

LEGAL PROTECTION OF COMMUNAL INTELLECTUAL PROPERTY AS A BASIC CAPITAL FOR NATIONAL DEVELOPMENT BASED ON LOCAL WISDOM

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Abstract

Communal intellectual property denotes rights held by a group collectively creations of a community that are passed down through generations, including traditional arts, music, dance, folklore, and traditional knowledge. In Indonesia, there are significant difficulties in ensuring the protection of communal intellectual property within a legal system that prioritizes individual rights, even though such works are collectively owned by native populations or nearby communities. This research focuses on examining the legal framework governing the protection of communal intellectual property in Indonesia and evaluating its contribution to national development rooted in local wisdom. This research utilizes a normative legal approach, focusing on a descriptive analytical approach. The results reveal that the legal safeguards for communal intellectual property in Indonesia remains limited, necessitating regulatory revisions to recognize the communal entitlements held by indigenous communities. Communal intellectual property holds great potential in driving economic, social, and cultural development based on local wisdom, particularly in sectors such as tourism, handicrafts, and the application of traditional knowledge. The research underlines the need for cooperative efforts involving the government, local

indigenous groups, and the business sector in creating policies that protect and utilize communal intellectual property for sustainable, inclusive, and culturally-based national development.

Keywords: *Legal Protection, Communal Intellectual Property, National Development, Local Wisdom.*

A. INTRODUCTION

Communal intellectual property refers to works that are the result of collective creation by a community, rather than individual creations. In Indonesia, examples of traditional forms often embody communal intellectual property arts, regional music, dance, folklore, as well as associated traditional knowledge to agriculture, medicine, and handicrafts.

The progress of globalization combined with rapid developments in information technology introduces fresh obstacles to safeguarding intellectual property, particularly concerning copyrights and diverse types of intellectual property rights. When it comes to indigenous peoples and local communities, intellectual property is often collectively owned and passed down through generations. These works, which include arts, literature, music, and traditional knowledge, frequently lack adequate legal recognition due to differences in existing legal systems. In Indonesia, the rich cultural diversity and local wisdom provide significant potential for national development. Communal intellectual property, which embodies local wisdom, can be an important resource in creating sustainable, culture-based development. Therefore, it is crucial to examine how Indonesia's legal system can provide protection for these works to support inclusive national development rooted in cultural identity.

Indigenous communities in Indonesia possess various forms pertaining to communal intellectual property which holds cultural significance and additionally can be utilized as economic resources. However, the rights over communal intellectual property are often not recognized within a more individualistic legal system. There are legal instruments in Indonesia that manage and supervise matters

concerning copyright and intellectual property, but there are no explicit provisions aimed at safeguarding the collective rights associated with communal intellectual property. This local wisdom contained in communal intellectual property has vast potential for national development, within economic, social, and cultural domains. For example, by means of the development of culture-based tourism, handicraft products, and the application of traditional knowledge in agriculture and healthcare. Therefore, it is important to involve native groups and local populations in safeguarding and managing their intellectual property.

1. Research Method

This study employs a normative legal research method with a descriptive design. The research approach is normative in nature, focusing on the analysis of statutory regulations concerning Copyright and Intellectual Property in Indonesia. The study relies on secondary data sources, which include primary, secondary, and tertiary legal materials. Data were collected through literature reviews and document analysis. The processing of data involves reviewing, organizing, and systematizing the materials, which are then subjected to qualitative analysis.

2. Research Questions

From the explanation provided in the background, the following issues can be examined in more depth:

1. What forms of legal protection are provided for communal intellectual property ?
2. How does communal intellectual property serve as a fundamental asset in national development based on local wisdom ?

3. Objectives And Purpose Of The Writing

This paper aims to examine the current regulatory framework concerning the legal safeguarding of communal intellectual property in Indonesia, explore the difficulties and barriers faced in ensuring such protection, and offer suggestions to enhance the legal measures protecting communal intellectual property, all within the framework of national development grounded in local wisdom.

B. RESULTS AND DISCUSSION

1. Forms of legal protection are provided for communal intellectual property

Communal intellectual property protection falls under the jurisdiction of Law Number 28 of 2014 concerning Copyright, which provides creators with exclusive rights over their creations. However, this law emphasizes the protection of individual rights, while protection for communal works owned collectively among indigenous peoples or local communities is still limited. Several other countries have developed mechanisms to protect communal intellectual property, exemplified by the acknowledgment of collective rights within the UNESCO Convention on Safeguarding and Encouraging the Diversity of Cultural Expressions,¹ which encourages countries to provide protection for Intangible heritage of culture.

Providing legal safeguards for communal intellectual property plays a crucial role in maintaining cultural heritage and traditional knowledge of a community or indigenous people. Communal intellectual property includes various cultural products collectively owned by a group, such as traditional songs, dances, folklore, visual arts, handicrafts, as well as traditional knowledge and practices. Legal protection of communal intellectual property might take multiple forms, including measures aimed at prevention as well as remedies for violations.²

Here are some forms of legal protection that can be provided:

1. Recognition and Protection of Collective Copyright

- **Collective Copyright:** Although many international and national copyright regulations prioritize individual rights, some countries, including Indonesia, have begun to recognize collective copyright. Collective copyright acknowledges works that are collectively owned by a group or community. For example, a traditional song created collaboratively by an

¹ UNESCO. “*Convention on the Protection and Promotion of the Diversity of Cultural Expressions*”. (2005). Article 11.

² *Ibid.*, Article 8.

indigenous community can be granted collective copyright protection, which represents the rights of the indigenous community as a whole.

- Registration of Intellectual Property: One form of protection that can be implemented is through the process of registering intellectual property with authorized institutions, including Indonesia's Directorate General of Intellectual Property (DJKI). While copyright is automatically granted upon the creation of a work, registering collective copyright can serve as a more formal recognition of works owned by a community or indigenous group.³
2. Legal protection for Indigenous Knowledge (TK) and cultural heritage expressions (TCEs)⁴
- Development of Specific Laws or Regulations: In many countries, including Indonesia, Protection mechanisms for indigenous knowledge and traditional cultural manifestations (such as songs, dances, and other artworks) is often not clearly regulated within the existing legal framework. Therefore, there is a need for the development of specific regulatory frameworks that control safeguarding traditional knowledge and cultural heritage manifestations owned by communities or indigenous peoples. An example of the regulation in question refers to Law Number 28 of 2014 concerning Copyright in Indonesia, which addresses some aspects of the protection of cultural works, even though it does not explicitly address communal intellectual property.
 - Documentation and Inventorying: The documentation or inventorying of cultural works and traditional knowledge can be carried out to provide initial recognition and protection. This process helps identify which works need protection and prevents unauthorized exploitation by external parties.

³ Indonesia. *Law Number 28 of 2014 on Copyright*. Article 61 Paragraph (1) and (2).

⁴ WIPO. "Documentation of Traditional Knowledge and Traditional Cultural Expressions." 2023. Available at: https://www.wipo.int/tk/en/tk_and_tces.html. Accessed on December 8, 2024, at 14:29 WIB.

3. Rights to Use and Economic Benefits (Benefit Sharing)

- **Benefit Sharing System:** Legal measures to secure rights over communal intellectual property also encompass those held by indigenous communities or groups to receive a fair economic benefit from the use or exploitation of their cultural works. For example, in the tourism industry, cultural products originating from an indigenous community should provide economic benefits to that community, not just to external parties. The benefit-sharing system ensures that the rights to communal intellectual property are not misused or exploited without giving fair compensation to the indigenous community or original owners.
- **Agreements with Third Parties:** Indigenous communities or groups can enter into agreements with third parties (such as tourism companies, designers, or manufacturers) who wish to use their cultural products. These agreements should include a fair share of profits (royalties) that align with their contributions as the rightful owners of the culture.⁵

4. Protection through Commercialization Regulations

- **Licensing and Supervision:** Indigenous communities can be granted the right to issue licenses or permissions for the use of their communal intellectual works, whether within the realms of arts, crafts, or indigenous knowledge. Safeguarding can be achieved by establishing licensing procedures that must be followed by parties wishing to use their cultural works. For example, the use of motifs or designs from the Dayak tribe in handicrafts or fashion must be authorized by the relevant community and provide appropriate compensation.
- **Geographical Indications and Geographical Indications Protection:** In Indonesia, protection is provided for certain traditional products through geographical indications. Products associated with the traditions or culture of a specific region can be protected through geographical indications that

⁵ Dharmawan, Ni Ketut Supasti, et al. "Model for Strengthening the Protection of Communal Intellectual Property: Transplanting Policy Content Including Benefit-Sharing Based on Legislation." *Jurnal Ilmiah Kebijakan Hukum*. 17.2. (2023). pp. 245.

indicate the product's origin and the use of traditional methods or knowledge.⁶ Example: the woven ikat crafts from East Nusa Tenggara, which are protected under the geographical indications system.

5. Protection through International Conventions

- The 2005 UNESCO Convention designed to protect and promote the variety of cultural expressions: One form of international protection is through this convention, which recognizes the importance of protecting indigenous cultural expressions from unfair commercialization or wrongful claims of ownership. Countries that sign this convention are obligated to develop policies that support cultural diversity and provide safeguarding traditional cultural manifestations.
- The Convention on the Diversity of Cultural Expressions also encourages countries to develop strategies to protect and promote heritage knowledge and cultural expressions without encroaching upon the rights of individuals or indigenous communities.⁷

6. Education and Socialization on Communal Intellectual Property Rights

- Outreach or socialization to Indigenous Communities: Safeguarding communal intellectual property additionally includes education and outreach to indigenous communities about their rights. This is important so that indigenous peoples fully understand their rights to culturally significant works owned collectively, as well as ways to protect and utilize them.
- Empowerment of Indigenous Communities: To raise legal awareness and skills in managing their intellectual property, empowerment programs involving legal experts, academics, and government institutions are crucial.⁸

⁶ Indonesia. *Law Number 20 of 2016 on Trademarks and Geographical Indications*. Article 103 Paragraphs (1) and (2).

⁷ UNESCO. *Op.Cit.*, Article 8. *Regarding (Protection and Promotion of Traditional Cultural Expressions)*.

⁸ Dharmawan, Ni Ketut Supasti, et al. *Op. Cit.*, p. 247.

7. Government Policy and Regulation

- **The Government as a Protector:** The state can play a role as a protector by ensuring that existing laws are sufficient to safeguard communal intellectual property. In addition, the government can also act as a facilitator in creating mechanisms that allow indigenous communities to access protection and benefit from their cultural works.
- **Dialogue Among Stakeholders:** It is essential for the government, indigenous peoples, and private entities to maintain their collaboration in dialogue to create fair and transparent policies regarding the use of communal intellectual works.

Development based on local wisdom aims to safeguard cultural values in the face of rapid modernization. Indonesia, as a nation characterized by vast cultural variety, can utilize local wisdom to create more sustainable development, covering economic, educational, and social sectors. Safeguarding communal intellectual creations is part of preserving that sustainability.

Legal Regulations for ensuring the defense of communal intellectual works in Indonesia, within the Indonesian legal system, have yet to provide adequate protection. Therefore, a revision or addition of regulations is necessary to recognize the collective entitlements of indigenous groups to communal intellectual creations. Some of the challenges faced with regard to the protection of communal intellectual works include:

- a) Insufficient knowledge among indigenous peoples about their rightful claims to intellectual works;⁹
- b) Limited recognition from the existing legal system, which prioritizes individual rights over collective rights;
- c) The potential for commercial exploitation by outside parties without granting equitable benefits to indigenous groups.

⁹ Nugroho, Titis Adityo. "The Politics of Communal Intellectual Property Law in the National Legal System". *De Lege Ferenda Trisakti Law Journal*. 2.1 (2024). p. 60.

Communal intellectual works have great potential in supporting national development, whether through the tourism sector, creative economy, or cultural preservation. For example, by granting recognition and rights to indigenous communities over their works, the state can encourage active participation in the establishment of a cultural heritage oriented economy.

There is a need for the development of regulations that recognize and protect collective rights over communal intellectual works. This could include the recognition of collective copyright or the establishment of a more inclusive framework for intellectual property protection that recognizes indigenous community rights. Indigenous communities need to be provided with education and outreach regarding the importance of protecting their intellectual works, as well as how to manage and utilize their works within the existing legal framework.

Synergistic cooperation between governmental agencies, indigenous populations, and private sector stakeholders is necessary to create a development model based on local wisdom. This model can address copyright protection aspects and fairness in the distribution of economic benefits.

2. The role of communal intellectual property as a fundamental asset in national development based on local wisdom

Communal intellectual property, when recognized, valued, and properly protected, can function as a key foundational element in promoting national progress based on traditional wisdom. It not only contributes to the preservation of culture and local identity but also promotes economic, social, and sustainable innovation. In the context of inclusive and sustainable development, the management of the acknowledgment of communal intellectual property is essential. This form of intellectual property serves as a foundational asset in national development based on local wisdom is essential, as it reflects the values, culture, and knowledge held by communities within their social and cultural contexts.¹⁰ Communal intellectual

¹⁰ Nugroho, Titis Adityo. *Ibid.*, p. 62.

property does not solely take the form of products or works protected by law but also includes ways of life, traditions, languages, local knowledge, and skills that have developed collectively within specific communities.

On December 20, 2022, Indonesia began implementing Regulation Number 56 of 2022 issued by the government addresses the management of Communal Intellectual Property. This regulation was created based on the consideration that:

- a. Indonesia's natural wealth and cultural diversity, comprising traditional cultural manifestations, native knowledge, genetic substances, provenance indicators, and possible geographical designations are included within the scope of Communal Intellectual Property that forms the foundation for national development;
- b. To support the goal of protecting, preserving, developing, and utilizing Communal Intellectual Property as a basis for national development, the state needs to carry out inventory, maintenance, and management of these assets.¹¹

The issuance of Government Regulation No. 56 of 2022 provides a definitive legal basis for safeguarding communal intellectual property. In order to realize this objective, cooperation between the government, society, and relevant sectors is necessary to preserve, manage, and utilize Indonesia's cultural heritage in a fair and sustainable manner. Here are some of the main roles regarding communal intellectual property within the framework of national development grounded in local wisdom:

1. Cultural Preservation and Local Identity: Communal intellectual property includes traditional knowledge, arts, and culture, which are integral to a community's identity. By protecting and managing this intellectual property, a nation can preserve its cultural heritage and ancestral legacy while strengthening local identity in the face of globalization. This contributes to cultural diversity in the context of national development.

¹¹ *The Considerations of Government Regulation Number 56 of 2022 on Communal Intellectual Property.*

2. Local Economic Empowerment: Communal intellectual property can serve as an economic resource that can be utilized for the development of products and services based on local wisdom.¹² For example, handmade crafts, traditional textiles, unique culinary products, or traditional medicines rooted in local knowledge have significant potential to boost the economy of local communities. With a well established system of With communal intellectual property rights, local communities have the ability to benefit economically from the use and commercialization of these products.
3. Strengthening Social and Economic Independence: Concerning sustainable development, communal intellectual property has the potential to support the social and economic independence of communities.¹³ By utilizing traditional knowledge in natural resource management, agriculture, and handicrafts, communities can develop an economy based on local resources and reduce dependence on external resources. This also creates social resilience in facing global economic challenges.
4. Innovation and Development of Technology Based on Local Wisdom: Communal intellectual property holds significant potential for innovation.¹⁴ Traditional knowledge in fields such as agriculture, healthcare, architecture, and others can serve as a foundation for creating innovative solutions that address the current needs of society. By integrating local wisdom into

¹² Sulistianingsih, Dewi. "Pentingnya Menjaga Kekayaan Intelektual Komunal Bagi Warga Desa". (2023). Available at: <https://www.masterplandes.com/pembangunan-des/pentingnya-menjaga-kekayaan-intelektual-komunal-bagi-warga-des/>. Accessed on December 8, 2024, at 20:03 WIB.

¹³ Direktorat Jenderal Kekayaan Intelektual (DJKI). "Analisis Yuridis Perlindungan Defensif Atas Kekayaan Intelektual Komunal (KIK) di Indonesia Dalam Kaitannya Dengan Pembangunan Nasional (Studi Kasus Pusat Data Nasional KIK)". (2022). Available at: <https://www.dgip.go.id/unduh/download/analisis-yuridis-perlindungan-defensif-atas-kekayaan-intelektual-komunal-di-indonesia>. Accessed on December 10, 2024, at 09:14 WIB, p. 8.

¹⁴ Amelia, Tina, et al. "Efektivitas Perlindungan Kekayaan Intelektual Pada Usaha Mikro Kecil Menengah (UMKM) Dalam Mendukung Ekonomi Kreatif.". Seminar Nasional: Universitas Borobudur. 2.1 (2023). p. 7.

modern technology and innovation, development can be achieved in a more environmentally friendly, sustainable manner, and in alignment with the local social and cultural context.

5. Promoting Justice and Social Welfare: The protection of communal intellectual property rights enables local communities to more readily obtain benefits from the application of their traditional knowledge. This can reduce the gap between local communities and external parties who may exploit the knowledge without providing fair benefits to the knowledge holders. The sustainability of these rights also promotes social justice, as the use of intellectual property is carried out with consideration for the rights and interests of local communities.
6. Education and Knowledge Dissemination: Communal intellectual property additionally contributes to in education and the dissemination of knowledge.¹⁵ The knowledge possessed by local communities can serve as a valuable learning resource, both for the younger generation within the community and for the broader public. This can function as one of the ways to foster cultural raising awareness and deepening comprehension of the significance of local wisdom within national development.
7. Increasing Community Participation in Development: Development based on local wisdom requires active participation from the community, and communal intellectual property provides a means to achieve this. By respecting and involving communities in the management of their intellectual property, development can be greater inclusivity that corresponds with the interests and goals of local communities. This helps reduce the development gap between urban and rural areas.¹⁶
8. Addressing Global Crises and Environmental Challenges: Local wisdom often contains principles that can provide solutions to global crises such as climate change, degradation of natural ecosystems, small and medium enterprises, encompassing micro

¹⁵ Syahnakri, Muhamad. "Melindungi Ekspresi Budaya Tradisional: Peraturan Hukum Untuk Kekayaan Komunal Intelektual". *Indonesian Journal of Innovation Studies*. 24 (2023). p. 13.

¹⁶ Direktorat Jenderal Kekayaan Intelektual (DJKI). *Op. Cit.*, p. 10.

scale businesses, and food availability and accessibility.¹⁷ Traditional knowledge in sustainable natural resource management can be integrated into development policies to reduce negative environmental impacts and promote more sustainable development.

Managing communal intellectual property for national development based on local wisdom presents many challenges, both legally, socially, economically, and culturally. The main challenge in protecting and managing communal intellectual property in Indonesia is its uneven implementation across the country. The gap between advanced regions and remote areas can result in insufficient legal safeguards for communal intellectual property in certain areas.¹⁸ To effectively handle this problem, embracing a more inclusive approach is essential, one that involves the active participation regarding indigenous peoples or local communities, coupled with collaboration among the government, industry stakeholders, and international organizations. Additionally, it is crucial to create legal systems and policies that can protect the entitlements of local communities and guarantee equitable returns from the utilization of communal intellectual property.

The government needs to formulate policies that integrate the protection concerning communal intellectual property within the scope of national progress. These policies must accommodate the perspective of local wisdom, which values social and collective relationships toward intellectual property. Additionally, the availability of a registration mechanism for intellectual property the ownership by indigenous or local communities is fundamental in protecting communal intellectual property. This will provide legal recognition and prevent exploitation by external parties without

¹⁷ Amelia, Tina, et al. *Op. Cit.*, pp. 9-10.

¹⁸ Kementerian Hukum Republik Indonesia: Direktorat Jenderal Kekayaan Intelektual. "Keanekaragaman Budaya Indonesia, Tantangan Sekaligus Peluang Pelindungan KI". 2024. Available at: <https://www.dgip.go.id/index.php/artikel/detail-artikel-berita/keanekaragaman-budaya-indonesia-tantangan-sekaligus-peluang-pelindungan-ki?kategori=ki-komunal>. Accessed on December 10, 2024, at 19:10 WIB.

permission. Providing training for local communities and indigenous peoples about their rights to communal intellectual property, as well as how to protect and utilize it legally, is also essential. This includes understanding the importance of intellectual property registration and ways to maintain the authenticity of traditional products or culture.

C. CONCLUSION

Ensuring legal protection for communal intellectual property is fundamental, as it helps preserve cultural continuity while contributing to locally grounded national development. Indonesia, with its rich cultural heritage and local wisdom, holds great potential to harness communal intellectual property as a fundamental asset for development. Therefore, more comprehensive and inclusive there is a pressing requirement to secure legal protection for communal intellectual property without delay.

Protecting communal intellectual property through legal means is fundamental to ensuring the rights of indigenous communities or community groups over their culturally significant, inherited works. Various forms of protection, such as the recognition of collective copyrights, preservation of indigenous knowledge, regulation of commercialization, and the implementation of international policies, should be embedded within the national legal system. This will ensure that communal intellectual property is effectively preserved and provides tangible benefits to the communities who own it.

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