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# Policy on Protection of Cultural Heritage through Communal Copyright in Supporting Sustainable Tourism

*by Ni Luh Made Mahendrawati*

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**Policy on Protection of Cultural Heritage through Communal Copyright in Supporting Sustainable Tourism**

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**Abstract**

Tourism has become a prevalent discourse in Indonesia, considering that in the last few years, Tourism has become the highest contributor to the commodity revenue line. Paying close attention to the integration of tourism certainly involves multidiscipline in it so that efforts to develop tourism require integrated efforts from various *pages* as well as multidiscipline. It is essential to realize that the attractions of tourism in Indonesia can consist of everything that has a uniqueness, beauty, and value in the form of the diversity of natural, cultural, and human-made diversity. In real terms, it can be observed that cultural heritage is one of the valuable assets owned by a country (Indonesia) in supporting the development of tourism. Culture is a way of life that develops, is shared by a group of people, and is passed down from generation to generation. The culture referred to is the result of reason and reason, so that philosophy can be understood as *of* *from* nothing, then thought by reason and ideas, then becoming. The process of creating a culture can *logically* be protected by Intellectual Property Rights (Copyright). During this time, the copyright-protected in Indonesia based on Law Number 28 of 2014 concerning Copyright is an Individual Right. It is understood that the copyright needed to protect cultural heritage is communal rights. How to regulate and apply copyright protection Communal communities will be studied more deeply so that there is a comprehensive and integrated model for protecting cultural heritage in Indonesia.

**Keywords:** protection policy; cultural heritage; communal copyright; sustainable tourism.

**Jel Classification:** Z32; Q01.

**Introduction**

Tourism is a multi-faceted and multidisciplinary nature of talks that requires a variety of approaches as relevant perspectives *understanding and discovering their nature*. The dynamics of the pattern of human life have implications for the rapid development of the tourism industry in the world, including Indonesia. Tourism is becoming a very promising sector in Indonesia. The magnitude of the tourism potential and the interest of tourist visits to Indonesia encouraged the government and local governments to improve tourism management facilities and infrastructure (Wirata 2015). Of course, it becomes an imbalance if the effort to manage tourism is only based on infrastructure improvement, a different and deeper perspective is needed in safeguarding what already exists and will be in the form of comprehensive and integrated policies in a strong legal *item*.

If tourism is understood to be more complicated than terminology as contained in Act Number 10 of 2009 concerning Tourism, as follows:

"Tourism is a variety of tourism activities and is supported by various facilities and services provided by the community, businesspeople, the Government, and the Regional Government."

While tourism terminology in the Act a quo, as follows:

*"Travel activities carried out by a person or group of people by visiting certain places for recreational purposes, personal development, or learning the uniqueness of tourist attractions that are visited in a temporary period of time."*

Stemming from this understanding, the discussion on tourism cannot be separated from several aspects, including Human, Nature, and tools (facilities and infrastructure). Of course, it can be understood that humans are domiciled as subjects and tourism objects so that nature is one form of tourism object, supported next through tools. Humans and nature, as well as various activities summarized in culture, bring a special attraction for tourists to come and do tourist activities.

In reality, humans in an area are bound to become a community with certain interests and origins, which, based on the passage of time, gives rise to creativity, ideas, reason, and knowledge that takes place repeatedly into a habit. It is known as a culture, which is one of the tourist attractions besides nature. A deeper understanding of tourism management efforts should pay attention to what is the attraction of tourism so that the development of the tourism industry can provide positive value to all parties. It cannot be denied that all possibilities which are classified as negative impacts always have the potential to arise. This is where the role of legal policy is needed to be present in the framework of regulating various human interests.

The development of the law regarding copyright in Indonesia cannot be separated from the development of recognition of Intellectual Property Rights (IPR) or known as Intellectual Property (IP). The first regulation in Indonesia concerning Intellectual Property Rights as outlined in the Copyright Act 1982, which was contained in the Republic of Indonesia State Gazette Number 15 of 1982 by revoking Auteurswet 1912. The Copyright Act was amended several times, the latest being the Law No. 28 of 2014 concerning Copyright.

Definition of Copyright originally described the right to copy or reproduce a copyrighted work. The term copyright is not clear who first used it; there is no single law that uses it the first time. According to Stanley Rubenstein, as quoted by Djumhana and Djubaedillah, around 1740, it was the first-time people used the term copyright. In the UK, the use of the term copyright first developed to describe the concept in order to protect publishers from the act of copying books by other parties who do not have the right to publish it. It is just that the subsequent development of protection in the copyright Law shifts more to give protection to the author, no longer just to protect the publisher. The nature of copyright is a part of intellectual property rights (incorporeal property), which is the mastery of the results of the ability to work, from ideas and thoughts.

The protection of copyright certainly requires the participation of the state in the form of regulations and various legal products in it. Copyright is private so that government intervention is needed to establish legal rules to protect various forms of creation from humans or groups of people. It is undeniable in the development of technology, intellectual property, including copyright, becomes an inseparable part as a part of the country's economic support — the internal economy in the country and economic relations at the international level.

Regarding cultural heritage in the form of action and knowledge of traditional communities, it has been protected from negative actions in the form of plagiarism or claims from other parties who do not hold copyright over these cultural expressions, contained in Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright (furthermore) called the Copyright Act). Traditional Cultural Expression is an expression of the cultural identity of a region along with humans who are in the region. It is essential to preserve and provide legal protection to the expression of traditional culture, which is a cultural heritage as one of the assets of tourism. So, in this paper, we will examine the perspective of the policy of protecting cultural heritage through communal copyrights as an effort to create sustainable tourism.

## 1. Discussion

### 1.1. Fundamental Considerations for The Protection of Cultural Heritage through Communal Copyright in Legal Regulatory Policies in Indonesia

Policy (or beleid: the Netherlands) is equated with politics, in the etymological view termed politics (the Netherlands). The policy by Carl J. Fredrick is expressed as a series of actions proposed by a person, group, or government in a particular environment by showing obstacles and opportunities for implementing the proposal in order to achieve specific goals (Syaukani and Thohari 2018). James E. Anderson said that policy is a series of actions that have certain objectives that are followed and implemented by an actor or group of actors to solve a particular problem. From some of these views can be put a view that a series of efforts made by people and/or groups of people who have certain goals.



Etymologically the policy is equated with the term "beleid" or politics. Thus, legal policy can be understood as legal politics. Exploring further about the understanding of legal politics, it would be appropriate to refer to the opinion of Abdul Hakim Garuda Nusantara, as quoted by Imam Syaukani and A. Ahsin Thohari that the understanding of legal politics can be explained through the scope or scope of the scope of understanding which encompasses: first, the territorial enforcement of legal politics; second, the process of reform and law-making, which leads to a critical attitude which has the dimension of *ius constituendum* and creates a law that has dimension of *ius constituendum*; third, affirming the function of the institution and fostering law enforcement (Syaukani and Thohari 2018). When this understanding is drawn into the context (relevance) in this study, the scope of the discussion can be further narrowed back to efforts to reform the existing law in Indonesia as well as an insight that has dimension *ius constituendum* on the Protection of Cultural Heritage through Communal Copyright.

The nature of the discussion regarding cultural heritage as communal copyright certainly cannot exceed the nature of copyright itself. Legally positivist, referring to Article 1 number 1 of the Copyright Act:

*"Copyright is the exclusive right of the creator, which arises automatically based on the declarative principle after work is realized in tangible form without reducing restrictions in accordance with statutory provisions."*

In line with that, it was revealed that the basic idea of copyright is to protect the form of human work that was born because of intellectual abilities. This legal protection only applies to creations that have been manifested explicitly so that they can be seen, heard, and read (Djumhana and Djubaeah 2014). The copyright law system and intellectual property rights law have several principles, including the principle of natural justice, the economic argument, the cultural argument, and the social argument. Of course, the four principles are integrated into forming a conducive atmosphere for every human being to think and be creative to create discoveries for human welfare.

Turning back to the classic adagium "*ibi ius Ubi societas*" that the development of human ideas creates new forms of discovery both personally and in groups, so that what is within the scope of copyright law must be renewed in line with social and community dynamics. The rapid development of technology influences tourism and the world economy, including Indonesia. Internationally, WIPO (World Intellectual Property Organization) In 2000 formed the IGC-GRTKF (Intergovernmental Committee on Genetic Resources, Traditional Knowledge, and Folklore) to discuss the possibility of holding a binding agreement, as a legal effort to protect internationally, then at the national level, the Government is discussing the Draft Law on SDGPTEF (Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions). (BPHN 2009). There is also the Beijing Treaty that will provide legal certainty for moral rights and economic rights of performers, especially to protect performance in the digital age. If Indonesia adopts this treaty, the consequence is that art performers have the authority to give permission or forbid other parties to broadcast and make fixations from the performers of their audio-visual performances (Detik News 2019). These performing arts also encompasses art performances and the results of traditional cultural expressions. At present traditional cultural expressions govern copyright protection through the Copyright Act but have not given authority to the presenter or copyright owner to allow or not to other parties to broadcast via video or other digital means.

Of course, it is very important to regulate the protection of (traditional cultural expression) cultural heritage through communal copyrights in the form of integrated legal regulations in the politics of national law. The national goal, as mandated in the Constitution, is to bring about justice and prosperity for the people. Related to traditional cultural expressions, of course, this can be said as cultural heritage, where cultural heritage is part of the national identity of a nation. Regarding culture as a national identity, Chris Jenks calls "culture as a medium that connects humans with nature. Culture exists because humans exist. Culture is meaningful only if the nature that is the cause of the birth of that culture still exists in an identity quality that is equivalent to the state at which it was created. (Surjawa, 2014) Stuart Hall, as quoted by Pratama Sukma, divides cultural identity into two different definitions, as follows: (Erniwati 2011)

*"First, cultural identity is related to equality in a particular group in which its members share a common history and common ancestry. Cultural identity, in this definition, illustrates the similarity of historical experiences and various cultural symbols that make them a stable, unchanging community and continue the terms of reference and meaning under historical change. Second, the definition of cultural identity is the identification formed by history and cultural elements. Cultural identity here then contains political identity, namely the politics of positioning in certain societies."*

The cultural identity of a group from one another certainly has differences given the historical differences, as well as the elements therein, including the values inherent in the culture. Protection of traditional cultural

expression, which is a cultural identity, is an element in maintaining the cultural wealth of traditional communities, where the cultural wealth of traditional communities is part of cultural identity, cultural identity is one of the national identities (Indonesian national identity).

From the perspective of tourism, cultural heritage (the expression of traditional culture) is one of the assets of a tourist attraction in addition to nature and artificial tourist attraction. The arrival of tourists because of interest in various tourist attractions certainly needs to be preserved and developed so that tourism activities have positive implications for people in the cultural heritage owner. Therefore, sociologically, the communal copyright law policy on cultural heritage needs to be examined and equipped to create a legal system capable of leading to the welfare of society.

## 1.2. Policy on Protection of Cultural Heritage through Communal Copyrights in Support of Sustainable Tourism in the Future

Nowadays, Indonesian tourism activities are increasingly enriched with various natural and artificial conservation aspects. Aside from that, it certainly cannot be forgotten that culture is the main attraction for tourists and foreign and domestic investors. So, it cannot be denied the magnitude of the influence of the tourism industry on the development of the country's economy. The same thing also expressed I Nyoman Sirtha (Wirata 2015), that the paradigm of tourism activities has shifted from mass tourism to alternative tourism based on nature and local culture, one of the tourism activities is ecotourism, which emphasizes conservation. Ecotourism as an environmentally friendly tourism activity prioritizes aspects of nature conservation, aspects of cultural empowerment, local community economics as well as aspects of empowerment and education. This condition must be supported by a strong and integrated legal system that is able to accommodate many interests, especially by not forgetting the community as an important element in the culture itself. Of course, in creating an ideal legal institution, it is necessary to balance the interests between the parties directly and pay attention to the interests of other parties.

The most obvious role of government is, of course, in bringing up a legal product (regulation) that can lead to public order and welfare. The welfare of the community is undoubtedly still very abstract, so in the context of legal politics, it needs to be explained more clearly so that the direction and objectives of the development of law in Indonesia. Referring to the views of Nonet and Zelznick, there are responsive legal terms. Historically, as a result of political processes in a society, there have been two types of legal development strategies that ultimately have implications for their legal character, namely orthodox development strategies and responsive legal development strategies (Syaukani and Thohari 2012). Responsive development strategies require a large role from the community in law development and determine the policy direction of the government, even though the issue of the authority to produce law remains in the hands of the government.

Cultural heritage (traditional cultural expression) is a natural human creation in a particular region in its socialization activities and then carried on for generations in real form. So, of course, it is very appropriate if communal copyright becomes a valuable milestone to appreciate what they have. Because it can be understood in the word "ownership" that rights will be attached, likewise in communal copyright-like individual copyrights will inherent rights to their creations, which have commercial aspects. It can be illustrated that tourist arrivals due to the attraction of cultural heritage certainly bring economic implications directly to the people around the location of the tourist attraction. The logic that flows than is that it is very feasible that what is stipulated in the Copyright Act is then maintained responsively by considering the needs of the community as the community closest to its creation. Because after all can not be denied that the preservation activities can not be done in one direction by the government, but it is essential to implement strong coordination with the owner of culture to create a conducive atmosphere in maintaining its culture or even creating new ideas and ideas in its development.

As the legal provisions in the Copyright Act concerning communal copyright over cultural heritage (traditional cultural expressions) are regulated in a separate Chapter (Chapter V Expressions of Traditional Culture and protected Works). Through several articles, implicitly regulated that the state holds communal copyright; technically, the state plays the role of inventorying, protecting, and maintaining the expression of traditional culture. It is just that it needs to be regulated in more detail in the implementing regulations to what extent the role of the community in supporting these government activities.

The social dynamics of society cannot be separated from technological developments and the digital world. So that in real terms, can be found a variety of electronic media that provides a means for everyone to spread information in the form of written or audiovisual (video), which of course, in the video contains certain

content. Responding to the development of these times in the Copyright Act, trying to accommodate these developments. Article 43 is stated as follows:

"Actions that are not considered copyright infringement include:

a. The announcement, Distribution, Communication and/or Duplication of national symbols and national anthem according to their original nature;

b. The announcement, Distribution, Communication, and/or Multiplication of everything that is carried out by or on behalf of the government, unless declared protected by law, a statement on the Work, or when the Work is made Announcement, Distribution, Communication, and/or Duplication;

c. The taking of actual news, either in whole or in part from news agencies, broadcasters, and newspapers or other similar sources with the condition that the source must be stated in full; or

d. The making and dissemination of Copyright content through non-commercial information and communication technology media and/or benefiting the Author or related parties, or the Author stated that he had no objection to the said production and dissemination.

e. Multiplication, Announcement, and/or Distribution of Portraits of the President, Vice President, former President, former Vice President, National Hero, leaders of state institutions, heads of ministries / non-ministerial government agencies, and/or regional heads by taking into account their dignity and fairness in accordance with regulatory provisions legislation."

5 Paying attention to Article 43 Letter d can be observed that in certain conditions, the act of disseminating Copyright content through information and communication technology media is not permitted unless it meets certain conditions such as not commercial, beneficial to the creator or obtaining permission from the creator. On top of that, it can be stated that the actual activity in question is prohibited.

Many social media provide a means for everyone to upload the content in the form of text or video. Not infrequently, the video content is a cultural heritage. Though it can be mentioned as, for example, Youtube and Netflix, the video collectors can get income from uploads (commercial value). So far, the government, through the Ministry of Communication and Information, has conducted surveillance of social media with video content, but it can be classified that law enforcement has not been maximized. Therefore, law enforcement efforts need to be maximized accompanied by clear legal rules that produce legal certainty and justice for the creator or holders of communal copyrights. This certainly must be a further discussion to create a conducive atmosphere in the national economy.

### Conclusion

The current legal policy in the field of copyright has accommodated the legal protection of Cultural Heritage so that what is the right of the creator (the public) is strived to be protected by law. Of course, this is based on a philosophical, sociological, and juridical basis so that the legal rules created do not deviate from national development goals. 17 In line with social dynamics that move along with the development of technology and information, many social media provide a means of disseminating information in the form of videos that can be utilized for economic aspects. This has not been touched by the legal video rules that contain content in the form of cultural heritage, even though essentially the creator or copyright holder has economic rights over all kinds of activities that contain his creations. Therefore, a more in-depth study from various parties is needed so that a national copyright law system is formed that accommodates social and technological developments ranging from the substance, structure to the culture that is integrated into a single national legal system.

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