Economics Analysis of Legal Approach In the Progression of West Lampung Traditional Cultural Expression

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Abstract

The value of West Lampung's traditional cultural expressions has not been maximized for the local inhabitants. This article will explain how to implement the local government-requested preservation of West Lampung traditional expressions and their use in accordance with the Economic Analysis of Law framework. The results of the discussion indicate that the Protection and Utilization of Traditional Cultural Expressions has only reached the inventory stage, based on Law No. 28 of 2014 regarding Copyright, Law No. 5 of 2017 regarding Promotion of Culture, Law No. 11 of 2010 regarding Cultural Conservation and Regulations Government No. 6 of 2015 regarding Museums, and Regulation of the Minister of Culture No. 106 regarding Intangible Cultural Heritage of Indonesia. The Economic Analysis of Law demonstrates that West Lampung's traditional cultural expressions must be optimized in order to boost the region's income. This can be maximized through the collaboration of the local government with academics in the arts, artists, Youtubers, artists, and other parties who are already aware of what the global community desires as connoisseurs, so that professional processing can affect the welfare of the people of West Lampung.

I. Introduction

The history of the world's nations has demonstrated that the advancement of a country and civilisation is always influenced by technological innovation and advancement. The progress of a nation is inextricable from the ingenuity, inventiveness, and tenacity of its citizens. Developed nations are still innovative nations. Even if a nation has a high level of productivity, it is still the nation that produces it that benefits from it. In the current era of globalization, developed nations are those able to utilize intellectual property as an economic driver through innovation and creativity. In addition, the intellectual property policies of these developed nations give intellectual property a high priority. When comparing the world's progress throughout the first and second industrial revolutions, innovation and technological advancements characterize both periods. The world has entered the fourth industrial revolution, which is characterized by the expansion of the digital industry, robotic technology, and automation. For this progress to be made, the community's invention and creativity must be preserved and cherished. If not, people will lose interest in innovation and originality.

Creativity and innovation are complementary aspects of national economic development that must be taken into account. Boosting the number of creative and innovative human resources in Indonesia will definitely boost Indonesia's competitiveness in the global arena, both regionally and globally. The paradigm that relies solely on natural resource income as state revenue must be modified and replaced with the development of intellectual property potential, such as Communal Intellectual Property products and creative industry products that are developed using national qualities and character. Indonesia.

High levels of intellectual property protection and enforcement criteria are included in the many bilateral and regional agreements that have been reached with the European Union (EU) and the United States. Although such safeguards are essential to boost their competitiveness, developing nations (DCs) don't make them a top priority. It follows that incorporating the intellectual property rules of other nations into a national system may not necessarily be as fruitful as it would be in those other countries. Countries' domestic intellectual property laws are typically shaped by their economic standing. Countries in Africa and Asia, to provide just two examples, have a wealth of indigenous wisdom and biological variety. They take precautions through existing forms of IPR or implement ''sui generis'' legislation in order to safeguard traditional cultural expressions against unauthorized usage by third parties who may wish to replicate or exploit them.

Since 1958, Indonesia has been a member of the Berne Convention for the Protection of Literary and Artistic Works. Since its origins on September 9, 1886, the Berne

Convention has undergone various changes and was signed in Paris on May 4, 1896. Article 15 paragraph 4 of the 1967 modifications to the Berne Convention grants countries signatory to the Berne Convention the ability to safeguard works whose owner is unknown for and on behalf of the owner. Unclaimed works are known as Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). The definition of TK incorporates Genetic Resources (GR) as part of indigenous peoples' or local communities' knowledge pertaining to the use of GR in traditional medicine. This GRTKF dan TCEs are all forms of Community Intellectual Property with the potential to generate regional income.

At the international level, Indonesia has convened a "Meeting of Like-Minded Countries (LMCs) on International Law Instrument(s) for the Preservation of GRTKF" from 23-27 November 2009, a second LMC conference in 2011, and a third LMC meeting in 2012, all of which have been organized and pushed by the Ministry of Foreign Affairs. Presently, Indonesia serves as the Negotiating Coordinator for Like-Minded Countries (LMCs), a group of developing nations that includes Jamaica, Peru, India, Namibia, Colombia, Brazil, Vietnam, Sri Lanka, Myanmar, and South Africa. Hence, Indonesia and the LMC are highly active in fighting for Genetic Resources, Traditional Knowledge, and Traditional Cultural Expressions (GRTKTCE) concerns at the World Intellectual Property Organization (WIPO) Inter-Governmental Committee (IGC WIPO) meeting on GRTKTCE.

Indonesia's confrontation over the GRTKF/TCE problem at the international level has been ongoing since the 2004 IGC WIPO on GRTKF/TCE sessions (6th Session of the IGC GRTKF, March 15-19), the Like-minded Countries forum (LMC's), and the Asian-African Law Advisory Organization (AALCO). At numerous forums, such as the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) and the Asia Pacific Economic Cooperation (APEC), Indonesia frequently emphasizes the GRTKTCE issue as the most crucial topic to be tackled. To date, however, there has been no international legal instrument (Convention/Treaty) pertaining to GRTKTCE. This is due in part to the tug-of-war between industrialized and developing countries over GRTKTCE. National laws are necessary to defend the moral and economic rights of ethnic communities and to ban the illegal use of their culture, customs, and traditions. According to the World Intellectual Property Organization (WIPO), the plan's focus on IP is ambitious and successful. However, the question of whether or not intellectual property is the best way to safeguard TCE has never stopped being discussed. Weak copyright legislation results from the TCE's lack of originality and production criteria (fixation requirements).

The ethnic community dies and leaves TCE, which is occasionally the result of ongoing creative effort on the ethnic group. Artists must respect ethnic communities when capturing their culture, history, and beliefs through TCE. On the side of originality when self-actualization of traditional culture belongs to a group of citizens and

copyright is owned individually, it can be concluded that the concepts of self-actualization of traditional culture and discovery are mutually contradictory. TCEs are transmitted through millennia, and their originators are occasionally unknown. This violates the creator's moral right to copyright, which mandates the disclosure of the creator's identify.

Economic copyright protection is limited to the creator's life plus 70 years in accordance with Article 58 of Law No. 28 of 2014 on Copyright and Article 7 of the Berne Convention. It is impossible to estimate the period of the work's protection if the creator is unknown. There is a permanent right to utilize and defend public domain works (community groups) that embody traditional cultural values. Cultural expressions that have been passed down for millennia, however, are considered to be in the public domain under the copyright notion. It's possible that ethnic communities won't stand up for their rights if they're violated, even if the aforementioned issues are ignored. This relates to the intersection between national legislation and ethnic community customs.

Henry Merryman stated that traditional cultural expressions of nationalism and internationalism do not require ideology. The legal system of contemporary society must embrace historic cultural expressions. This has the potential to affect policy on traditional cultural manifestations at the regional, national, and global levels. Human intellectual endeavors have the potential to produce items that are both modern and, legally speaking, limited in their usefulness. Communal intellectual property is difficult to define in terms of ownership and duration of protection because it is the result of a social process that has taken place over many years rather than being the property of a single person or company. There are several instances of abuses of traditional cultural expressions in Indonesia. Communal Intellectual Property that have been claimed by foreign parties, in order to increase public awareness of the significance of protecting and exploiting the communal economy. Reog Ponorogo and Pendet dance are examples of traditional cultural expressions asserted by Malaysia in one of its tourism promotion advertisements. Puppet motifs on Adidas shoes produced without permission from the local government concerned as owners of communal intellectual property are also problematic.

Communal intellectual property has economic worth and may be exploited economically while protecting the nation's moral and sociocultural ideals. In addition, Communal Intellectual Property is regarded as a national economic engine because it can be developed and transformed into Intellectual Property with commercial worth. There are several economic and social benefits for each region if Communal Intellectual Property is adopted. Regional communal culture, for instance, can be preserved and protected from extinction if it is created and re-run by local communities, resulting in greater economic benefits. It is hoped that the problems that have arisen thus far can be remedied via heightened awareness and cooperation

with relevant parties. This is because, for a variety of reasons, it has been extremely difficult to make communal culture an intellectual property to until. Among other factors, there is a lack of public awareness regarding the significance of protecting Communal Intellectual Property and the economic potential resulting from the use of Communal Intellectual Property in their region; a lack of participation from relevant local government; a lack of knowledge regarding the significance of Communal Intellectual Property as a driver of the regional economy; and an inability of legitimate supporting data attributed to Communal Intellectual Proper.

Located in Indonesia's Lampung Province, West Lampung is one of the province's regencies. Each indigenous community group in the West Lampung Regency retains cultural values and local knowledge via their own Traditional Cultural Expressions (TCEs), which contribute to the West Lampung Regency Government's cultural potential. Such as traditional dances, traditional rites, and growing customs among the West Lampung people. The role of the state as the holder of copyright for TCEs is outlined in Article 38, paragraph 1 of Law No. 28 of 2014 regarding Copyright. Article 38, paragraph 2, of the Copyright Law obligates the state to conduct an inventory, safeguard, and maintain TCEs.

Based on the preceding arguments and explanations, the problems that will be examined in this research are the extent to which the protection and utilization of traditional cultural expressions have been carried out by the Regional Government of West Lampung to date, and how the development of traditional cultural expressions in West Lampung has been conducted using the Economics Analysis of Law approach.

2. Research Method

This paper employs empirical normative legal research approaches in its methodology. In this instance, legal normative research methodologies involve empirically examining primary, secondary, and tertiary legal sources in conjunction with the field situation, followed by qualitative data analysis.

3. Results and Discussion

Regional Government Implementation of West Lampung Traditional Cultural Expressions Protection

Limitations and exceptions, with a heavy emphasis on basic rights, have been at the center of intellectual property rights scholarship over the past few decades. The sui generis system created in the European Union has never before been discussed in the context of geographical indication protection. Wow, that's impressive. A GI is just a label, but it's a powerful one. It identifies the place from which the product originated and the quality or reputation associated with that region. Guaranteeing the uniqueness and authenticity of a product, GI labels like those found on Darjeeling tea, Parma ham, Scotch whiskey, Champagne, and Cuban cigars serve as the equivalent of a certificate. Consumers are more likely to spend money on products with a GI designation. In cases

where a product's aesthetics do not seem to be unique, a GI allows its holder to prevent others from inappropriately duplicating the product, saving customers time and effort in their search.

In the Narrative of the 2020-2024 Medium Term Development Plan by the Ministry of National Development Planning/Bappenas, it is mentioned that Social and Cultural Capital is one of the fundamental capitals of development, which uses cultural riches as a driving factor. Contains :

a) Cultural Economic Aspects;
b) Sociocultural Resilience; and
c) The Dimension of Freedom of Speech.

West Lampung is one of the districts of the Indonesian province of Lampung with a rich cultural heritage. Examples include tapis weaving, folk songs, musical instruments, and traditional dances. West Lampung's art is an integral part of the identity of Lampung's inhabitants. By legal and non-legal measures, the government, particularly the Regional Government of West Lampung, is responsible for preserving the cultural legacy of West Lampung. Regional Regulation No. 14 of 2000 on the Empowerment, Preservation, and Development of Customs and Customs Institutions is a legislative example of a policy in which one of the imperatives is the recognition that customs must be protected and used only for the local community.

Safeguarding sociocultural values encompasses all efforts to conserve and protect the cultural values of those affected by trade liberalization, which has resulted in an increasing lack of borders between nations. Indonesian cultural values contain numerous components of indigenous knowledge, particularly ethical and moral principles that form the basis of custom, communal habits, and customary institutions, allowing them to endure. The success of a policy's implementation will be influenced by the degree to which it reflects local ideals of wisdom. The behavioral science approach is an option for increasing compliance with laws and rules. This is due to the numerous ineffective or disregarded regulations throughout the community. In general, old coercive techniques predominate in Indonesian regulatory documents. The ineffectiveness of the current regulatory model needs a fresh approach to the formulation of laws and regulations. Soekanto recognized that the establishment of laws and regulations was essentially a technique for settling social conflicts and disagreements.

Protections for TCEs are carried out in accordance with the Copyright Law (Law No. 28 of 2014), the Promotion of Culture Law (Law No. 5 of 2017), the Cultural Conservation Law (Law No. 11 of 2010), the Government Regulation on Museums (Regulation No. 6 of 2015), and the Minister of Culture Regulation on Indonesia's Intangible Cultural Heritage (Regulation No. 106 of 2016). In addition, Regional Regulation of West Lampung Regency Number 14 of 2000 on Nurturing, Preserving, and Developing Traditions and Traditional Institutions is an effort by the Regional Government of West Lampung Regency to preserve traditional traditions. To raise

awareness of the existence of traditional cultural expressions in the West Lampung Regency and to encourage their protection and preservation, the West Lampung Regency Government takes part in activities organized by the Lampung Provincial Government, such as traditional festivals. Unfortunately, most traditional cultural manifestations have not been effectively documented and exploited for conservation, including those of West Lampung. Efforts should be taken immediately to establish new regulations for the preservation of traditional cultural expressions that are separate from the Copyright Law.

In order to strengthen, conserve, and develop the customary and traditional institutions in the West Lampung Regency, regional administrators must work in tandem with Customary organizations and institutions. It is easier to adopt and accept these policies as part of the customary institution-managed values if they are designed by the Regional Government after consultation with traditional leaders and are grounded in the community's local wisdom.

Village and regional leaders have a responsibility to ensure that their communities have the resources they need to carry out their roles in supporting governance, development, and community development initiatives, as well as to ensure that customs and customary institutions are empowered, preserved, and developed. the. Empowerment, Preservation, and Development of Customary and Customary Institutions aims to promote human flourishing, enrich national cultural treasures, and foster the growth of regional culture in support of the nation's culture, which includes noble and civilized values. Traditional cultural manifestations in West Lampung need to be protected as part of this effort.

A constructive, democratic, fair, and objective attitude among government officials, regions, and outsiders is crucial for the empowerment, maintenance, and expansion of traditional institutions for traditions that are still alive or exist but are in decline. As a tool of national development, a more openness to absorbing the positive cultural norms of other areas and countries, as well as a firmer dedication to protecting national sovereignty The primary goal of empowering, preserving, and developing adat and customary institutions is to increase the contribution of traditional values and customary institutions to the effective running of government, the promotion of sustainable development, the strengthening of national resilience, and the advancement of local community welfare.

When it comes to issues regarding Customary Law and the inappropriate application of customs, it is up to Customary Institutions to mediate and relay public opinion to the government. Facilitating community involvement in governance, development implementation, and community development while also empowering, preserving, and developing local cultures Facilitating open and honest communication between Customary heads and custom stakeholder groups and regional government mechanisms to achieve mutual goals.

Indigenous peoples' interests and the influence of customs are represented by Customary Institutions, and commercialization of West Lampung's communal intellectual property is prioritized for the region's economic development and citizens' quality of life, with the hope that it will help them better compete in the modern digital economy. Maintaining robust and vibrant national stability necessitates the participation of customary institutions in governmental and developmental processes, with due regard for the needs of the local community of customary law practitioners.

As a result, we need to rethink our overarching conceptual assumptions about customers' attitudes in this market. Buyers who are well-versed in the spare parts industry are less likely to be duped regarding a product's commercial provenance. Therefore, it is unlikely that the legitimate interests of the trademark proprietor would be jeopardized or that the mark's reputation would be irreparably damaged by its use in this situation. However, customary institutions are limited by a lack of human resources, despite the fact that managing traditional cultural manifestations and other cultural potentials demands a large amount of authority and responsibility. Therefore, this law cannot be properly implemented and may not play a significant role in preserving West Lampung's indigenous cultural practices.

There are two types of legal protection for traditional cultural manifestations. The first involves protecting hitherto unrecognized forms of traditional cultural expression. The second is the preservation of traditional cultural expressions whose creators can be determined. The original, anonymously created domain Language, music, touch, and other intangibles all make up what we call "Traditional Cultural Expressions." The same formula or pattern may be seen in all previous iterations. Mother-style Folklore is what academics in China call it.."

Mother-style Folklore is similar to other forms of traditional cultural expression. The WIPO report also uses the term. The transmission of knowledge from one generation to the next has allowed TCEs to develop over time. It's hard to pin down exactly who made it. As a result, tracing the origin of an inherited TCEs might be challenging. Traditional cultural expressions that are passed down from one generation to the next can be traced back to the community. Traditional cultural expressions that have been passed down through generations are often recreations of earlier performances. Art forms that include such "re-development" or "re-performance" have the potential to reach higher levels of excellence, eliciting more positive responses from viewers and giving them a more satisfying aesthetic experience.

To maintain the status quo, Indonesia has monitored these TCEs. Copyright Law No. 28 of 2014 regulates this, but Indonesia has not yet mastered the system for regulating Traditional Cultural Expressions, which adapts in a one-of-a-kind way to meet the needs of each community and capitalize on its indigenous expertise. It's not simple to get people to change their ways, especially if the rules being enforced aren't in line with the values of the community. Procedures that advocate for the strictest penalties

against rule-breakers have come to be seen as the panacea for all problems. The goal is to send a message that breaking the rules will have consequences.In his research, Dolling questioned the effectiveness of the disincentive effects and found that not all legal transgressions can be punished.

Bentham contends that adherence with the law is contingent on how legislators frame rules so that they can be followed in general. Bentham, the founder of utilitarianism, argues that people's loyalty to the law is contingent on the law's utilitarian or helpful values. It will be simpler for people to comply with a law or regulation if it provides benefits. Aubert argued that sometimes the law does not function efficiently in a community due to administration flaws within the government. The flaw was discovered in either the compilation or execution of the rule. Soekanto remarked that the social dimension in the creation of rules and regulations was almost entirely disregarded. Thus that it becomes impossible for passed regulations to alter the socioeconomic conditions of society. According to Pound, the law is an instrument for social engineering (Social Engineering), Thus, the law serves a societal purpose. In order for the government or regulators to effectively create laws and regulations, they must know that they play the role of social engineers.

Complete legislation on Cultural Expression has not yet been drafted. This is a draft of a law being considered by the Indonesian government to protect and promote the country's rich heritage of oral traditions, scholarly works, and artistic expressions. However, Traditional Cultural Expressions (TCEs), which make up a country's cultural legacy, cannot be registered as copyrights since they do not meet copyright criteria, which are normally of an individual character. In. We must foster and preserve this form of traditional cultural expression. In the case of a disagreement, many non-governmental organizations and artist organizations go to non-judicial institutions and other means to pursue justice on behalf of society and the arts.

Legally protecting traditional cultural expressions is not a copyright in and of itself, although it does have certain copyright implications. The state or custodian community, who is the copyright holder in this case, is responsible for protecting traditional cultural expressions through moral and economic rights. All steps taken to prevent the unlawful or improper use of cultural artifacts fall under this safeguard. Protecting traditional cultural expressions as part of traditional knowledge is essential for defending the rights of local communities.

Even though traditional cultural expressions are protected in Indonesia, the country's laws are far behind the times. The Copyright Law is just one of several pieces of legislation in Indonesia designed to safeguard the free expression of local traditions; others include the Advancement of Culture Law (2017), the Cultural Conservation Law (2010), the Government Regulation on Museums (2015), and the Intangible Cultural Heritage of Indonesia Regulations (2017). The intellectual property of TCEs is not protected by any centrally administered national law. There is no Copyright Holder for Traditional Cultural Expressions under government regulation in Indonesia. The

Indonesian government provides scant legal protection for indigenous cultural practices. Traditional Knowledge and Traditional Cultural Expressions in Indonesia are not well protected, and there is a dearth of supporting data, documentation, and knowledge on the subject.

These obstacles make it harder for the people of Indonesia, namely those of West Lampung, to gain official recognition for the contributions of their ancestors. It appears that just a small fraction of the works that the people of Lampung have inherited from their forebears are protected as intellectual property. Hadra Ugan and Sekura Cakak Buah, two ceremonial settlements in West Lampung Regency, are only two examples of the 17 Intangible Cultural Heritage designations that the Provincial Government of Lampung has received from the Ministry of Education and Culture.

The Indonesian government has taken precautions to protect its nation's works and traditional cultural manifestations by making claims to international cultural organizations. Traditional cultural representations in Indonesia frequently breach intellectual property rights, despite efforts by the government. R Hari Widiyanto Jayaningrat, head of the Hari Jayaningrat Art Division of the Lampung Provincial Education Office, was recently interviewed and provided the following details: The indigenous people of West Lampung still utilize artifacts from their culture today, but in small numbers due to the costly expense of keeping them. These artifacts are used during weddings, circumcisions, and events honoring traditional leaders. The existence of traditional cultural forms in contemporary West Lampung culture necessitates their formal protection under the law.

Specifically, Article 38 of Law No. 28 of 2014 regulates Traditional Cultural manifestations and serves as the legal basis for protecting such manifestations in the country. Lampung Wesst Traditional cultural manifestations of West Lampung are revered for their aesthetic worth, form, and the presence of symbolism with philosophical overtones, according to locals. In line with the definition of traditional cultural expressions, which is "intellectual works in the arts, especially literary expressions, that contain the distinctive components of traditional heritage and are generated, maintained, and kept by the guardians of that legacy," we see that this is the case."

The handicrafts of Indonesia offer a wealth of art and a culture brimming with artistic concepts. The cultural diversity of Indonesia gives it an advantage over other nations. The culture of Indonesia is diverse. Traditional communities' efforts to establish their regional identities are mostly safeguarded by intellectual property rights. Legal protection of indigenous peoples' or traditional communities' intellectual property is an intriguing area of study in the field of intellectual property rights. The intellectual property of indigenous peoples comprises cultural expressions. Society analyzes creatively how to construct something new while recognizing the nation's cultural heritage that has been kept for generations.

The government of West Lampung recognizes that traditions and customary institutions exist, are used by the general public, thrive in the area, and are regarded as values, cultural qualities, and national identities that should be fostered. As required by the high ideals of Pancasila and the Constitution of 1945, Indonesia's cultural values and national identity are essential components of the country's efforts to nourish and cultivate its people's minds, hearts, and spirits. West Lampung Regency Regional Regulation No. 14 of 2000 on the Empowerment, Protection, and Development of Indigenous and Customary Institutions was enacted as a result of this realization on the part of the Regional Government. Not even West Lampung's own citizens are aware of the regional law that protects and promotes their unique culture.

Existing restrictions are not adhered to because the government lacks fundamental knowledge of dissemination tactics for legal norms or legislation. So, the goal of regulation is rendered ineffectual because the people themselves are unaware of their existence. Legal fiction theory and the concept of presumption iures de iure connected to the closing clauses of statutes and regulations may not necessarily affect people's adherence to the law. Soekanto believes that the efficacy of law enforcement also depends on the infrastructure and amenities that facilitate community compliance with legislation. For instance, when the government outlaws littering, it must establish trash cans in various locations so that people can dispose of rubbish at those locations.

According to classical legal thought, the reason people don't follow the rules is because they were unfairly written. According to Aquinas, a rule or law is not binding if it is unjust. This proverb summarizes the primary justification for violating a rule or regulation: if the subject matter being governed is contrary to moral or just standards.Philosophically speaking, according to Feinberg, people can break the law whenever they have a good reason to. But he also said that it's hard to identify the limitations of what constitutes legal justification for breaching the law and that the borders are still being disputed. Internalization based on a conviction in the intrinsic worth of regulated material contributes at least partially to citizens' compliance with the law. Because of this, compliance is voluntary and not coerced because of the perceived worth of the controlled items. Kreps goes further by saying that individuals find value in complying since it affords them certain benefits or legal safeguards.

The United Nations Educational, Scientific, and Cultural Organization (UNESCO) and the Ministry of Culture and Tourism of Indonesia compiled "Recording Indonesia's Intangible Cultural Heritage: A Practical Guidebook." This highlights the need for physical proof of ownership when dealing with intangible cultural assets. Scientific verification of a traditional cultural expression is crucial as a defense tool against intangible heritage claims made by foreign parties about Indonesia's traditional cultural expressions. Because of its uniqueness, aesthetic worth, and historical significance, Intangible Cultural Heritage is something that can be articulated in concrete terms and has artistic value for foreign parties. Indonesia should have recognized the necessity of maintaining, developing, and promoting this. Indigenous communities and municipal governments should restrict TCE access on a case-by-case

basis. In order to prevent the widespread production of the community's intellectual property for economic purposes, access to information on Traditional Cultural Expressions is restricted as much as possible for outside parties. The community from which a cultural expression was originally derived should be eligible to receive a portion of the profits made by foreign parties.

The Economic Analysis of Law Approach to the Utilization Development of West Lampung's Traditional Cultural Expressions

Slowly but surely, the world is being dragged into an era where Artificial Intelligence (AI) replaces humans in cultural production thanks to the third technological revolution. However, the idea of the "romantic author," dating back to the 18th century, continues to cast a long shadow over how authorship is understood in Western countries. The achievement of general well-being is one of Indonesia's national objectives. The economic and legal development of instruments to achieve these objectives. The administration of the state, as well as the life of the nation and society, is centered on the welfare of the people and is governed by legal standards. One of the constitutional principles is the principle of rule of law and welfare. According to Tim Lindsey, the constitutional affirmation of Indonesia's legal state is referred to as the rewriting of rule of law.

According to Dahlan Thaib, the rule of law cannot be isolated from the sovereignty of the people, the constitutional provision that the Indonesian constitutional system based on the 1945 Constitution must be based on the principles of people's supremacy and the rule of law. This is in accordance with Article 1 paragraph 2 of the Constitution of 1945, which states that sovereignty resides with the people and is exercised in accordance with the Constitution. In addition, Article 1 paragraph 3 of the Constitution of 1945 states that Indonesia is a law-based state.

Article 1 paragraph 3 of the 1945 Constitution is, in the opinion of Lili Rasjidi, an affirmation that Indonesia has chosen a constitutional state as its form of government, which means that every action and consequence committed by every citizen must be based on the law and resolved in accordance with the law. Consequently, as a rule of law, the government cannot be separated from the principle of a rule of law, meaning that all government policies must be founded on legality. Strengthening Indonesia's status as a state governed by the rule of law necessitates that every attitude, policy, and action of state institutions and citizens be governed by the law. In a state governed by the rule of law, those who hold the highest command or lead the nation are the laws. This conforms to the principle of the rule of law, not the rule of man. This concept is consistent with the notion of nomocratie, which refers to the exercise of legal authority (nomos). This provision indicates that Indonesia will establish a government based on the rule of law, not government by law.

The incorporation of the concept of the rule of law into the body of the 1945 Constitution had an effect on the notion of a welfare state. The concept of rule of law adopted by Indonesia is substantive or material in nature, as stated in Article 34 of the

country's 1945 Constitution. This provision implies that the implementation of the concept of rule of law contributes to the establishment of Indonesia's welfare state. In Agency for Investigation of Preparatory Efforts for Indonesian Independence called BPUPKI sessions, the desire for Indonesia to become a welfare state is evident.

Development of Intellectual Property Rights is one of the pillars for achieving economic development that leads to people's prosperity (IPR). In the 21st century, the economic contribution based on ideas, knowledge, and information has increased significantly. The competitiveness of a product is determined primarily by its innovation and creativity, which add value to its function, design, brand, and patented extra features. South Korea is an example of a country that has overcome its backwardness through the use of intellectual property. According to data from the World Bank, South Korea's gross domestic product (GDP) was only $4.8 million in 1967. While Indonesia 5.6 million US dollars. In 2017, Indonesia's gross domestic product was $1 billion. South Korea's gross domestic product has surpassed 1.5 billion US dollars. On the basis of these considerations, it is necessary to develop IPR policies that will benefit the populace.

To develop Intellectual Property in Indonesia, the Economics Analysis of Law approach can be utilized, i.e. the application of economic principles as rational choices for analyzing legal issues. The theory was developed by philosophers Jeremy Benthem (1748-1832) and John Stuart Mill (1773-1873) within the school of utilitarianism, which prioritizes the benefit principle (1806-1873).

The legal system, like the economy, is based on rational behavior. The law employs sanctions, such as imprisonment and punitive damages, to influence behavior. The coercive aspect of the law assumes that individuals are aware of the repercussions. Moreover, the application of these microeconomic concepts to legal issues. This method of economic analysis in law originated in the United States, which adheres to the Common Law system in which judges play a crucial role in determining what constitutes law.

In economic analysis, decisions are made under conditions of scarcity. In situations of economic scarcity, it is assumed that individuals and communities will or should strive to maximize their goals by making the most of their limited resources. In conjunction with a positive analysis of the law, the analyst will ask what economic predictions can be made if the policy is implemented. People will respond to the policy's incentives or disincentives. Normative analysis, which is conventionally interpreted as welfare economics, typically asks whether proposed policies or legal changes will affect the manner in which individuals achieve their goals. In this context, the Pareto Efficiency (name of an Italian economist from the last century) and "Kaldor Hicks efficiency" become significant (name of two English economists). The Pareto efficiency criterion asks whether a policy or a change in the law improves one person's situation without making another person worse off. On the other hand, Kaldor-Hicks efficiency asks whether the policy or legal change will generate sufficient benefits for those who

experience the change, in order to hypothetically compensate those who are harmed by the policy or legal change. The final method is a cost–benefit analysis.

Some individuals believe that the approach to economic analysis in law, which emphasizes the cost-benefit ratio, does not promote justice. Focused on efficiency, economists do not feel the need for a component of justice (justice). Naturally, adherents of the economic analysis approach in law deny this. First, it is asserted that the notion that economists do not consider justice is false. In order to establish normative claims regarding the distribution of income and welfare, one must have a political philosophy that transcends purely economic considerations. Second, economics provides a framework within which justice-related discussions can be conducted. If the conditions for a competitive market to exist are met, economists have demonstrated that pareto efficiency will result. Similarly, any result of pareto efficiency can be derived from earlier asset distributions that generate competitive conditions. Third, societal norms are simultaneously born from peaceful order. Artificial regulation of spontaneous order by law is inappropriate. Those who hold this view reject the notion that incentives can control the law and the economy.

Traditional Cultural Expressions (TCE) are a component of Indonesia's IPR, which has been evolving for decades. After the approval of TRIPs, Indonesia enacted a positive copyright law, Law No. 28 of 2014, which is positive. The emergence of this law and Indonesia's presumed full compliance with the provisions of this TRIPS Agreement cannot be divorced from the tendency of the international community and Indonesia in particular to provide legal protection for intellectual property rights. This law was enacted as a result of Indonesia's accession to the WTO (World Trade Organization). One of the repercussions is that Indonesia must adopt the TRIP (Trade-Related Aspects of Intellectual Property Rights) standard for its Intellectual Property Rights laws and regulations. This is also due to the ratification of international conventions in the field of Intellectual Property Rights and compliance with the necessary provisions, namely the Law on Copyrights, Industrial Designs, Layout Designs of Integrated Circuits, Trade Secrets, Patents, and Marks.

The existence of the Copyright Law has not been fully effective in preventing infringements in society, such as those involving the Protection of Traditional Cultural Expressions. The fact that foreign parties recognize communal intellectual property in Indonesia demonstrates this. Indonesia is beginning to feel the need to recognize, protect, and reward communal intellectual property, including Traditional Cultural Expressions and access to their works for the benefit of humans. In terms of Copyright ownership, the law acts and guarantees the Author exclusive control and enjoyment of the results of his work, with the assistance of the state for law enforcement if necessary.

The Regional Government of West Lampung must promote traditional cultural expressions more aggressively and in a more professional manner, and rework traditional cultural expressions so that they meet international eligibility standards in

terms of documentation, so that the international community knows more about and recognizes that these Traditional Cultural Expressions are West Lampung Traditional Cultural Expressions. Traditional cultural expressions that are maximally promoted can attract the attention of domestic and international tourists, which will increase foreign exchange as well as the region's income. Regional Governments must be able to maximize the introduction of traditional cultural expression products as communal property intellectual property in the international world, through social media such as YouTube and Twitter, even if E-Commerce is permitted for the promotion of traditional cultural expression products.

Local governments can pursue an Inventory of Communal Intellectual Property by providing protection for communal intellectual property related to access and sharing of benefits derived from the use of communal intellectual property. Starting with an inventory of communal intellectual property with the goals of:

1) Protecting the rights of indigenous peoples;
2) Providing a database of information for commercial/non-commercial use of communal intellectual property;
3) Restricting access to those with permission from indigenous peoples;
4) Increasing the competence of indigenous peoples regarding the use of communal intellectual property; and
5) Publishing optimal utilization of Communal Intellectual Property that will generate economic value (does not stop at inventory).

Comprehensive management of communal intellectual property, including Traditional Cultural Expressions, begins with Inventory. Where the inventory starts with the community and local government and then investigates the area's potential. After conducting an inventory, protection is carried out through intellectual property protection, as we are aware that there are currently no barriers between countries, regions, and it appears that there are no boundaries. By virtue of the ease with which information can be transmitted via electronic media, West Lampung Traditional Cultural Expressions must be safeguarded immediately after being catalogued. Only after they have been protected can West Lampung's traditional cultural expressions be commercialized. The optimal utilization of traditional cultural expressions includes the publication of national and international works.

Through digital media promotion, exports, and digital marketing, the commercialization of West Lampung Traditional Cultural Expressions must be maximized nationally and internationally. It is expected that West Lampung Traditional Cultural Expressions will have economic value. Tourism is also increased by the development of economic and cultural assets. The significant impact of Digital Culture on Business (E-Commerce) includes:

1) Making an impact on the organization through digital transformation (previously paper receipts became digital receipts).

2) Demonstrate a strong attachment to a specific culture with pre-existing values that can be utilized to effect change in the digital business world.
3) Digital transformation is the mantra/key of modern business.
4) The application of technology must take into account the existing cultural circumstances.
5) Culture can shape the image of a brand.

Digital Marketing as an E-Commerce Booster entails all forms of activities and activities that include planning, implementing, and analyzing data to introduce a product, as well as instilling confidence in the product's use via internet-based digital devices. The following actions can be taken to maximize traditional cultural expressions economically:

1) Determining the market based on the potential of Communal Intellectual Property (Example: exporting products, identifying cooperation partners in advance to adapt community legends or literary works into performing arts, theater, musicals, films, and books);
2) Selection of social media (product publication/introduction on Instagram, YouTube, and Facebook);
3) By collaborating with academics in the arts and arts activists in the entertainment industry, it is possible to develop content that conforms to social media standards and is appealing.
4) Artist/Influencer Endorsement Services;
5) Digital Sales Platforms (Amazone; shopee, tokopedia, zalora etc.)Peningkatan pariwisata juga akan meningkat jika Ekspresi Budaya Tradisional terpublikasi dan dikomersialisasikan secara optimal.

Unlimited digital media publications will entice domestic and foreign tourists to visit West Lampung directly. National and international researchers may be interested in collaborating on existing traditional cultural expressions in order to share profits with the region and its inhabitants in West Lampung. Utilization of traditional cultural expressions from upstream to downstream that can be carried out optimally will have an effect on cultural tourism, increase foreign exchange, and affect the welfare of people. This is the foundation for the Economic Analysis of Law approach to optimizing the protection and utilization of traditional cultural expressions in West Lampung.

4. Conclusion

From what has been described, we can infer that multiple regulations, including Law No. 28 of 2014 concerning Copyright and the establishment of West Lampung Regency Regional Regulation No. 14 of 2000 regarding the Empowerment, Preservation, and Development of Customary Customs and Customary Institutions, are enforced in order to protect traditional cultural expressions in West Lampung. Furthermore, the administration of West Lampung Regency Several cultural heritage assets owned and characterized by the indigenous peoples of West Lampung have been cataloged by the

Provincial Government of West Lampung and the Ministry of Law and Human Rights; however, the authority granted to customary institutions to maximize the potential for traditional cultural expression in West Lampung has not been implemented optimally, as implementation of the law is still a considerable distance from what was anticipated. The term "intellectual property awareness" refers to the degree to which native people have an upstream-to-downstream understanding of intellectual property. If West Lampung wants to see a rise in regional revenue, then the Economic Analysis of Law approach must be used to maximize the exploitation of the region's traditional cultural manifestations. Local governments may make the most of this by working with art scholars, artists, YouTubers, artists, and others who know what the world's connoisseurs really want. The existing system of protecting manifestations of West Lampung traditional culture is insufficient, as it is only based on inventory and cannot increase the country's foreign exchange or improve the living conditions of the West Lampung people.

Refrences

Books

Bentham, Jeremy, The Collected Works of Jeremy Bentham: An Introduction To The Principles of Morals and Legislation (Oxford: Clarendon Press): 2016.

Dahlan Thaib, Ketatanegaraan Indonesia: Perspektif Konstitusional, Yogyakarta: Total Media, 2009, hlm.26.

WIPO, 2001, Intellectual Property Needs and Expectations of Traditional Knowledge: WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998– 1999). WIPO, Geneva, p69-191.

Lionel Bently and Brad Sherman, 2009, Intellectual Property, Oxford University, p91.

Lindsey, Tim, Hak Kekayaan Intelektual: Suatu Pengantar, PT. Alumni, Bandung, 2006.

Lucas-Schloetter A , 2004 Folklore, dalam von Lewinski S (ed) Indigenous Heritage And Intellectual Property: Genetic Resources, Traditional Knowledge And Folklore. Kluwer Law Inter- national, Alphen aan den Rijn, p293.

Long ED, 2006, Traditional Knowledge and The Fight for The Public Domain. John Marshall Rev Intellectual Property Law 5, p317.

Zhang,2007, Research on Intellectual Property Protection of Folklore, Law Press China, Beijing, p205-206.

WIPO, Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions, WIPO Doc WIPO/GRTKF/IC/5/3 , 2003.

Li Luo, Intellectual Property Protection of Traditional Cultural Expressions, DOI 10.1007/978-3-319-04525-2_2, Switzerland:Springer International Publishing, 2014.

Jurnal

Erlina B., Jainah, Z. O., Safitri, M. ., & Seftiniara, I. N. . (2022). Implementation of the Utilization of West Lampung Traditional Cultural Expression in the Legal System Perspective of Intellectual Property . ENDLESS: INTERNATIONAL JOURNAL OF FUTURE STUDIES, 5(3), 145–155. https://doi.org/10.54783/endlessjournal.v5i3.99

Baltic Journal of Law & Politics 15:2 (2022): 100-116 DOI: 10.2478/bjlp-2022-001006

B, E. (2022). Implementation Of Protection Of Traditional Cultural Expression In West Lampung Regency. LEGAL BRIEF, 11(3), 1990–2004. https://doi.org/10.35335/legal.v11i3.390

Lili Rasjidi, Pembangunan Sistem Hukum Dalam Rangka Pembinaan Hukum Nasional, dalam Sri Rahayu Oktoberina dan Niken Savitri (eds), Butir-Butir Pemikiran dalam Hukum Memperingati 70 Tahun Prof.Dr.B.Ar- ief Sidharta, SH, Bandung: Refika Aditama, 2008,hlm.129

J. H. Merryman, "Two Ways of Thinking about Cultural Property," Am. J. Int. Law, vol. 80, no. 4, pp. 831–853, 1986.

P.Sakul,Y.O.Agow,andN.Pinangkaan,"PerlindunganHukum Terhadap Hak Cipta Warisan Budaya Batik Bangsa Indonesia Ditinjau Dari Perspektif Hukum Internasional," Lex Priv., vol. 8, no. 3, pp. 184–192, 2020.

A. Absori, K. Dimyati, and K. Wardiono, "Model Penyelesaian Sengketa Lingkungan Melalui Lembaga Alternatif," Mimb. Huk., vol. 20, no. 2, pp. 367–382, 2008.

H. Husamah, "Mengusung Kembali Khazanah Identitas Budaya Bangsa," J. Bestari, vol. 42, 2016.

A. Atsar, "Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta," J. Law Reform Progr. Stud. Magister Ilmu Huk., vol. 13, no. 2, pp. 284–299, 2017.

D. Rahayu, "Perlindungan Hukum Terhadap Hak Cipta Motif Batik Tanjungbumi Madura," Mimb. Huk., vol. 23, no. 1, pp. 115– 131, 2011.

C. Antons, "Asian Borderlands and the Legal Protection of Traditional Knowledge and Traditional Cultural Expressions," Mod. Asian Stud., vol. 47, no. 4, pp. 1403–1433, 2013.

Soerjono Soekanto. "Masalah-Masalah di sekitar Perundang-Undangan (Suatu Tinjauan Menurut Sosiologi Hukum)"., Jurnal Hukum dan Pembangunan 6.1 (1976): 27-34.

Dieter Dolling et al. "Is Deterrence Effective? Results of a Meta-Analysis of Punishment". European Journal on Criminal Policy and Research Volume 15, 201-224 (2009).

Vilhelm Aubert, "Some Social Functions of Legislation", Acta Sociologica Journal Volume 10 No.1-2 (1967)

Roscoe Pound, "Law in Books and Law in Actions", American Law Review 44 (1910):12

Roscoe Pound, "The Lawyer as Social Engineer" , Journal of Public Law, 3 (1954) : 292

Norman Kretzmann, "Lex Iniusta Non Est Lex: Laws on Trial in Aquinas' Court of Conscience", American Journal of Jurisprudence, 99 (1988). Lihat juga Andre Santos Campos, "Aquinas's "Lex Iniusta Non Est Lex": A Test of Legal Validity." ARSP: Archiv Für Rechts Und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy 100,

Joel Feinberg, "The Right to Disobey." Michigan Law Review No. 6 (1989)

David M. Kreps. "Intrinsic Motivation and Extrinsic Incentives." The American Economic Review, vol. 87, no. 2, (1997).

Kelly Goldsmith, Vladas Griskevicius, and Rebecca Hamilton in Scarcity and Consumer Decision Making: Is Scarcity a Mindset, a Threat, a Reference Point, or a Journey? Journal of the Association for Consumer Research 2020 5:4, 358-364

Adamkovič M, Martončik M. A Review of Consequences of Poverty on Economic Decision-Making: A Hypothesized Model of a Cognitive Mechanism. Front Psychol. 2017 Oct 11;8:1784. doi: 10.3389/fpsyg.2017.01784. PMID: 29075221; PMCID: PMC5641572.

Cudd, Ann E. "Is Pareto Optimality a Criterion of Justice?" Social Theory and Practice, vol. 22, no. 1, 1996, pp. 1–34. JSTOR, http://www.jstor.org/stable/23559021. Accessed 22 Feb. 2023.

Aos S., Barnoski R., Lieb R. (1998). Watching the bottom line: Cost-effective interventions for reducing crime in Washington. Olympia, WA: Washington State Institute for Public

Policy. (98-01-1201).

Gayer, Gabrielle, Itzhak Gilboa, Larry Samuelson, and David Schmeidler. "Pareto Efficiency with Different Beliefs." The Journal of Legal Studies 43, no. S2 (2014): S151–71. https://doi.org/10.1086/676636.

Schaefer, David Lewis. "Economic Scarcity and Political Philosophy: Ancient and Modern Views." International Political Science Review / Revue Internationale de Science Politique 4, no. 3 (1983): 279–94. http://www.jstor.org/stable/1601096.

Endörfer, R., & Larue, L. (2022). What's the Point of Efficiency? On Heath's Market Failures Approach. Business Ethics Quarterly, 1-25. doi:10.1017/beq.2022.21

Nguyen, S.L., Le, V.A. Diffusion of Geographical Indication Law in Vietnam: "Journey To The West". IIC (2023). https://doi.org/10.1007/s40319-023-01289-9

Tischner, A., Stasiuk, K. Spare Parts, Repairs, Trade Marks and Consumer Understanding. IIC 54, 26–60 (2023). https://doi.org/10.1007/s40319-022-01274-8

Xiao, Y. Decoding Authorship: Is There Really no Place for an Algorithmic Author Under Copyright Law?. IIC 54, 5–25 (2023). https://doi.org/10.1007/s40319-022-01269-5

Kur, A. No Strings Attached to GIs? About a Blind Spot in the (Academic) Discourse on Limitations and Fundamental Rights. IIC 54, 87–94 (2023). https://doi.org/10.1007/s40319-022-01273-9

Keri A.F. Johnston, Marion Heathcote, The quest for 'real' protection for indigenous intangible property rights, Journal of Intellectual Property Law & Practice, Volume 9, Issue 5, May 2014, Page 345, https://doi.org/10.1093/jiplp/jpu057

Chijioke Okorie, Technology and national security: what's IP got to with it?, Journal of Intellectual Property Law & Practice, Volume 17, Issue 8, August 2022, Pages 601–602, https://doi.org/10.1093/jiplp/jpac065

Moerland, A. Do Developing Countries Have a Say? Bilateral and Regional Intellectual Property Negotiations with the EU. IIC 48, 760–783 (2017). https://doi.org/10.1007/s40319-017-0634-6

Upreti, P.N. The Role of National and International Intellectual Property Law and Policy in Reconceptualising the Definition of Investment. IIC 52, 103–136 (2021). https://doi.org/10.1007/s40319-020-01009-7