



Enhancing Protection for Balinese Traditional Cultural Expression: A Government and Academician Cooperation Approaches

Desak Putu Dewi Kasih^(✉), Ni Ketut Supasti Dharmawan,
Anak Agung Istri Ari Atu Dewi, I Gusti Ngurah Parikesit Widiatedja,
Anak Agung Gede Duwira Hadi Santosa, and Putu Aras Samsithawrati

Faculty of Law, Universitas Udayana, Bali, Indonesia
dewi_kasih@unud.ac.id

Abstract. In order to strengthen the protection of Balinese traditional cultural expressions based on inventory at the National Data Center for Communal Intellectual Property, this study aims to investigate the arrangements of communal intellectual property protection in international flora and in Indonesia as well as the significant role of cooperation between the government and academician. This study employs analytical, conceptual, and normative legal research methods with statutes. The study's findings demonstrate that one kind of communal intellectual property is traditional cultural expressions. According to WIPO/GRTKF/IC/40/19, traditional cultural expressions are used to produce inventive and creative goods, and their protection can benefit both users and custodians while maintaining a balance between rights and obligations. Meanwhile, from the national context in Indonesia, Traditional Cultural Expressions are protected under Article 38 of Law No. 28 of 2014 on Copyrights where the state is considered the copyright holder. Traditional Cultural Expressions works have the potential to be developed as creative products in tourism activities. Therefore, inventory activity as an obligation of the government must be implemented by the government followed by a registration process to strengthen the protection of such Traditional Cultural Expressions. Inventory activity is significant to be implemented, primarily to protect Communal Intellectual Property ownership and prevent its use by parties outside the custodian who use it for commercial purposes without asking for permission. Strengthening the protection, and improving the inventory activity as well as its recording mechanisms are relevant to be implemented through intensive collaboration between the government and the academician.

Keywords: Protection of Traditional Cultural Expressions · Government Obligations · Commercial used · Cooperation Between Government and Academician

1 Introduction

Indonesia, including Bali, is famous for its cultural diversity and natural resources. Dances, traditional games, and traditional foods and drinks are just only a few examples

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of the many diversities of culture and nature that Indonesia has. Tourists all over the world who come to Indonesia are interested in such beauty. Citing data from the Bali Central Statistics Agency (BPS), foreign tourists who came directly to Bali Province in March 2022 were recorded as 14.620 visits. This number shows an increment of thousands of percent compared to the previous month's period which recorded 1.310 visits (Detik Travel, 2022). Hence, it can be assumed that Indonesia's culture and natural resources, including those in Bali, have extraordinary charm and charisma to attract tourists, as well as develop tourism thus bringing economic value to the life of the state and society itself.

Discussing the economic value of an object, or in this article is referred to as work, such as dances, traditional games, and traditional foods that have existed in an area for a long time and have been passed down from generation to generation, is actually closely related to the field of Intellectual Property. Nowadays, the rapid development of technology where information can flow easily and people can travel from one place to another in the blink of an eye has led to the importance of legal protection upon Intellectual Property of such a work in concern. There have been many previous cases where the work of someone or a region is then claimed by others who are not entitled to that. Therefore, this is where Intellectual Property (IP) takes the role. IP, for example, copyright as one of its regimes, offers legal protection not only for the moral right of an author but also for his/her economic rights (Asima Trismawati Situmeang, Saidin, T. Keizerina Devi A, 2021).

Besides individual IP, one of the current intriguing topics in IP is communal IP. Generally speaking, IP recognizes both communal and individual IP (Yunita Maya Putri, Ria Wierma Putri, Rehulin, 2021). Regulating communal IP is crucial because Indonesia's natural resources—traditional knowledge, cultural expressions, genetic resources, and potential geographical indications—are essential to the country's growth due to its cultural diversity and riches. Given that, it is imperative to safeguard such works. According to Indonesian Regulation of Minister of Law and Human Rights 13/2017, community IP in this context includes the protection of traditional knowledge (TK), traditional cultural expressions (TCEs), genetic resources, and geographical indications potential (GI potentials).

Under the IP regime, there is this theory called reward theory where the author of the work will obtain rewards for intellectual work that is successfully created as recognition and appreciation for his/her creative efforts (Dewa Ayu Dian Sawitri, Ni Ketut Supasti Dharmawan, 2020). Therefore, the creation of work, such as dance (part of TCE) or others as already mentioned above, is intertwined with economic value. This economic value can be said to be rather a sensitive issue. Moreover, TCE works have the potential to be developed as creative products in tourism activities. For example, today there is no other state claiming a sacred dance (part of TCE's work) owned by a specific region in Bali. But we will never know what will happen in the future. Will there be bad faith from other states towards such work in concern? If yes, that may lead to a legal problem. The work needs to be well protected and all preventive measures need to be taken. As a note, the "state" is mentioned here as according to Article 38(1) of the Indonesian Law Number 28 of 2014 on Copyright (Law 28/2014), it is noted that the copyright holder of TCE is the State (Dharmawan, N. K. S. 2017).

Thus, this article raises two legal issues to be discussed, namely (1) how is the arrangement of communal IP protection, particularly TCEs, in international fora and in Indonesia? and (2) how is the role of cooperation between the government and the academician in order to strengthen the protection of Balinese Traditional Cultural Expressions? Facing the abovementioned explanation, therefore, preventive measure is obviously needed to address the issues and that is where the discussion of such issues in this article is important.

2 Method

This article examines the issues surrounding the arrangement of collective IP protection, particularly TCEs, in international fora and in Indonesia as well as the function of collaboration between the government and the academician in order to strengthen the protection of Balinese TCEs. It does so by using normative legal research with statute, analytical and conceptual approaches. The Framework Convention on Tourism Ethics 2020 of the United Nations World Tourism Organization, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, and the World Trade Organization's Trade Related Aspects of Intellectual Property Rights Agreement are a few of the international legal instruments used in this article. The 1945 Constitution of the Republic of Indonesia (the 1945 Indonesian Constitution), Indonesian Law Number 10 of 2009 on Tourism (Law 10/2009), Law 28 of 2014, Indonesian Law Number 20 of 2016 on Trademarks and Geographical Indications (Law 20/2016), Indonesian Law Number 13 of 2016 on Patents (Law 13/2016), Indonesian Law Number 5 of 2017 on the Advancement of Culture (Law 5/2017), and the Regulation of Minister of Law and Justice are the national legal instruments that are used.

3 Result and Discussion

The Arrangement of Communal IP Protection Particularly TCEs in International Fora and Indonesia

Indonesia as a member country of the TRIPs Agreement is obliged to protect IPs, both individual and communal IPs. Strengthening the protection of Communal IP owned by regions, including in Bali, is very urgent to be done. That is based on the consideration that Communal IP is a regional cultural identity, adhesive for national identity, and a driving force for positive business competition and the community's economy. As noted, Bali is an area that is rich in creative works sourced from the ancestral cultural heritage and rich in assets that have the potential to receive communal IP protection.

Multidimensional and multidisciplinary tourism activities as regulated in Article 1 (4) of Law 10/2009 are relevant to be studied from various aspects of science, including legal science with the dimension of protection of aspects of communal cultural heritage in economic development. The Framework Convention on Tourism Ethics 2020, emphasizes that tourism has contributed both directly and indirectly to sustainable development goals, especially those related to economic growth and productive employment opportunities. In the context of this contribution, the recognition of the protection of the socio-cultural traditions and practices of the community, including indigenous peoples and the

values they adhere to must be placed as the basis for the consequences of responsible tourism (Article 4 of the Framework Convention on Tourism Ethics 2020). Furthermore, Article 7 of the Convention stipulates that the contribution of the tourism sector to cultural resources is to improve the standard of living of its people by recognizing its rights and obligations.

Nationally, Article 32 (1) of the 1945 Constitution establishes the legal framework for the protection of cultural characteristics. It states that the government must ensure that the people have the freedom to uphold and develop their cultural values while also advancing Indonesian national culture in the context of global civilization. One could claim that the town is protected by the constitution in promoting its cultural values, including turning those values into a creative output to assist tourism endeavors. According to Supasti Dharmawan, national law 5/2017 and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage both regulate the conservation of traditional cultural works from the standpoint of intangible cultural heritage (Ni Ketut Supasti Dharmawan, 2021). However, the protection of cultural works as works deriving from the cultural heritage should also be seen from an intellectual property perspective, particularly from the communal IP point of view, in addition to a safeguarding perspective.

According to WIPO/GRTKF/IC/40/19, traditional cultural expressions are used to produce inventive and creative goods, and their protection can benefit both users and custodians while maintaining a balance between rights and obligations.

Generally speaking, the IP legal system with individual rights protects the growth of the creative sector. As a result, from this angle, IP protection places more emphasis on individual rights. The view of industrialized countries is consistent with this idea (Maria Alfons, 2017). To prevent exploitation by unauthorized parties, however, the development of the creative economy must also be strongly protected on a communal level under TK and TCE (Desak Putu Dewi Kasih, et al., 2021). IP protection is an integral part of the creative economy. They are IP owners who can expand their business using a franchise model and who have the sole right to utilize their own intellectual property or collaborate with third parties through a license agreement. According to Maria Alfons, the goal of IP protection is to promote the development and emergence of fresh concepts and to foster an environment that will allow for the successful development of these concepts (Maria Alfons, *Ibid.*).

The communal IP protection procedures in Indonesia are dispersed among a number of legal instruments. The agreements are often covered by laws like Law 28/2014, Law 20/2016, and Law 13/2016. The Indonesian Regulation of Minister of Law and Human Rights 13/2017, in particular, regulates community IP. Article 1(1) of the Indonesian Regulation of Minister of Law and Human Rights 13/2017 contains a definition of community IP. Essentially, communal IP consists of TK, TCEs, genetic resources, and prospective geographical indications.

It is crucial to understand the various categories of community IP in general before delving deeply into the topic of TCEs. TK is defined as intellectual work in the fields of knowledge and technology that is created, developed, and maintained by a specific community or society and contains elements of traditional heritage characteristics (Article 1(3) of the Indonesian Regulation of Minister of Law and Human Rights 13/2017). According to Article 3 of the relevant Minister Regulation, some examples of the various

forms of TK works include expertise, ecological knowledge, traditional medicine, as well as abilities for creating traditional crafts, foods and drinks, and modes of transportation. Additionally, a potential geographical indication is a mark identifying the region of origin of a good or product that, as a result of geographic environmental factors, including natural environmental factors, human environmental factors, or a combination of these two environmental factors, gives the good or product produced a particular reputation, quality, and characteristics that have the potential to be protected by geographic indications (Article 1(6) of the Indonesian Regulation of Minister of Law and Human Rights Article 6 of Indonesia's Regulation of Minister of Law and Human Rights 13/2017 lists natural resources, handicrafts, and/or industrial products as examples of this work.

Moving forward, the elaboration of TCEs. TCEs are regulated briefly under Law 28/2014 (as part of the copyright regime) and in more detail under the Indonesian Regulation of Minister of Law and Human Rights 13/2017. TCEs all forms of expression of copyrighted works, both in the form of tangibles and intangibles, or a combination of both, which indicate the existence of a traditional culture that is held communally and across generations (Article 1(4) of the Indonesian Regulation of Minister of Law and Human Rights 13/2017). Following are the forms of TCEs expression:

- a) textual verbal both oral and written, in prose and poetry, on diverse themes and content of the message, which can be in the form of literary works or informational narratives;
- b) music including vocal, instrumental, or the combination of both;
- c) motion including, among other things, dance;
- d) theater, which includes, among other things, puppet shows and folk theater;
- e) art, which can take both two- and three-dimensional forms and be constructed out of a variety of materials, including leather, wood, bamboo, metal, stone, ceramic, paper, and textile, as well as a mix of materials;
- f) traditional ceremonies;
- g) architecture,
- h) landscape; and/or
- i) other forms of expression according to development (Article 4 of the Indonesian Regulation of Minister of Law and Human Rights 13/2017). Genetic Resources are plants, animals, micro-organisms, or their parts that have real or potential value (Article 1(5) of the Indonesian Regulation of Minister of Law and Human Rights 13/2017).

Law 28/2014, through Article 38(1) and its elucidation, basically regulates the above letter (a)–(f) as to what is included as a form of TCE expression. Article 4 of the Indonesian Regulation of Minister of Law and Human Rights 13/2017 also mentions letters (a)–(f). However, the latter contains letters (g)–(i) as additions to what constitutes a form of TCE expression. The wording of the above letter (i) “other forms of expression according to development” is actually very helpful. Considering the rapid development in today's era, it is not impossible that the form of TCE expression will also develop. Since the forms in letters (a)–(h) is already determined, therefore, point (i) is there to open up space for new forms of TCE expression that may emerge in the future. Thus, it provides adequate room for the future form of TCE expression, which does not yet

exist, to also be protected under the law. Ensuring that “it will be protected” is the point. Do not let the work escape and be unprotected, that is the message that can be taken.

According to Article 38 (1) of Law 28/2014, the State has the right to be referred to as the TCEs’ copyright holder with regard to the aforementioned forms of expression. According to Law 28/2014’s Article 60(1), the State’s ownership of TCEs gives it indefinite copyright protection. The State is required by Law 28/2014’s Article 38(2) to inventory and preserve such TCEs. Furthermore, because the concept of the State is still too nebulous, Article 7 of Indonesia’s Minister of Law and Human Rights Regulation 13/2017 specifies in more detail that the Minister of Law and Human Rights must work with other departments, institutions, and/or local governments to fulfill the duty of performing the TCE inventory. There are various techniques to carry out inventory activities, including: (a) field/feasibility studies; (b) administrative requirements; (c) proposing the determination of the results of the inventory; and/or (d) data exchange. In conducting an inventory, ministers, institutional leaders, and/or regional heads are required to fill out a form, namely the Inventory Form of Communal IP. In order to fill in the form, valid data related to the existence of such communal IP in concern are needed. In addition, there should be a description of the TCE work that is going to be registered. Such a description requires the ability to describe it in a comprehensive way which also needs to be supported by other documentation, for example in the forms of written works of books, journals, photos, and videos. Once the requirements are completed, then the form is submitted to be registered at Indonesia’s Communal IP National Data Center which is available on the Directorate General of IP’s official website. Once approved, the certificate is issued.

Role of Cooperation Between the Government and the Academician in Order to Strengthen the Protection of Balinese Traditional Cultural Expressions

Previous studies have shown that strengthening the protection of communal IP related to TK, TCEs, and potential geographical indications has been carried out. Some of them have been successfully registered and obtained Certificates of Cultural Works and Certificate of Registration of communal IP. Several types of communal IP originating from Bali have been successfully registered at Indonesia’s Communal IP National Data Center. For example, Tari Rejang Ilud Desa Buahhan (music-instrumental, motion-dance, traditional ceremony-ritual from Gianyar Regency), Permainan Tradisional Megandu (motion-game from Tabanan Regency), Tari Rejang Pande Suci Wedana Tihingan (motion-dance from Klungkung Regency), Megoak-goakan Desa Panji (motion-games from Buleleng Regency), Tradisi Ari-ari Megantung (Ngutang Kau) (traditional ceremony-ceremony from Bangli Regency), Tari Baris Wayang Lumintang (motion-dance from Denpasar City), Bungbung Kepyak (Bungbung Kepyak Lingkungan Dewasana) (music-instrumental from Jembrana Regency) and Cakepung (Theater-puppet, theater-folk theatrical from Karangasem Regency). However, those numbers are still very small compared to the various communal IPs that are currently growing, developing, maintained, and spreading throughout the regencies and cities in Bali.

Considering that the TCEs of Bali are so diverse, and have not been identified as a whole, it is important to find a solution that is able to answer this problem. In order to strengthen the protection of Balinese TCEs, inventory activities, that is the responsibility of the state, should be also carried out with the help of other stakeholders to speed up

and maximize the process. As already mentioned above, there is a gap between the big numbers of TCEs throughout Bali that are queuing to be inventoried and registered at Indonesia's Communal IP National Data Center on the Directorate General of IP and the currently limited capability, resources and funding that government may have to inventory the TCEs. Inventory of TCE works in Bali is very important to be conducted. It is because registration in this inventory activity constitutes as defensive protection. This means that the sooner we have the certificate, the better we protect our work. The custodian or community where the TCE is originated can say out loud that such work is theirs in case of something unfortunate happen in the future, such as others claiming ownership of such works.

As the legal basis for the institution, specifically in this case the academician, to help the inventory activity is already provided by the law (Article 7 of the Indonesian Regulation of Minister of Law and Human Rights 13/2017), then collaboration between government and academician should be one of the solutions in facing the gap above mentioned. Therefore, cooperation between the government and the academician in order to strengthen the protection of Balinese TCEs plays an important role. With consideration that the academician's expertise is obviously needed, primarily in collecting data from custodians and describing the TCEs in a region to be successfully registered at Indonesia's Communal IP National Data Center on the Directorate General of IP.

The collaboration between the government and the academician could be in the form of a Cooperation Agreement where part of its realization is to inventory and registration of TCE works across Bali. Benefits that the government may obtain from the collaboration with academicians, among others, are (1) human resources (academicians) who are experts and reliable in their fields; (2) funding, specifically if government collaborates with academicians that are carrying this inventory activity based on campus/another institution-funded research scheme; (3) increase in numbers of TCEs being inventoried and registered; as well as (4) saving time as the activity is carried out together. In another side, academicians may also be benefitted from this collaboration, for example (1) updating and upgrading practical skill as they directly engage in the field and interact with society; and (2) realization of their research goal as part of their final report, specifically to academicians who are carrying this inventory activity based on campus/another institution-funded research scheme.

These inventory and registration activities, as well as having communal IP Registration Letter (Certificate) of TCEs works across Bali, definitely will strengthen legal certainty regarding the original identity of a work originating from the cultural heritage. The urgency of this action is to serve as a preventive measure in preventing claims of commercial use by other parties without permission. Such legal certainty can become a legal foundation in a fair business competition in the future. All in all, the good cooperation between government and academician will hopefully resulting in the increasing number of TCE inventory and registration at Indonesia's Communal IP National Data Center of the Directorate General of IP.

4 Conclusion

From an international perspective, WIPO/GRTKF/IC/40/19 emphasizes the use of TCEs contributes to creating creative and innovative products and their protection can provide

benefits for both users and custodians as well as a balance of rights and obligations. Generally, in Indonesia, the legal protection arrangements of what can be categorized as communal IP are regulated by various laws and regulations namely Law 28/2014 on Copyrights, Law 20/2016 on Trademarks and Geographical Indications, and Law 13/2016 on Patents. However, a regulation that particularly regulates communal IP and names the law “Data of Communal Intellectual Property” is the Indonesian Regulation of Minister of Law and Human Rights 13/2017. As Bali is famous for its culture and nature in the world, obviously it has many communal IP works, especially TCEs, resulting from such beauty. Several types of communal IP originating from Bali have been successfully registered at Indonesia’s Communal IP National Data Center. However, those numbers are still very small compared to the various communal IPs that are currently growing, developing, maintained, and spreading throughout the regencies and cities in Bali. To Strengthen the protection of Balinese TCEs, the collaboration between government and academicians could be the solution. With consideration that the academician’s expertise is obviously needed, primarily in collecting data from custodians and providing an adequate description of a TCE in a region to be successfully registered at Indonesia’s Communal IP National Data Center on the Directorate General of IP. Finally, this collaboration hopefully will not only benefit the government and academicians but the custodians in Bali and Indonesia as well. In the end, the issuance of a certificate as the final collaboration product can be used properly to prevent unauthorized parties that using the TCE works for commercial purposes without permission.

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