



## LEGAL STRENGTHENING OF LOCAL CULTURE-BASED COPYRIGHT ASSETS TO SUPPORT ENTREPRENEURSHIP IN THE TOURISM INDUSTRY

Zulkifli Makkawaru<sup>1\*</sup>, Kamsilaniah<sup>2</sup>, Almusawir<sup>3</sup>  
<sup>1,2,3</sup>Lecturer at the Faculty of Law, Bosowa University, Makassar  
[zulkifli.makkawaru@universitasbosowa.ac.id](mailto:zulkifli.makkawaru@universitasbosowa.ac.id)

**Keyword:**  
legal rights; inventory;  
registration;  
entrepreneurship;  
tourism assets

**Abstract:** *This research aims to analyze the legal legitimacy of ownership and control of culturally traditional assets in Indonesia, which drive the economicization of cultural wealth through the national tourism industry. Legal weaknesses impede recognition and support to promote the economicization of these cultural assets. The research begins with a review of regulations and policy documentation to understand the philosophical and sociological foundations of the regulation of cultural copyright ownership. The study also examines theoretical aspects of the implementation of the law.*

*Field research is conducted through a series of in-depth interviews with experts and practitioners, both legal professionals and music industry practitioners, collecting data on public understanding through questionnaires. Field data is analyzed quantitatively, while document data and doctrinal studies are analyzed qualitatively. The results of the research indicate a low awareness of locally-based cultural intellectual wealth, as evidenced by the weak appreciation of society, including local governments, in inventorying and registering communal intellectual property assets. The subsequent effect is the weakness in optimizing the commercial value of communal intellectual property, especially in the cultural tourism sector.*

**Article Information:** Accepted: 15-11-2023, Approved: 27-11-2023, Published: 28-11-2023

### Introduction

Entrepreneurship in the tourism sector is expected to become a flagship in the future. Tourism is seen as capable of bringing together various segments to participate in it, ultimately generating many commercial effects that drive the economic growth of a country. Even advanced countries like the United States, China, and South Korea show attention to the tourism sector in accumulating resources for the advancement of their economies. Similarly, Arab countries also do not lag behind in making the tourism sector a source of national income, apart from oil. The economic achievements of the tourism sector can be obtained through expenditures made by both domestic and foreign tourists. The economic impact of tourism can be seen in Tourism GDP, tourism employment, indirect taxes from the tourism sector, and wages/salaries from the tourism sector.

Tourism is an activity, service, and product of the tourism industry that can create travel experiences for tourists. According to Gartner, the main elements shaping tourist experiences are the attractiveness of a place or location. Attraction can be natural or artificial, modern or traditional with a local nuance.

The tourism sector is a sector that needs strengthening for two considerations. First, the world has realized how the tourism sector has become a leading contributor to the financial well-being of a nation. Second, the Indonesian government has also shown awareness of the importance of boosting tourism to address weaknesses in other sectors that often affect Indonesia. Abundant natural resources alone are not enough to be addressed only through physical exploration and management. Natural resources that hold beauty must also be a concern, and that is what the Indonesian government is beginning to realize.

The abundant and diverse cultural wealth serves as a magnet for others to take advantage of it and even occupy (at least claim) it as part of their culture. This can be seen as a conscious effort by other nations that this sector is very valuable if its value is maximized. It has a very close and positive effect on the sustainability and development of the tourism sector. However, our vulnerability in handling this issue is strongly felt. Thus, in-depth, comprehensive, and continuous study and attention are needed so that the management of its utilization can yield maximum results according to the conditions and situations in Indonesia.

Culture is the result of habits, behaviors, and beliefs that have uniqueness, making it different from one region to another. This diversity makes culture an identity that a group of people possesses. In its position as an archipelagic country, Indonesia has the most diverse culture in the world. If not managed well, it can become a source of conflict, both domestic conflicts between regions and misunderstandings or practices of mutual claims with other countries.

An important activity is the collection of data on traditional cultural expressions, such as fabric motifs, traditional dance, traditional music, folklore, traditional architecture, traditional food, and others. The collection of data on traditional cultural expressions can also introduce the culture of other regions, creating a sense of ownership of traditional culture. An initiative is needed to save traditional culture as cultural heritage, so that Indonesia has a national identity and can preserve traditional cultural expressions.

## **Conceptual Framework**

### **Legality of Ownership Rights to Creative Economic Outputs**

The legal strength of ownership and control over culturally traditional assets in Indonesia is a key factor in driving the demand for the economicization of cultural wealth. The weakness in legality turns out to be a trigger for the lack of smoothness in all efforts to obtain recognition and support to promote the economicization of these cultural assets.

In contrast to what neighboring countries and some other countries in the Asian region have done, which have successfully organized their cultural assets to optimize them as wealth that can support their progress. The opposite situation occurs in Indonesia, which has to struggle to resist various

forms if it wants to release many cultural assets from foreign claims, both questioning the claimed cultural assets and those that are likely to be claimed in the future.

The 4.0 era is even transitioning to the 5.0 era, which positions technology not just for utilization but for developing something new. Technology helps generate brilliant ideas easily because many things that are thought of do not require a long time to think deeply in unveiling new creations and innovations. It has long been felt that cultural wealth is merely a fulfillment for the preservation of national pride. The concept of the creative economy is the right choice to trigger the encouragement of the next development of innovative creations in the form of modifications in creative works that have become models for society today. Emphasizing the spirit of expressing new expressions about a condition, event, product is an important aspect that needs to be prioritized. Furthermore, the entire expected process from it must always be accompanied by the readiness of regulations or legal foundations.

All aspects of work related to cultural assets and their development, including strengthening the expressiveness of the implementation of the creative economy that has recently been developed by the government, have become very important in supporting all entrepreneurial activities for national economic development.

### **Diversity in Indonesia, Driving the Growth of the Creative Economy**

It is unfortunate if the proponents of the creative economy do not see the expression of national culture as a driving factor for production creativity. The Indonesian nation, which possesses rich expressions, can utilize traditional cultural expressions as a catalyst for the creative economy. There are many benefits to be gained by leveraging the wealth of traditional cultural expressions owned by the Indonesian nation. First, as a way to preserve traditional cultural heritage so that if produced commercially, it can reintroduce traditional culture that has disappeared in society. Second, as a catalyst for innovation in the Indonesian economy because there are still many traditional cultural expressions of Indonesia that have not been utilized. Third, it can create new traditional culture owned by Indonesia due to the innovations that will be made. Fourth, if regulated in clear and firm laws, in this case through the Bill on State Property Rights Over Culture, it can generate foreign exchange for multinational companies and other countries that use motifs or expressions of traditional Indonesian culture as part of innovative commodities.

### **Legal Protection for Traditional Cultural Expressions**

The idea of private ownership formulated by John Locke was influenced by the history of European countries with highly dominant monarchies, where civilians had no rights to their possessions, and kings could easily take anything owned by the citizens. This led to the birth of the concept of private ownership (property theory) as part of an effort to propose limitations on the power of the king. The concept of private ownership inspired other thinkers who gave rise to intellectual property rights.

John Locke's theory of ownership states that an individual may own or claim something as their own if they have worked on and cultivated it. This principle is suitable for visible goods, such as land, trees, and houses. However, what about goods that are not visible, such as knowledge or ideas? There is a fundamental difference in the perspective on ownership found in international conventions and cultural ownership societies.

Protection for traditional cultural expressions is currently being formulated by WIPO (World Intellectual Property Organization), and some articles being discussed cover definitions of traditional cultural expressions, regulation of use, and ownership of traditional cultural expressions.

## **Materials And Method**

The chosen approach to problem-solving is the normative-empirical approach, emphasizing the application of law that can only be considered effective if the elements of legal substance and a good legal structure are fulfilled (Makkawaru et al., 2020). In legal norms/rules containing articles of the law, their effectiveness can be assessed through society's compliance with the law (the new legal order). The empirical approach complements the normative approach in resolving issues, particularly in the implementation of new legal institutions in society, as institutions for implementing rights in copyright law in Indonesia.

This research was conducted in the city of Makassar, where many local art products are found. Many stakeholders are concerned about the potential loss of identity if not accompanied by accurate recording, as one of the efforts in developing art and culture-based tourism. A study of legislation and policy documentation was carried out to understand the philosophical and sociological foundations of the issuance of the law. Simultaneously, a theoretical study was conducted on legal enforcement theories that would shape legal culture, ultimately providing a positive effect for the development of commercialization through the tourism entrepreneurship sector.

Field research steps were taken through a series of in-depth interviews with experts and practitioners, both legal professionals and practitioners in the music industry, and the collection of data on public understanding through the distribution of questionnaires. Field data was analyzed quantitatively, while document data and doctrinal studies were analyzed qualitatively.

## **Result**

Registration of intellectual property rights for local Indonesian cultural works faces challenges, and the lack of an ideal registration form is one of the contributing factors. The Directorate General of Intellectual Property of the Republic of Indonesia recognizes the need for anticipation and response to the fate of local Indonesian intellectual property. Therefore, the Directorate General has established a new nomenclature called the Head of the Section for Reinventory of Communal Intellectual Property and Libraries. The Communal Intellectual Property Program, launched since 2014, is awaiting further

developments. Regions that have enacted Regional Regulations regarding this aspect include West Java and Papua.

Furthermore, the Directorate General of Intellectual Property of the Republic of Indonesia has signed a Memorandum of Understanding between the Ministry of Education and Culture and the Ministry of Law and Human Rights with reference numbers: No. 1204/F.F1/HK/2014 (Ministry of Education and Culture letter) and No. HKI.HM.05.02-03 (Ministry of Law and Human Rights letter) entitled "Memorandum of Understanding on the Protection of Traditional Knowledge and Traditional Cultural Expressions." The scope of this Memorandum of Understanding includes:

1. Providing a database of traditional knowledge and traditional cultural expressions;
2. Managing information on traditional knowledge and traditional cultural expressions;
3. Providing materials, facilitators, and speakers for advocacy, socialization, communication, information, and education on traditional knowledge and traditional cultural expressions;
4. Coordinating and consolidating the importance of inventorying, maintaining funds for preserving traditional knowledge and traditional cultural expressions with Regional SKPDs, Regencies/Cities, and the community carrying traditional knowledge and traditional cultural expressions; and
5. Enhancing the capacity of stakeholders to inventory, preserve, and maintain traditional knowledge and traditional cultural expressions.

Regarding duties and responsibilities, it appears that both institutions carry out tasks and responsibilities that are not significantly different. However, in terms of coordination and consolidation for the importance of inventorying, maintaining, and preserving traditional knowledge and traditional cultural expressions, the Ministry of Education and Culture seems to have more flexibility in mobilizing provincial and regency/city SKPDs, while the Ministry of Law and Human Rights, based on the concept of regional autonomy (OTODA), only has one regional office at the provincial level.

The state of recording cultural copyright in South Sulawesi can be described as follows:

The handling of documentation, registration, and inventorying of cultural copyright in Indonesia is inadequate, as indicated by 66 respondents (66%) stating so, while approximately 18% or 18 respondents claim it is adequate. There are 16 respondents (16%) who appear to pay little attention to the issue and answer that they do not know. This is reflected in Table 1.

**Table 1**  
**Assessment of Documentation Activities and Inventory of Cultural Creation Works**

No.	Respondent Answers	Total	Percentage
1	Sufficient	18	18
2	Not Sufficient	66	66
3	Don't Know	16	16
<b>Total</b>		100	100

Data source: Processed from the questionnaire

Are Indonesian cultural copyrights sufficiently protected from claims/recognition by other countries? The answers are very concerning as 95 respondents (95%) state that Indonesian cultural copyrights are not protected from claims/recognition by other countries, while only 3 respondents (3%) state that Indonesian cultural copyrights are sufficiently protected from claims/recognition by other countries. This is illustrated in the following Table 2:

**Table 2**  
**Preservation of Cultural Copyright from Foreign Claims**

No.	Respondent Answers	Total	Percentage
1	The copyright of Indonesian cultural works is sufficiently protected from claims/recognition by other countries	3	3
2	The copyright of Indonesian cultural works is not protected from claims/recognition by other countries	95	95
3	Don't Know	2	2
<b>Total</b>		100	100

The central government plays the most significant role in taking steps such as registration, even down to the regional level, although it is acknowledged that it is difficult to see something truly authentic without the influence of each other's cultures. Our cultural wealth is too vast, and the government is overwhelmed with management. Similarly, in handling it, we are always late, reacting only when others act to our disadvantage.

Addressing the chaos requires legal protection in the form of legislative improvements (stated by 8% of respondents), while 37% of respondents suggest improving law enforcement and case resolution. The largest percentage of respondents, 55%, mentions that both options should be implemented (improvement of legislation along with law enforcement and case resolution, as shown in Table 3.

**Table 3**  
**Forms of Legal Protection for Cultural Copyright**

No.	Respondent Answers	Total	Percentage
1	Improvement of its legislation	8	8
2	Improvement of its law enforcement/resolution of cases	37	37
3	Both answers above are correct	55	55
<b>Total</b>		100	100

In Table 4, it is illustrated that 8 (8%) of respondents mention the need for inventorying and documentation, while 37 (37%) state that the crucial aspect is registration or recording, to strengthen

its legality. However, the percentage desiring both options (inventorying and documentation along with registration/recording) is 55%.

**Table 4**  
**The role that must be undertaken by Local Governments in the protection of cultural copyrights**

No.	Respondent Answers	Total	Percentage
1	Inventorying and Registration	8	8
2	Registration of rights	37	37
3	Both answers above are correct	55	55
<b>Total</b>		100	100

The attention of local government to the preservation of local copyright is reflected as follows:

**Table 5**  
**Views on the Level of Attention from Local Governments to Cultural Copyrights**

No.	Respondent Answers	Total	Percentage
1	Sufficient	39	39
2	Not sufficient	55	55
3	Don't Know	6	6
	Total	80	100

The respondents' answers are as follows: 39 respondents (39%) state it is sufficient, slightly lower with 55 respondents (55%) stating that the attention from the local government is not sufficient.

## Discussion

The strengthening sense of ownership by individuals or communities over what belongs to them, especially when it comes to high artistic intellectual property, is the hope of a nation. This is triggered by a tragedy of foreign claims to our communal intellectual property. It raises awareness that we have been too neglectful of our immaterial wealth. The necessary condition is strengthening recording after optimal inventorying to provide the highest proof value when facing issues of mutual claims.

This awareness also arises following the realization that the economic value of local cultural wealth is very high, especially when developed with a creative economic approach, especially by the original stakeholders. The focal point is the maximization of entrepreneurial messages with the commodity capital of cultural tourism assets that are flourishing nowadays.

Many new regulations have been issued by the government, although it is perceived as late, but behind that, the awareness to make these regulatory instruments has not been maximized. The role of all segments of society, especially stakeholders in cultural tourism, is needed.

## Conclusion

Awareness of locally based cultural intellectual wealth is still low, as evidenced by the weak appreciation of the community, including local governments, in conducting inventory and registration

(recording) of their communal intellectual property assets. This has led to difficulties in providing more accurate legal evidence.

The majority of the public expects a significant role from the government, especially local governments, to strengthen inventorying and registration activities to provide a subsequent effect, such as maximizing economic benefits through selling in tourism packages, which are currently experiencing development worldwide.

## References

- Sapta Nirwandar. 2014. *Building WOW Indonesia Tourism and Creativity Industry*. Gramedia Pustaka Utama, Jakarta.
- Muljadi A.J., 2010. *Kepariwisata dan Perjalanan*. Rajagrafindo Persada, Jakarta.
- Makkawaru, Z., Tira, A., & Dema, H. 2020. *Pemajuan Ekonomi Kreatif dan Pemberdayaan Kekayaan Intelektual*. Farha Pustaka, Jakarta.
- Makkawaru, Z. (2019). Perlindungan Kekayaan Intelektual Daerah Belum Optimal: Regional Intellectual Property Protection Is Not Optimal. *Clavia*, 17(1), 63-72.
- Handayani, S. T. (2021). Perlindungan Hukum Terhadap Kekayaan Seni Budaya Sebagai Potensi Pariwisata Kabupaten Maros (Doctoral Dissertation, Universitas Bosowa).
- Asri, D. P. B. (2018). Perlindungan hukum preventif terhadap ekspresi budaya tradisional di Daerah Istimewa Yogyakarta berdasarkan undang-undang nomor 28 tahun 2014 tentang hak cipta. *JIPRO: Journal of Intellectual Property*, 13-23.
- Patji, A. R. (2010). Pengembangan Dan Perlindungan Kekayaan Budaya Daerah: Respon Pemerintah Indonesia Terhadap Adanya Klaim Oleh Pihak Lain. *Jurnal Masyarakat dan Budaya*, 12(3), 167-188.
- Zulkifli Makkawaru. 2019. *Perlindungan Hukum Ekspresi Budaya Tradisional*. Farha Pustaka, Sukabumi. Hlm. 183
- Munajat, M., Putri, A. G., Rahayu, Y. P., Sari, F. P., Dahliana, A. B., Sofyanty, D., ... & Dewanto, I. J. (2022). *Ekonomi Kreatif: Suatu Konsep Ekonomi Baru*.
- Andriansyah, A. (2023). Pembaharuan Hukum Pelindungan Konsumen: Kesiapan Indonesia Menyambut Kehadiran Social Commerce. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 12(2).
- Wahyuningsih, S., & Satriani, D. (2019). Pendekatan Ekonomi Kreatif Terhadap Pertumbuhan Ekonomi. *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita*, 8(2), 195-205
- Makkawaru, Z. (2019). Perlindungan Hukum Ekspresi Budaya Tradisional Upaya Pengelolaan Aset Kekayaan Intelektual Bangsa
- Zulkifli Makkawaru. 2018. "Perlindungan Hukum atas Ekspresi Budaya Tradisional (The Legal Protection on Traditional Cultural Expression)". *Tesis Pascasarjana Universitas Hasanuddin, unpublsh*