasi Kuliah Filsafat Hukum (Evaluation of Legal Philosophy Lectures)*, (Ghalia Indonesia: Jakarta, 1987), 166.

30 Widodo Dwi Putro, *Kritik Terhadap Paradigma Positivisme Hukum (Criticism of the Paradigm of Legal Positivism)*, (Genta Publishing: Yogyakarta) 2011, 11

communal intellectual property management and utilization and maintenance mechanisms itself with the existence of these provisions. However, far from perfect, in the author's opinion, it is sufficient to accommodate the need to protect communal intellectual property, which is increasing daily.

The other conclusion from discussion above also that the implications of the implementation of PP KIK for indigenous communities in Indonesia, if they still use the current form of PP KIK, have not been able to have the maximum positive impact. The PP KIK has not reflected legal certainty, especially in the section on communal intellectual property through the review channel, and the second is related to problems commercial utilization of communal intellectual property. The unpreparedness of human resources, especially from the community of origin itself, and the seriousness of the government and its apparatus in the regions will affect the implications of PP KIK itself. It shows that the interests of indigenous communities have not been fully accommodated in the end, so regulators must consider more deeply the interests of indigenous communities and cut bureaucracy to facilitate the maintenance and utilization of communal intellectual property carried out by the government itself in order to provide maximum benefit for society.

## **E. Suggestion**

Based on the discussion and conclusion above, some suggestions from the discussion will be as follows, firstly, broadly speaking, the author recommends refining PP KIK by prioritizing the meaning of forming this government regulation as a legal product. Furthermore, according to the author, this PP KIK must prioritize the principle of legal certainty in each article. So that by prioritizing this principle, PP KIK will no longer contain a gray area that causes the loss of the essence of legal certainty and can provide comprehensive legal protection for indigenous peoples. With the improvement of PP KIK, of course, in the future, it will positively affect the implications in society.

In particular, PP KIK itself needs to add articles related to the mechanism for the government's emergence of results of communal intellectual property studies ("assessment" clause). Besides that, it is also necessary to add articles that regulate the mechanism when communal intellectual property arising from registration or data collection based on government studies wants to be utilized by other parties. Which, in this case, is not regulated explicitly regarding the first, the party who utilizes must apply for a permit to whom. Second, then what kind of benefits will be provided later? Third, to whom the benefits will be handed over, and fourth, related to who will enjoy the results of utilizing the communal intellectual property.

## Bibliography

### Books:

- Atmadja, *Urgensi Perlindungan Hak Kekayaan Intelektual (The Urgency of Protecting Intellectual Property Rights)*, (Lex Jurnalica, 2015)
- Budi, A. R., & Syamsudin, M., *Hak Kekayaan Intelektual dan Budaya Hukum (Intellectual Property Rights and Legal Culture)*. (PT. Raja Grafindo Persada:Jakarta, 2004)
- François., Ost, *Legal System between Order and Disorder, translated by Iain Stewart*. (Oxford: Clarendon Press, 2002)
- Halim, A. Ridwan, *Evaluasi Kuliah Filsafat Hukum (Evaluation of Legal Philosophy Lectures)*, (Ghalia Indonesia: Jakarta, 1987)
- Kusumaatmadja, Mochtar, *Pengantar Hukum Internasional (the Introduction of International Law)*, (Alumni, Bandung, 2019)
- Marzuki, Peter Mahmud, *Penelitian Hukum (Legal Research)*, (Kencana Prenadamedia Group, Jakarta: 2016)
- Mayer-Maly, Theo. “Partes Iuris”, *Critical Studies in Ancient Law, Comparative Law and Legal History*, edited by John W. Cairns dan Olivia F. Robinson. (Oregon: Hart Publishing, 2004)
- Notohamidjojo, *Soal-Soal Pokok Filsafat Hukum (Legal Philosophy Questions)*, (BPK Gunung Mulia: Jakarta, 1975)
- Putro, Widodo Dwi, *Kritik Terhadap Paradigma Positivisme Hukum (Criticism of the Paradigm of Legal Positivism)*, (Genta Publishing: Yogyakarta, 2011).

### Journals:

- Adawiyah, R., *Pengaturan Hak Kekayaan Intelektual Dalam Masyarakat Komunal Di Indonesia (Regulation of Intellectual Property Rights in Communal Society in Indonesia)* (2021). <https://doi.org/10.28946/rpt.v10i1.672>, (accessed 25 May 2023)
- Buana, Mirza Satria, *Hubungan Tarik-Menarik Antara Asas Kepastian Hukum (Legal Certainpi) Dengan Asas Keadilan (Substantial Justice) Dalam Putusan-Putusan Mahkamah Konstitusi (The Relationship of Attraction Between the Principle of Legal Certainty and the Principle of Substantial Justice in Decisions of the Constitutional Court)*, Yogyakarta: Tesis Magister Ilmu Hukum Universitas Islam Indonesia (2010)
- Destanto, Tri, *Hubungan Antara Paten Dan Pengetahuan Tradisional Berdasarkan Dengan UU No. 14 Tahun 2001 Tentang Paten (The Relationship Between Patents And Traditional Knowledge According To Law No. 14 of 2001 concerning Patents)* (2021).
- Halawa, Martinu Jaya, et al., *Pelindungan Hukum Masyarakat Adat Terhadap Kekayaan Intelektual Komunal Nias (Legal Protection of Indigenous Peoples Against Communal*

*Intellectual Property of Nias*), Journal of Education, Humaniora, and Social Sciences (JEHSS) Vol 5, No. 4, Universitas Medan Area (2023)

Sinaga, N. A., Pentingnya Perlindungan Hukum Kekayaan Intelektual Bagi Pembangunan Ekonomi Indonesia (*The Importance of Intellectual Property Legal Protection for Indonesia's Economic Development*), Jurnal Hukum Sasana (2020), <https://doi.org/10.31599/sasana.v6i2.385>, (accessed 21 May 2023)

Sofyarto, K., *Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional terhadap Perolehan Manfaat Ekonomi (Legal Protection of Intellectual Property Rights over Traditional Knowledge for Obtaining Economic Benefits.)*. Kanun Jurnal Ilmu Hukum (2018), <https://doi.org/10.24815/kanun.v20i1.9832>, (accessed 18 May 2023)

### Websites:

Ayu Rizaty, Monavia, *Ada 2.161 Komunitas Adat di Indonesia, Berikut Sebarannya (There are 2,161 Indigenous Communities in Indonesia, Here's Their Distribution)*, <https://dataindonesia.id/varia/detail/ada-2161-komunitas-adat-di-indonesia-berikut-sebarannya>, (accessed 7 May 2023)

Kompas, Editor, *Paten Kopi Gayo Milik Belanda Toraja Milik Jepang (Gayo Coffee Patent Owned by the Netherlands Toraja Owned by Japan)* <https://nasional.kompas.com/read/2008/05/28/15421243/paten.kopi.gayo.milik.belanda.toraja.milik.jepang>, (accessed 19 May 2023)

Rohmah, Inayah, *Perlindungan Varietas Tanaman dalam Penerapan Paten Bagi Inventor Asing, (Protection of Plant Variety in the Application of Patents for Foreign Inventors)* <https://www.kompasiana.com/inayahrohmah/584e96f3749373375dc894e2/perlindungan-varietas-tanaman-dalam-penerapan-paten-bagi-inventor-asing?page=all>, (accessed 20 May 2023)

Rubiyantoro, Yohan, *Malaysia Klaim Tari Pendet, Indonesia Kirim Nota Protes, (Malaysia Claims Pendet Dance, Indonesia Sends Protest Note)*, <https://nasional.kontan.co.id/news/malaysia-klaim-tari-pendet-indonesia-kirim-nota-protes--2>, (accessed 25 May 2023)

### Regulations

The Government Regulation of the Republic of Indonesia Number 56 of 2022 Concerning Communal Intellectual Property

## AUTHOR CURRICULUM VITAE

**Marcellino Gonzales S.** is a Judge in the District Court of *Trenggalek*, East Java. He graduated from the Law Faculty of *Padjadjaran University*, Bandung, Indonesia. He also received master degree in Law from the Law Faculty of *Merdeka University*, Malang, Indonesia. He had been granted a scholarship for the "YES-Program" from the People's Republic of China. He received his LL.M. degree from the East China University of Political Science and Law (ECUPL), Shanghai, China, in 2016. He also received a Ph.D. degree from the Southwest University of Political Science & Law (SWUPL), Chongqing, China, in 2022.



## AUTHOR GUIDELINES

Indonesian Law Journal (ILJ) is a scientific journal published by The National Law Development Agency. ILJ invites academicians, researchers, observers, practitioners and all parties interested in legal field to publish their articles. Authors are expected to read and abide the following Author Guidelines:

1. Submitted manuscripts should be in legal field with particular topics as requested and have not been published elsewhere.
2. Manuscripts should be submitted in English. Authors who are not native speakers of English should seek assistance from a native speaker to proofread their manuscripts before submitting them to the Editorial Team.
3. Submitted manuscripts are going through peer review process. The results of the review will provide consideration to decide whether the manuscripts should be accepted, revised or rejected. Submissions may be returned to authors that do not adhere to these guidelines.
4. Submitted manuscripts should be in the form of :
  - a. Research Result Paper;
  - b. Jurisprudence;
  - c. Literature Review; and
  - d. Case studies.
5. **Title** of manuscript should be concise and specific which describes the content of the article comprehensively and unambiguously. It should be in Arial font, size 14, UPPER CASE, and **bold** typeface. It should be centered across page in 1.0 space.
6. The **abstract** should be concisely describes the background, the issue, the method, conclusion and recommendation in one paragraph. Total words used is no more than 150 words. It is typed using 1.0 space with normal margin and alignment: justify. Abbreviations must be spelled out.
7. Outline of manuscript:
  - Title;
  - Name of Author(s) (should be typed below the title in full name without any qualifications). Use the word "and" instead of "&" if authors are more than one.
  - Authors' Affiliations (name(s) of department(s) and institution(s));
  - Author Email;
  - Abstract;
  - Keyword;
  - Introduction;



- Research Method;
- Discussion;
- Closing;
- Bibliography;
- Curriculum Vitae of Author.

Body:

A. Introduction

It presents the description of the background and the issue discussed in the manuscript.

B. Research Method

It is an optional section for articles which are based research.

C. Discussion

The section contains the analysis of the issue. Items of discussion should be adjusted to the number of discussed issues.

D. Closing

It should describe the overall, clear and concise conclusion and recommendation.

8. Technical Writing Guidelines:

- a. Manuscripts should be in soft copy in the form of Microsoft Word (.doc)/(docx).
- b. Manuscripts should be in 10 up to 25 pages long, including abstract, figures, tables and bibliography.
- c. Manuscripts are written in A4 paper, 12 point Arial, 1.5 space. Top margin should be 3 cm, as well as bottom, left, and right.
- d. Figures and tables:
  - The caption for a table appears above the table, left indent (not center), should be in Arial font, size 12 ;
  - The caption for a figure should be appeared below the graphic, left indent (not center), in Arial font, size 12;
  - Typically, boldface the word "Figure" or "Table" then present the caption in plain text.
  - Use arabic numerals (1, 2, 3, dst.) for the associated number of figures/tables;
  - Tables appear in left indent;
  - Font type and size for table content may be customized as needed (size 8-10, *Times New Roman /Arial*) in 1.0 space.

- 
- Reference or explanation should be below the associated table/figure, typed left indent, Arial size 10.
- e. References should be put in foot note in *Cambria* font, size 10:
- Books (with 1 author): Wendy Doniger, *Splitting the Difference* (Chicago: University of Chicago Press, 1999), p. 65.
  - Books (with 2 authors): Guy Cowlshaw and Robin Dunbar, *Primate Conservation Biology* (Chicago: University of Chicago Press, 2000), p. 104–7.
  - Books (with authors of 4 or more): Edward O. Laumann et al., *The Social Organization of Sexuality: Sexual Practices in the United States* (Chicago: University of Chicago Press, 1994), p. 262.
  - Journal Articles: John Maynard Smith, “The Origin of Altruism,” *Nature* 393 (1998): 639.
  - On-line Journal Articles: Mark A. Hlatky et al., “Quality-of-Life and Depressive Symptoms in Postmenopausal Women after Receiving Hormone Therapy: Results from the Heart and Estrogen/Progestin Replacement Study (HERS) Trial,” *Journal of the American Medical Association* 287, no. 5 (2002), <http://jama.ama-assn.org/issues/v287n5/rfull/joc10108.html#aainfo> (accessed 7 January, 2004).
  - Papers of a Seminar: Brian Doyle, “Howling Like Dogs: Metaphorical Language in Psalm 59” (paper at the Annual International Meeting for the Society of Biblical Literature, Berlin, Germany, 19-22 June, 2002).
  - Website/internet: Evanston Public Library Board of Trustees, “Evanston Public Library Strategic Plan, 2000–2010: A Decade of Outreach,” Evanston Public Library, <http://www.epl.org/library/strategic-plan-00.html> (accessed 1 June 2005).
- f. Bibliography:
- Corresponding references for all citations should be in the latest edition;
  - References in Bibliography should be classified based on the types of references used in the manuscript, for example; Book; Paper/Article/Proceeding/Research Result Paper; Internet and Regulations ;
  - Bibliography should be in alphabetical order;
  - The internet sources of used references should be officially validated.
  - Bibliography should be written as followed:
    - Books (with 1 author): Doniger, Wendy, *Splitting the Difference* (Chicago: University of Chicago Press, 1999).
    - Books (with 2 authors): Cowlshaw, Guy and Robin Dunbar, *Primate Conservation Biology* (Chicago: University of Chicago Press, 2000).

- Books (with authors of 4 or more): Laumann, Edward O. et al., *The Social Organization of Sexuality: Sexual Practices in the United States* (Chicago: University of Chicago Press, 1994).
  - Journal Articles: Smith, John Maynard, "The Origin of Altruism," *Nature* 393 (1998).
  - On-line Journal Articles: Hlatky, Mark A. et al., "Quality-of-Life and Depressive Symptoms in Postmenopausal Women after Receiving Hormone Therapy: Results from the Heart and Estrogen/Progestin Replacement Study (HERS) Trial," *Journal of the American Medical Association* 287, no. 5 (2002), <http://jama.ama-assn.org/issues/v287n5/rfull/joc10108.html#aainfo> (accessed 7 January, 2004).
  - Papers of a Seminar: Brian Doyle, "Howling Like Dogs: Metaphorical Language in Psalm 59" (makalah disampaikan pada the annual international meeting for the Society of Biblical Literature, Berlin, Germany, 19-22 June 2002).
  - Website/internet: Evanston Public Library Board of Trustees, "Evanston Public Library Strategic Plan, 2000–2010: A Decade of Outreach," Evanston Public Library, <http://www.epl.org/library/strategic-plan-00.html> (accessed 1 Juni 2005).
9. The Curriculum Vitae of Authors should be written in paragraph, not more than 1 page long and mention the name, latest education background, organization/office, professional background, and scientific works/manuscripts.
10. Electronic form/softcopy of the manuscripts, a complete Curriculum Vitae (includes e-mail address and phone number) and a copy of valid ID should be submitted to [indonesianlawjournal@gmail.com](mailto:indonesianlawjournal@gmail.com) or [ilj@jdih.go.id](mailto:ilj@jdih.go.id)



# Indonesian Law Journal

---

The Editors of Indonesian Law Journal  
National Law Development Agency Ministry of Law and Human Rights of RI  
Jl. Mayjen Sutoyo-Cililitan, Jakarta Timur, INDONESIA  
Telephone : (62-21) 8011754, 8091908  
Faximile : (62-21) 8011752, 8002265  
E-mail : [indonesianlawjournal@gmail.com](mailto:indonesianlawjournal@gmail.com) | [ilj@jdihn.go.id](mailto:ilj@jdihn.go.id)  
Website : <http://www.ejournal.bphn.go.id>

P - ISSN : 1907 – 8463

E - ISSN : 2722 – 8568