



THE LEGAL PROBLEMS OF TRADITIONAL CULTURAL EXPRESSIONS AS INTELLECTUAL PROPERTY WITH COMMUNAL OWNERSHIP

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ABSTRACT

This legal research aims to analyze arrangements regarding communal legal protection of traditional cultural expressions based on Government Regulation Number 56 of 2022 concerning Communal Intellectual Property, and it also seeks to identify legal problems in the practice of protecting Communal Intellectual Property in Indonesia where various cases of unilateral claims against the inheritance of Traditional Cultural Expressions by other countries, such as Malaysia's claim for Pendet Dance, Wayang Art, and Reog; Germany's claim for Distinctive Ornamental Frame from Jepara; and China's claim for Batik Pesisir's motif. There find legal problems. First, the intellectual property legal protection regime in Indonesia is still individualistic. Second, Insufficient communal intellectual property legal instruments. Last, a low legal culture in Indonesian society. Based on these findings, that the government need to amendment the protection of Traditional Cultural Expressions of Communal Intellectual Property through substance reform in Act No. 28 of 2014 about Copyright and develop one database of Communal Intellectual Property.

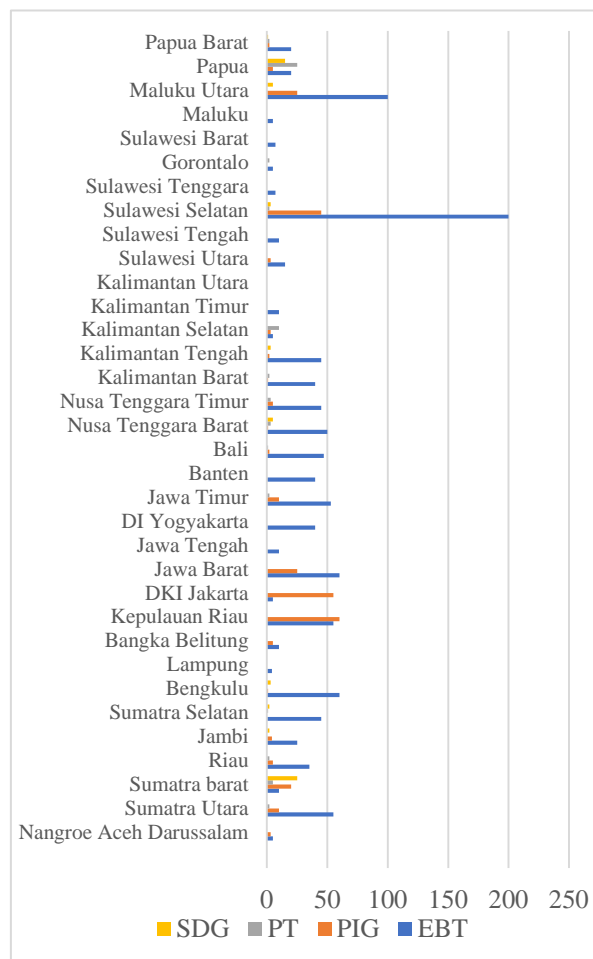
A. INTRODUCTION

The existence of Intellectual Property Rights has become a public concern since 1989. Indonesian as member country of the World Trade Organization (Hereinafter referred to as WTO) drafted an agreement on The Agreement on Trade-Related Aspects of Intellectual Property Rights (Hereinafter referred to as TRIPS). TRIPS is intended to establish a global minimum standard of legal protection for intellectual property.¹ The seeds of protection in TRIPS had been planted a century earlier with the Paris

1 Carlos M. Correa, "Interpreting the Flexibilities Under the TRIPS Agreement," *Access to Medicines and Vaccines 1*, (2021): 4.

Convention for the Protection of Industrial Property in 1883. According to Juwita, intellectual property rights are exclusive rights granted to the state by legal instruments to works in the human intellect, including art, literature, science, aesthetics, and technology.² In this aspect, Indonesia is now included in the list of countries that acknowledge the existence of the two agreements. Indonesia simultaneously agreed to the TRIPS Agreement and implemented the key provisions of the Paris Convention in Law Number 15 of 2001 concerning Copyright as modified by Law Number 28 of 2014 concerning Copyright (Hereinafter referred to as ICA). There is one fundamental link between the two agreements mentioned above both are predominately directed toward the concept of individualized ownership in the legal protection of intellectual property. To emphasize this, only one name may be acknowledged and recognized as the author and/or inventor of a work or innovation. This gives them complete ownership of the work they own. The rights holder can act autonomously in selecting how and who can disseminate his work.³ This concept is then included in numerous Intellectual Property Rights (Hereinafter referred to as IPR) laws and regulations in Indonesia.

Figure 1. Distribution of Indonesian Communal Intellectual Property Data



- 2 Juwita, *Hak Kekayaan Intelektual Sebagai Bentuk Perlindungan Hukum*, (Yogyakarta: Stiletto Book, 2022), 2.
- 3 Jan Rosén, *Individualism and Collectiveness in Intellectual Property Law*, (Cheltenham: Edward Elgar Publishing, 2012), 14.

Source: <https://kikomunal-indonesia.dgip.go.id/>, accessed on 27 June 2023

The figure above show that Indonesia has an outstanding cultural history that is equal to the number of tribes dispersed from Sabang to Merauke. Figure 1 depicts the total distribution of Communal Intellectual Property in Indonesia, beginning with Traditional Cultural Expression (EBT), Traditional Knowledge (PT), Potential Geographical Indications (PIG), and Genetic Resources (SDG). Based on data from the Directorate General of Intellectual Property Ministry of Law and Human Rights of the Republic of Indonesia that Traditional Cultural Expression has the most uses of Communal Intellectual Property in Indonesia focused on South Sulawesi Province.⁴ Therefore, there will be more potential in the future in the use of Traditional Cultural Expression so that legal protection is needed.

The Indonesian country is a communal nation as evidenced by the existence of its diverse indigenous peoples. In this scenario, Indonesians do not fully embrace the individualistic concept. Various intellectual properties containing collective cultural values are born as a result of these indigenous peoples. It is referred to as "Traditional Cultural Expression" by several sources.⁵

Protecting Traditional Cultural Expression (Hereinafter referred to as TCEs) can have a positive cultural and social influence. Such as (1) concurrently carrying out efforts to conserve and maintain a country's cultural heritage; (2) providing prevention against parties wishing to misuse indigenous peoples' TCEs; and (3) providing justice and protection for indigenous peoples in the use of intellectual property results.⁶

The last point has high urgency because following Simatupang, public interest in Indonesian cultural heritage has led to numerous Indonesian TCEs being claimed and created in such a way that they move away from their roots for economic reasons. This is owing to the lack of defined norms protecting Communal Intellectual Property.

Figure 2. Indonesian Communal Intellectual Property Object Used by Other Countries

4 Indonesian Ministry of Law and Intellectual Property Rights, "Distribution of Indonesian Communal Intellectual Property Data" accessed June 27, 2023. <https://kikomunal-indonesia.dgip.go.id/>

5 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.

6 Maya Ruhtiani, "Perbandingan Perlindungan Hukum Hak Kekayaan Intelektual Komunal Antara Indonesia Dan China," *Jurnal Ilmiah Universitas Batanghari Jambi* 22, No. 2 (2022): 886–891.

No.	Objek yang digunakan oleh Negara asing	Negara asing yang menggunakan ekspresi budaya tradisional
1.	Batik	Adidas
2.	Batik Pesisir	China
3.	Rendang	Holland
4.	Sambal Bajak	Holland
5.	Sambal Petai	Holland
6.	Sambal Nanas	Holland
7.	Jepara Graving	French
8.	Tempe	Thailand
9.	Jepara-Distinctive Ornamental Frame	England
10.	Bali Silver Handicraft	America

Source : Ayu Citra Santyaningtyas, 2020.

The figure above show that developed countries claim so many Indonesian TCEs assets. This includes batik, old manuscripts, culinary recipes, songs, dances, musical instruments, designs, plant products, and other cultural things –not mentioning religio-cultural wealth that is also developing according to the times, such as Islamic Crypto Assets.⁷ Usage has been occurring for decades. The result is a nobility of Indonesian culture in the form of Pendet Dance, Wayang Art, and Reog, all of which are unilaterally claimed as Malaysian cultural heritage. In the same vein, the company John Hardy International Ltd accomplished the same with Balinese motifs.⁸ Furthermore, protection postulates the thoughts of Finger and Schuler in Santyaningtyas, this article agrees that through protection in ICA, indigenous peoples can use TCEs to gain commercial benefits from the fruit of their thoughts and creativity.⁹

This research aims to identify the legal problems of traditional cultural expression that have hampered the implementation of Government Regulation Number 56 of 2022 concerning Communal Intellectual Property (Hereinafter referred to as GRCIP).

B. RESEARCH METHODS

The legal research was normative legal research used secondary data also known as legal research based on positive legislation in Indonesia. Secondary data was from primary legal materials, secondary legal materials and tertiary legal materials.¹⁰ This research used is acquiring information so that the research objectives can make recommendations for what should be

7 Wiwoho, J., Trinugroho, I., Kharisma, D.B. and Suwadi, "Islamic crypto assets and regulatory framework: evidence from Indonesia and global approaches", *International Journal of Law and Management* 66, No. 2 (2024): 155-171

8 Laina Rafianti, "Perlindungan Bagi Kustodian Ekspresi Budaya Tradisional Nadran Menurut Hukum Internasional Dan Implementasinya Dalam Hukum Hak Kekayaan Intelektual Di Indonesia," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 1, No. 3 (2014): 498-521.

9 Ayu Citra Santyaningtyas, "Strategi Perlindungan Ekspresi Budaya Tradisional Di Indonesia," *Jurnal Heritage* 8, No. 2 (2020): 107-113.

10 Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2021), 14.

done based on the results of the analysis performed. The statute approach is used in this research.¹¹ The statute approach is utilized in this research, according to Peter Mahmud Marzuki, to find the legal ratio and the ontological basis for the birth of legal rules to find the philosophical content underlying these legal acts. Library approaches were used to obtain legal materials for this study.¹² This journal's analysis employs the technique of describing primary and secondary legal materials. ICA and GRCIP are used in primary legal sources to describe the legal protection of communal TCEs and to identify problems that arise. Furthermore, acquired secondary legal material is linked to legal theory and literature to aid in journal writing.

C. RESULTS AND DISCUSSION

1. Mechanisms for Communal Legal Protection of TCEs based on Government Regulation Number 56 of 2022 Concerning Communal Intellectual Property

As an archipelagic country, Indonesia possesses a richness of unique TCEs that should be conserved as national potential. This wealth is a source of intellectual labor that must be legally protected. Furthermore, this wealth can be used to improve capabilities in the crafts and sectors in which the creators are involved. Thus, preserving these TCEs can benefit both the producers and the nation and state. TCEs are an important aspect of Indonesian social life in general.¹³ Previously, authors had sole ownership of TCEs regulated by Copyright Law. Because this creator's context has not been arranged, either individually or communally the government is attempting to provide additional information regarding the preservation of ownership of TCEs.

a. Definition and Legal Protection of TCEs

Tradition, culture, and expression are the three words that makeup TCEs. "Expression" refers to the act of expressing or conveying an idea, intent, or sentiment. In general, "culture" can be defined as the product of human reason and mind working together to produce and sustain life in their surroundings. TCEs are a part of the people's cultural existence as owners. Traditional cultural representations already incorporate elements like economy, spirituality, and community. All of these qualities are respected in traditional communities. As a result, TCEs might represent an area of indigenous peoples' identity.¹⁴

In Indonesia, the protection of traditional cultural manifestations can take three various forms. First, protection is provided by the provisions of the Copyright Law, which governs the rights to traditional cultural manifestations. Second, limited international protection (Neighbouring Rights), which gives limited international protection for TCEs. Third, protection through

11 *Ibid*, 69.

12 *Ibid*, 133-134.

13 Agus Sardjono, *Membumikan HKI Di Indonesia*, (Bandung: Nuansa Aulia, 2009), 160.

14 Hilman Hadikusuma, *Pengantar Hukum Adat*, (Jakarta: Mandar Maju, 2010), 51.

industrial property law provisions (Protection Based on Industrial Property), which offers protection for TCEs based on intellectual property law.¹⁵

b. The Urgency of Communal Ownership in TCEs

Individual ownership, the idea of originality, and the principle of fixation in the copyright system all pose challenges to the future protection of traditional communal cultural manifestations. First, TCEs are collectively owned whereas copyright is individual and exclusive. Furthermore, because TCEs have existed for a long time this is difficult to determine who produced them. Furthermore, only original works are protected by copyright although many historic artistic traditions are not original in this sense because components are not protected until designated in a certain form or media. The time limit for intellectual property rights protection gives a duration of protection that includes copyrights as defined in Article 58 ICA. However, this does not apply to TCEs because their protection is essentially unlimited.

Based on the explanation of the weak protection of TCEs in the copyright system, it is necessary to determine which IPR system is considered capable of paying attention to the uniqueness of TCEs that are primarily characterized by communalistic or sui generis characteristics. As a result, the Indonesian government will publish arrangements for TCEs in GRCIP.

c. Legal Protection of TCEs in Government Regulation Number 56 of 2022 concerning Communal Intellectual Property (GRCIP)

1) Rights and Obligations of the Nation

The Nation owns TCEs as communal intellectual property and is obligated to preserve, protect, and inventory them. As Nation in Article 3 paragraphs (1) and (2) of the GRCIP, this is done to preserve cultural identity, defend rights, promote economic growth, community empowerment, and public interest in Indonesia through an inventory of TCEs. Inventorying can take numerous forms such as releasing a book providing an inventory of written information or recording the inventory in a computer database.¹⁶

2) Classifications of TCEs

There are different sorts of TCEs in Indonesia. First up is Bali's traditional Pendet Dance. Furthermore, traditional shows include leather puppets sometimes known as Wayang Kulit. Traditional ceremonies that make use of musical instruments such as gongs, drums, saron, and slenthem, also known as gamelan music. Based on the preceding example, there is a TCEs classification defined in Article 7 paragraphs

15 Kholis Roisah, "Perlindungan Ekspresi Budaya Tradisional Dalam Sistem Hukum Kekayaan Intelektual," *Masalah-Masalah Hukum* 43, No. 3 (2014): 372–379.

16 Bayangsari Wedhitami, "Upaya Perlindungan Ekspresi Budaya Tradisional Dengan Pembentukan Peraturan Daerah," *Law Reform* 9, No. 2 (2014) : 32–48.

(1) and (2) GRCIP that includes verbal textual, music, movement, drama, fine arts, traditional ceremonies, architecture, landscapes, and or other forms of expression based on evolution. Aside from that, the following objects can utilize genetic resources to realize TCEs.

3) Parties in Communal TCEs

Ministers, leaders of non-ministerial government agencies, and municipal governments are among those responsible for preserving and administering TCEs. Article 3 paragraph (2) GRCIP governs this remark. Aside from that, non-governmental parties such as communities of origin or customary law communities may have the moral right to carry out their duties by committing to care for, maintain, develop, and use TCEs indefinitely under Article 5 paragraph (1). In general, these events play a vital role in communally preserving, maintaining, and defending TCEs. Communities of origin or customary law communities can capitalize on the economic possibilities of TCEs such as cultural tourism to generate cash for local governments.

4) Protection for TCEs

Protection for TCEs is all about bringing up the important of legal mitigation.¹⁷ Remembering many potentially fast-developing sectors surely facing legal challenges.¹⁸ TCEs themselves can be carried out by Ministers, ministers/heads of non-ministerial government institutions, and/or Regional Governments in carrying out safeguards by preventing exploitation that is not in accordance with the values, meaning, identity, and social institutions that apply in the Home Community. Furthermore, safeguarding can be accomplished through mediation, lobbying, and diplomacy with other countries. This is governed by Article 28 of the GRCIP.

The Nation has not thoroughly documented the identification of TCEs. Article 35 GRCIP indicates that if a TCEs is not registered or has not been recorded in accordance with the relevant legislation, the Nation has a role to play. The nation retains the right and obligation to safeguard communal TCEs. This is done in order to preserve cultural identity and protect the rights of a group of origin and country.

17 Muryanto, Y.T., Kharisma, D.B. and Ciptorukmi Nugraheni, A.S., "Prospects and Challenges of Islamic Fintech in Indonesia: A Legal Viewpoint", *International Journal of Law and Management* 64, No. 2 (2022): 239-252.

18 Muryanto, Y.T., "The urgency of Sharia Compliance Regulations for Islamic Fintechs: a Comparative Study of Indonesia, Malaysia and the United Kingdom", *Journal of Financial Crime* 30, No. 5 (2023): 1264-1278.

2. The Legal Problems in Adopting Indonesia's Heritage of TCEs

"Sepi ing pamrih, rame ing gawe, mamayu hayuning bawond"

The writer uses this Javanese philosophy to show how great the value of Indonesian oneness is in carrying out communal values. This philosophy's meaning is to live life to the fullest by putting aside personal interests and doing good activities for the greater good.¹⁹

Indonesian people hope to establish a social order based on mutual cooperation and non-individualism through this philosophy. This is what the Intellectual Property Protection for TCEs in GRCIP aims to achieve. Nonetheless, there are a number of legal issues that limit this protection, some of which connect with social-community issues, such as:

a. Indonesia's Legal Protection Regime is Still Individualistic

In substance, Indonesian IPR protection is more than just carrying out individual actions or recognizing individual rights. Indonesian IPR protection can also be accomplished through the use of communal (communalistic) concepts. The same thing was also mandated in the UNESCO (United Nations Educational, Scientific, and Cultural Organization) Convention in 2003, 20 years ago. The treaty governs the acknowledgment of collective intellectual property rights in intangible cultural treasures such as traditional cultural manifestations and customary knowledge. The convention is expected to foster a greater appreciation for cultural heritage and human inventiveness.²⁰

Despite worldwide recognition, Indonesia's legal protection remains oriented toward an individualistic regime. On paper, IPR have an individualistic intent to dominate intellectual property, which of course entirely opposes the aspirations of safeguarding TCEs. The current implementation of IPR in Indonesia mostly mirrors the western idea, with IPR established to defend capital owners' rights to carry out their interests.²¹

The communal Indonesian society has not even been able to speed the safeguarding of TCEs in the CIP scheme. This is because individualistic regimes have substantial nuances in the rules and regulations that safeguard IPR. The national law corridor has the same outlook; several IPR laws and regulations that breathe individualistic regimes have been embedded in Indonesian IPR protection practice.

19 Sigit Nugroho, "Perlindungan Hak Kekayaan Intelektual Dalam Upaya Peningkatan Pembangunan Ekonomi Di Era Pasar Bebas ASEAN," *Supremasi Hukum: Jurnal Penelitian Hukum* 24, No. 2 (2015): 164–178.

20 Yunita Maya Putri, "Perlindungan Bagi Hak Kekayaan Intelektual Komunal," *Jurnal Hukum De'rechtsstaat* 7, No. 2 (2021): 173-184.

21 Lilys Sinurat Enni Sopia Siregar, "Perlindungan Haki Dan Dampaknya Terhadap Perekonomian Indonesia Di Era Pasar Bebas: Pendekatan Kepustakaan," *Niagawan* 8, No. 2 (2019): 75–84.

Individual and communal IPR protection differ significantly in general. These differences are based on principles, and their stances are fundamental, as follows:²²

Table 1. Differences between individual and communal intellectual property

No.	Intellectual Property Right	Individual Intellectual Property	Comunal Intellectual Property
1.	Rightsholders	Individual or legal entity rights	Indigenous people's rights
2.	Economic Benefits	Only for individuals or legal entities	To form a partnership in which advantages are distributed between indigenous peoples and the state
3.	Form of creation	Tangible (product and/or process of creation) Findings must be documented and organized in a methodical manner (systematically).	Intangible (created and maintained by tradition) Cannot be compiled in writing and in a systematic manner because it comprises traditional knowledge, genetic resources, geographical indications, and TCEs,

Source : Putri, 2021.

Given the strong individualized concept in the practice of IPR protection in Indonesia, it is required to modify the practice of safeguarding TCEs in the form of GRCIP, which takes time. Furthermore, there is a fundamental distinction between the current communalistic and individualistic intellectual property protection. As a result, the application of protection and GRCIP from government officials at the highest level to government officials at the lowest level can be accelerated.²³

b. Inadequate Legal Instruments for Communal Intellectual Property

22 Yunita Maya Putri, "Perlindungan Bagi Hak Kekayaan Intelektual Komunal," *Jurnal Hukum De'rechtsstaat* 7, No. 2 (2021): 173-184

23 Lilys Sinurat Enni Sophia Siregar, "Perlindungan Haki Dan Dampaknya Terhadap Perekonomian Indonesia Di Era Pasar Bebas: Pendekatan Kepustakaan," *Niagawan* 8, No. 2 (2019): 75-84

Adequate weapons are required for the implementation of legal protection for TCEs. In this case, the weapon is a legal instrument. The execution of legal protection and obtaining legal instruments are two components that complement one another. Regrettably, these two features have not taken the same course. Due to basic issues that can never be resolved, the two cannot coexist yet.

TCEs, in particular, have been governed under three types of protection: copyright, international protection, and industrial property law. However, a closer examination reveals that the current Copyright Law is insufficient to protect TCEs. These regulations are insufficient because the copyright protection they provide contradicts traditional cultural qualities. There is one guideline that requires copyright protection to be achieved exclusively for original works in their true form or expressive work. Meanwhile, TCEs are not written but are manifested orally and passed down from generation to generation, hence they lack definitive legitimacy.²⁴ Very unfortunate considering the many good impacts that can result from adequate legal products, such as facilitating investment and preventing investment fraud.²⁵ This is also important remembering the rapid growth of capital market in Indonesia.²⁶

The urgency of communal ownership in TCEs is a major concern because of the communalistic nature and other different aspects of the copyright system which are more focused on individual ownership and the principle of originality. This is because the classification of TCEs in Copyright Law is larger than that in GRCIP, which is more specific. Understanding the necessity for protection requires a thorough description and grouping of traditional communal cultural expressions. The issuance of GRCIP has offered specific procedures to communally protect TCEs. Furthermore, comprehensive data protection has to be implied to support the legal framework.²⁷

c. Indonesian Society Has a Low Legal Culture

A good legal system is defined as having three components: (1) legal structure, (2) legal substance, and (3) legal culture. To achieve the desired law, all three must function in concert. This is

24 Irfan Ardiansyah, "Perlindungan Hukum Hak Kekayaan Intelektual Terhadap Budaya Tradisional Di Indonesia," *Jurnal Trias Politika* 6, No. 1 (2022): 123–129.

25 Sudarwanto, A.S. and Kharisma, D.B. "Law enforcement against investment fraud: a comparison study from the USA and Canada with a case study on binary options in Indonesia", *Safer Communities* 22, No. 4 (2023): 235-253.

26 Kharisma, D.B. and Hunaifa, A., "Comparative study of disgorgement and disgorgement fund regulations in Indonesia, the USA and the UK", *Journal of Financial Crime* 30, No. 3 (2023): 635-649.

27 Kharisma, D.B. and Diakanza, A., "Patient personal data protection: comparing the health-care regulations in Indonesia, Singapore and the European Union", *International Journal of Human Rights in Healthcare*, (2022)

owing to the fact that the three have a basic relationship.²⁸ All schemes or systems in law enforcement are inextricably linked to the legal structure. In other words, it applies to all law enforcement organizations, including courts, police, and prosecutors, as well as all law enforcement officers inside them.

Meanwhile, legal culture may be defined as all of the community's efforts in implementing the law and its system so that it can be applied in order to fulfill the aims that led to the development of the law.²⁹ It comprises people's perspectives, ideas, habits, and ways of thinking. Maximum legal protection and comprehensive legal tools will be rendered ineffective if the community lacks a dependable legal culture. This is also a problem that will impede the implementation of TCEs Protection. Simply said, this issue is recognized by the Indonesian people's lifestyle and living patterns.

In general, Indonesian society and particularly indigenous peoples are unfamiliar with written culture. Indigenous peoples conduct activities based on unwritten cultural standards known as adat. This has an effect on unreliable administrative capabilities. A good legal culture can only be realized if it has an adequate model of interest in it. A model derived from the nation's basic values and based on the *volkgeist* or spirit and soul of the Indonesian people. In short, a legal culture reconstruction model is needed that is in line with the philosophical values of the Indonesian nation.³⁰

The government as state administrator has provided legal protection through GRCIP as an effort to realize legal certainty. Apart from that, to prevent acts of misuse of communal intellectual property the Indonesian Ministry of Law and Intellectual Property Rights should develop the database, the obligation to fulfill the requirements for registration of Communal Intellectual Property, and the appointment of proof of approval for use and distribution of profits and ownership by the owner.³¹ This is done in order to document communal intellectual property so that not only preventive efforts to protect TCEs but other intellectual property can be accommodated.

28 Anajeng Esri Edhi Mahanani, "Rekonstruksi Budaya Hukum Berdimensi Pancasila Dalam Upaya Penegakan Hukum Di Indonesia," *Jurnal Yustika: Media Hukum dan Keadilan* 22, No. 1 (2019): 1–10.

29 Eko Wigiyanto, "Penegak Hukum Sebagai Garda Terdepan Perwujudan Negara Hukum Di Indonesia," *Jurnal Sakato Ekasakti Law Review* 1, No. 1 (2022): 1–8.

30 Anajeng Esri Edhi Mahanani, "Rekonstruksi Budaya Hukum Berdimensi Pancasila Dalam Upaya Penegakan Hukum Di Indonesia," *Jurnal Yustika: Media Hukum dan Keadilan* 22, No. 1 (2019): 1–10,

31 Ismail Koto, "Perkembangan Hak Kekayaan Intelektual Komunal Di Indonesia", *Jurnal Seminar Nasional Hukum, Sosial dan Ekonomi* 2, No. 1 (2023): 167-173.

D. CONCLUSION

In Indonesia, there are a number of legal issues that impede TCEs protection. First, the individualistic regime (idea) is so pervasive in Indonesian intellectual property law protection. Second, the legal framework for Communal Intellectual Property is deficient. Last, Indonesian society's legal culture remains low. Having a comprehensive legal framework means creating sustainable social finance ecosystem, simultaneously.³² TCEs have been legally regulated in the ICA. Nevertheless, the legal regulation is only confined to the inventor. On the other hand, TCEs protection must be carried out in a complete and integrated way. This occurs to preserve intellectual property rights. This urgency caused the adoption of GRCIP, which that the Nation has the rights and responsibility to guard, manage, and inventory TCEs. Furthermore, the Community of Origin has the moral right to acknowledge and accept the responsibility of permanently protecting and administering TCEs. Government should Amendment ICA and develop one database of communal intellectual property to keep requirements in registration and compliances.

BIBLIOGRAPHY

Journals:

- Ardiansyah, Irfan. "Perlindungan Hukum Hak Kekayaan Intelektual Terhadap Budaya Tradisional Di Indonesia." *Jurnal Trias Politika* 6, No. 1 (2022).
- Enni Sopia Siregar, Lily Sinurat. "Perlindungan Haki Dan Dampaknya Terhadap Perekonomian Indonesia Di Era Pasar Bebas: Pendekatan Kepustakaan." *Niagawan* 8, No. 2 (2019).
- Kharisma, D.B. and Diakanza, A. "Patient personal data protection: comparing the health-care regulations in Indonesia, Singapore and the European Union." *International Journal of Human Rights in Healthcare* ahead-of-print, No. ahead-of-print (2022).
- Kharisma, D.B. and Hunaiifa, A. "Comparative study of disgorgement and disgorgement fund regulations in Indonesia, the USA and the UK." *Journal of Financial Crime* 30, No. 3 (2023): 635-649
- Koto, Ismail. "Perkembangan Hak Kekayaan Intelektual Komunal Di Indonesia." *Jurnal Seminar Nasional Hukum, Sosial dan Ekonomi* 2, No. 1 (2023).
- Mahanani, Anajeng Esri Edhi. "Rekonstruksi Budaya Hukum Berdimensi Pancasila Dalam Upaya Penegakan Hukum Di Indonesia." *Jurnal Yustika: Media Hukum dan Keadilan* 22, No. 1 (2019).
- Muryanto, Y.T., Kharisma, D.B. and Ciptorukmi Nugraheni, A.S. "Prospects and challenges of Islamic fintech in Indonesia: a legal viewpoint",

32 Sudarwanto, A.S., Kharisma, D.B. and Cahyaningsih, D.T. "Islamic Crowdfunding and Shariah Compliance Regulation: Problems and Oversight", *Journal of Financial Crime* (2023)

- International Journal of Law and Management* 64, No. 2 (2022): 239-252.
- Muryanto, Y.T. "The Urgency of Sharia Compliance Regulations for Islamic Fintechs: a Comparative Study of Indonesia, Malaysia and the United Kingdom." *Journal of Financial Crime* 30, No. 5 (2023), 1264-1278.
- Nugroho, Sigit. "Perlindungan Hak Kekayaan Intelektual Dalam Upaya Peningkatan Pembangunan Ekonomi Di Era Pasar Bebas ASEAN." *Supremasi Hukum: Jurnal Penelitian Hukum* 24, No. 2 (2015).
- Putri, Yunita Maya. "Perlindungan Bagi Hak Kekayaan Intelektual Komunal." *Jurnal Hukum De'rechtsstaat* 7, No. 2 (2021).
- Rafianti, Laina. "Perlindungan Bagi Kustodian Ekspresi Budaya Tradisional Nadran Menurut Hukum Internasional Dan Implementasinya Dalam Hukum Hak Kekayaan Intelektual Di Indonesia." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 1, No. 3 (2014).
- Roisah, Kholis. "Perlindungan Ekspresi Budaya Tradisional Dalam Sistem Hukum Kekayaan Intelektual." *Masalah-Masalah Hukum* 43, No. 3 (2014).
- Ruhtiani, Maya., "Perbandingan Perlindungan Hukum Hak Kekayaan Intelektual Komunal Antara Indonesia Dan China." *Jurnal Ilmiah Universitas Batanghari Jambi* 22, No. 2 (2022).
- Santyaningtyas, Ayu Citra. "Strategi Perlindungan Ekspresi Budaya Tradisional Di Indonesia." *Jurnal Heritage* 8, No. 2 (2020).
- 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).
- Sudarwanto, A.S. and Kharisma, D.B. "Law Enforcement Against Investment Fraud: a Comparison Study From The USA and Canada With a Case Study on Binary Options in Indonesia." *Safer Communities* 22, No. 4 (2023): 235-253.
- Sudarwanto, A.S., Kharisma, D.B. and Cahyaningsih, D.T. "Islamic Crowdfunding and Shariah Compliance Regulation: Problems And Oversight." *Journal of Financial Crime* ahead-of-print No. ahead-of-print (2023).
- Correa, Carlos M., "Interpreting the Flexibilities Under the TRIPS Agreement." *Proceeding In Access to Medicines and Vaccines* 1, (2021).
- Wedhitami, Bayangsari. "Upaya Perlindungan Ekspresi Budaya Tradisional Dengan Pembentukan Peraturan Daerah." *Law Reform* 9, No. 2 (2014).

Wigiyanto, Eko. "Penegak Hukum Sebagai Garda Terdepan Perwujudan Negara Hukum Di Indonesia." *Jurnal Sakato Ekasakti Law Review* 1, No. 1 (2022).

Wiwoho, J., Trinugroho, I., Kharisma, D.B. and Suwadi, P. "Islamic Crypto Assets and Regulatory Framework: Evidence from Indonesia and Global Approaches." *International Journal of Law and Management* 66, No. 2 (2024): 155-171.

Books:

Hadikusuma, Hilman. *Pengantar Hukum Adat*. Jakarta: Mandar Maju, 2010.

Juwita. *Hak Kekayaan Intelektual Sebagai Bentuk Perlindungan Hukum*. Yogyakarta: Stiletto Book, 2022.

Marzuki, Peter Mahmud. *Penelitian Hukum*, Jakarta: Kencana, 2021.

Rosén, Jan. *Individualism and Collectiveness in Intellectual Property Law*, Cheltenham: Edward Elgar Publishing, 2012.

Sardjono, Agus. *Membumikan HKI Di Indonesia*, Bandung: Nuansa Aulia, 2009.

Websites:

Indonesian Ministry of Law and Intellectual Property Rights. "Distribution of Indonesian Communal Intellectual Property Data" Accessed June 27, 2023. <https://kikomunal-indonesia.dgip.go.id/>.