

Legal politics of communal intellectual property regulation in the national legal framework

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Abstract

This research analyzes the legal politics of protecting Communal Intellectual Property (CIP) in Indonesia, a country rich in ethnic, cultural, and biological diversity. Using a qualitative desk study method, it explores how Indonesia's legal and political frameworks address the protection of CIP within a predominantly Western, individual-oriented intellectual property (IP) system. While Indonesia has made notable progress—especially through the issuance of Government Regulation No. 56 of 2022 on Communal Intellectual Property—serious implementation challenges remain. The regulation marks an important move toward defensive protection via a national inventory but lacks robust mechanisms for positive protection, such as effective enforcement, dispute resolution, and fair benefit-sharing. This study highlights key obstacles, including limited public and community understanding of CIP rights, leaving Indigenous Peoples and local communities vulnerable to exploitation and biopiracy. Institutional weaknesses and legal overlaps particularly with conservation laws that may criminalize traditional practices and further marginalize these communities. The research emphasizes that protecting CIP is not merely a legal requirement but a critical step toward preserving national identity, state assets, and social justice. It concludes with strategic recommendations to strengthen CIP protection, including the development of a *sui generis* legal framework, enhanced institutional capacity, greater community empowerment, and the adoption of relevant international instruments.

Keywords: Communal Intellectual Property; Legal Politics; Traditional Knowledge; Biopiracy; *Sui Generis* Protection; Access and Benefit-Sharing; Indonesia

1. Introduction

Intellectual property (IP) is often understood as legal rights over *intangible assets*. This concept basically refers to the exclusive rights granted to individuals or entities that have used their thinking abilities creatively, rationally, and logically to produce intellectual work. Thus, IP is a recognition of the results of thought and innovation. What gets legal protection or exclusive rights in the context of IP are the rights itself owned by the creators or owners. Interestingly, although IP is an intangible asset, the manifestation of the right can be seen in the form of physical or tangible objects (material objects). For example, copyright is an intangible asset, but the book (physical) is its manifestation; patent is an intangible right, but the patented product (physical) is its manifestation. Thus, IP law seeks to protect ideas and creativity that ultimately manifest in forms that we can perceive or use.¹

In practice, IP rights can be categorized into two main forms of ownership that are fundamentally different. First, there is personal or individualized ownership. This form refers to a situation where the exclusive rights to intellectual work are wholly owned by a single creator, inventor, or entity. For example, an author owns the copyright to his book, or an engineer holds a patent on his invention. These rights are personal, transferable, and usually subject to clear legal protection for the individual. On the other hand, there are also forms of ownership that are communal or common. This is a different concept, where the rights to a form of IP are not owned by a single individual, but rather by a particular

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community, indigenous group, or collective. Common examples of communal ownership include traditional cultural expressions such as traditional dances, folklore, weaving motifs, or traditional knowledge of herbal medicines that have been traditionally owned and preserved by a Tribe or community. In this context, the protection and utilization of such IP is governed by communal norms and often has its own challenges in recognition and enforcement in modern legal systems that tend to focus on individual rights.² Communal Intellectual Property (hereinafter referred to as IP) encompasses diverse forms such as Communal ownership consisting of Traditional Cultural Expressions (TCE), Traditional Knowledge (TK), Genetic Resources (GR), Indications of Origin (IO), and Potential Geographical Indications (PGI).³ It is crucial for a country to protect its diversity from unauthorized claims, theft, or piracy by foreign countries or parties.

Indonesia, as a country with diverse ethnicities and cultures, has great potential in terms of communal intellectual property. Be it in the form of traditional knowledge, cultural expressions, or genetic resources. However, how legal politics can accommodate and protect these rights in a national legal system that tends to be individualistic is a challenge. Although the value and importance of communal intellectual property (CIP) are well recognized, especially in countries rich in cultural heritage and traditions such as Indonesia, the legal protection given to this form of intellectual property is often far from adequate. This is a great irony considering that CIPs are the foundation of many communities' identity and an invaluable resource. In many jurisdictions, both at the national and international levels, existing legal and policy frameworks tend to focus more on the protection of intellectual property in the context of individuals or corporations. This focus, which is more familiar with individual patents, trademarks, or copyrights, has not adequately considered the unique characteristics and specific challenges inherent to CIPs. For example, CIPs often do not have a single identifiable creator, are collective in nature, are passed down orally, and are closely linked to specific cultural rituals or practices, all of which are difficult to accommodate by conventional legal frameworks.

It is this context that underlies this research, with the title "The Legal Politics of Communal Intellectual Property Regulation in the National Legal Framework". This study aims to examine and analyze how the legal politics related to the regulation of communal intellectual property is implemented in the field. More than that, this study also seeks to evaluate the level of effectiveness of its application in the overall Indonesian national legal system in force today. This means that this study will explore both aspects of policy formulation and implementation practices to understand the extent to which CIP is protected.

2. Methods

This research will adopt a qualitative approach conducted through a literature study. This method involves an in-depth analysis of various existing literature, including legal documents relevant to the legal politics of communal intellectual property in Indonesia. This approach specifically includes the review of legal literature such as books, journal articles, and various official documents. The aim is to understand the applicable legal theories and principles, as well as how they apply in the context of communal intellectual property. Overall, this qualitative method is designed to provide a more comprehensive and in-depth picture of the political implementation of communal intellectual property law in Indonesia's national legal system.

3. Results

In practice, Intellectual Property (IP) is a fundamental personal right and is expressly protected by constitutional law. This protection is not without reason; its main purpose is to safeguard the essential interests of human beings, uphold individual dignity, and give proper respect to the human rights possessed by each individual or legal entity. In other words, IP protection ensures that creativity and innovation born from human thought are valued, legally recognized, and their owners can enjoy the benefits of their work, in line with the basic principles of human rights.⁴ IP has a very close and fundamental relationship with human rights, making it the main reason behind drafting various existing laws and regulations. In fact, the act of protecting IP is not just a legal formality, but a real manifestation of upholding human rights itself, which recognizes and respects the results of creativity, innovation, and cultural expression of each individual. In Indonesia, the foundation of IP protection is very strong: philosophically, which is rooted in the noble values of Pancasila that uphold humanity and justice; legally, the constitutional foundation is guaranteed by the 1945 Constitution of the Republic of Indonesia which protects the rights of citizens; and sociologically, this protection effort always refers to the culture and life order of the very diverse Indonesian people, ensuring that the legal framework developed is relevant, inclusive, and acceptable to all elements of the nation. For this reason, the purpose of IP protection is to give recognition to the results of the creativity of individuals or entities that innovate

Juridically, in the realm of positive law, the regulation of IP globally can generally be found in an instrument called the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). This agreement is a very important document in international law because it serves as a foundation that summarizes the minimum standards that must be met by member countries in terms of protection and enforcement of intellectual property rights. That is, TRIPs provide basic limitations on how IP should be recognized and protected worldwide, ensuring a certain harmonization among various national legal systems.⁵

With the enactment of the TRIPs agreement, the legal protection of IP can be significantly strengthened and become much more comprehensive than before. The Agreement plays a very crucial role in building a solid legal protection system for IP at the international level, transcending national boundaries. The fundamental purpose of this agreement is multidimensional: first, to protect the intellectual property rights of innovators and creators; second, to encourage global innovation and creativity; third, to facilitate the transfer of technology between countries so that knowledge can spread; and finally, to promote the widespread dissemination of knowledge around the world, ultimately contributing to global progress.

Indonesia is known as a country that is very rich in diversity, both cultural and biological. The country is one of only six countries in the world recognized as a center of cultural diversity, as well as a *megadiversity* country, indicating an extraordinary biological wealth,⁶ where Indonesia, as one of the largest archipelagic countries in the world, is endowed with an extraordinary diversity of tribes, languages, and rich cultural arts. Each community within it has its own unique culture. This culture is the result of human work, creation, and taste, which serves as an important tool for society to maintain and develop its life in the amid of the surrounding natural and social environment.⁷

Indonesia has highly varied geographical conditions, complemented by diverse customs, as well as abundant cultural resources, including rich traditional knowledge and traditional cultural expressions.⁸ Indonesia, as a rich country, has a diversity of landscapes, cultures, and traditional knowledge that has been passed down across generations. These varied geographical conditions, diverse customs, and rich traditional knowledge and cultural expressions form the nation's unique identity. Efforts are ongoing to protect, promote, and sustain this heritage so that it remains a valuable national asset. Unfortunately, in Indonesia, this diversity of traditional cultures, knowledge, and expressions is often only considered as an ancient and beautiful historical relic, like a display at home, without maximizing its potential contribution to the progress of the nation.⁹

The trade sector plays a crucial role in driving a country's economic growth, the success of which is greatly influenced by its comparative advantage. This advantage, in turn, is highly dependent on the country's technological capabilities, with IP as one of the most important determinants.¹⁰ IP is one of the key elements that can fundamentally make a significant contribution in strengthening the comparative advantage possessed by a country. In this competitive modern era, by optimally utilizing and developing the potential of IP, a country is not only able to create much higher competitiveness in the global market, but also effectively drive the achievement of sustainable economic growth. IP becomes an engine of innovation that differentiates a country's products and services, attracts investment, and open new market opportunities, thus making it a strategic asset for long-term economic progress.

As explained earlier, in practice, IP is divided into two forms of ownership, namely personal or individual and communal (*common*). This Communal Intellectual Property (CIP) category includes various important forms such as Traditional Cultural Expressions (TCE), Traditional Knowledge (TK), Genetic Resources (GR), Indications of Origin (IO), and Potential Geographical Indications (PGI). Therefore, it becomes very important for the state to actively protect this valuable CIP diversity from potential unauthorized recognition, theft, or even piracy by other countries or parties. The urgency of this protection is even more pronounced given the increasing utilization of genetic resources in various parts of the world, which unfortunately is often accompanied by unethical practices such as the theft of genetic resources and/or traditional knowledge for commercial purposes (widely known as *biopiracy*) as well as *misappropriation* of genetic resources, which can harm the original owner communities and deprive them of their rights to such valuable heritage.¹¹

In some cases, *biopiracy* is often practiced when traditional knowledge and genetic resources are utilized without authorization or without providing adequate compensation to the original owner communities. These harmful actions must be addressed immediately because the theft of genetic resources and traditional knowledge directly hampers the welfare of communities and reduces the potential for equitable development and utilization of CIP. Therefore, effective protection of CIP is necessary to prevent *biopiracy* and misuse of genetic resources. States have an obligation to strengthen regulations and legal mechanisms that ensure recognition, respect, and protection of traditional knowledge, traditional cultural expressions, and genetic resources. Thus, communal intellectual property can be maintained,

utilized fairly, and provide commensurate benefits to the people who are the owners and custodians of cultural heritage and traditional knowledge.

Graham Dutfield cites several reasons for the importance of protecting traditional knowledge:

"Apart from treaties and emerging international norms, which imply both legal and moral imperatives for protecting traditional knowledge, there are several reasons why developing countries may feel motivated to protect Traditional Knowledge. These are set out below. To improve the livelihoods of traditional knowledge holders and communities, To benefit national economies, to conserve the environment, to prevent biopiracy."¹²

According to Graham Dutfield, there are several compelling reasons for developing countries to protect traditional knowledge. First, this protection aims to improve the lives of the communities and individuals who possess the knowledge. Second, it can provide significant economic benefits to the country. Third, the protection of traditional knowledge contributes to environmental conservation efforts. Lastly, it also serves as a deterrent against *biopiracy*. Thus, through the protection of traditional knowledge, the state not only maintains cultural sustainability but also improves people's welfare and preserves invaluable natural resources.

Although CIP often does not meet the criteria of "novelty" which is the standard in the modern IP protection system, its existence is the result of collective thinking and extraordinary wisdom of traditional communities, proven to be able to survive and be sustainable over a very long period. More than just a historical heritage, IP has been proven to provide significant benefits to human life in various aspects, ranging from traditional medicine to sustainable agricultural practices. Therefore, it is imperative that we give proper appreciation to the inventions and innovations born from these traditional communities. The fact that CIPs have never gone extinct, even after existing for generations, demonstrates their intrinsic value and remarkable adaptability, confirming their enduring relevance.¹³

Protecting at the national level for CIP has great significance as it not only affirms Indonesia's sovereignty but also serves as concrete evidence of the nation's ownership of CIP. CIP is an essential element of national identity and an invaluable asset of the country, so it is important that it continues to be developed, protected, promoted, defended and optimally utilized from the local, national, and international spheres. With this national protection, Indonesia's position in terms of ownership and sovereignty over CIP will be even stronger. Given that CIP is an integral part of the country's identity and strategic assets, its management must be carried out properly and receive adequate legal protection so that it can continue to provide sustainable benefits for the entire community.

Since December 20, 2022, Indonesia has officially enacted Government Regulation Number 56 Year 2022 on Communal Intellectual Property. This Government Regulation, hereinafter abbreviated as GR of CIP, was prepared based on the consideration that:¹⁴

- Indonesia's cultural diversity and natural wealth in the form of traditional cultural expressions, traditional knowledge, genetic resources, indications of origin, and potential geographical indications are forms of Communal Intellectual Property as the basic capital of national development.
- For the sake of protection, preservation, development, and utilization of Communal Intellectual Property as the basic capital of national development, Communal Intellectual Property needs to be inventoried, guarded, and maintained by the state.

Prior to the enactment of GR of CIP, the protection of traditional CIP in Indonesia was regulated under the framework of IP law, which was generally individualized. For example, traditional knowledge (TK) and genetic resources (GRs) are regulated in Article 26 of Law No. 13/2016 on Patents. In addition, Geographical Indications (GIs) are covered in Articles 53-61 of Law No. 20/2016 on Trademarks and Geographical Indications. The author argues that GIs should be regulated in separate legislation, separate from trademark laws, given their different characteristics; trademarks are individual, while GIs are communal.

Furthermore, Local Variety (LV) is regulated in Article 7 of Law No. 29/2009 on Plant Variety Protection. Then, traditional cultural expressions (TCE) are found in Article 38 of Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. However, in its implementation, the Copyright Law is considered not fully able to accommodate the protection and proper utilization of TCE of local indigenous peoples, because copyright is basically an individual right to creation and does not regulate traditional rights collectively owned by a community.

GR of CIP was formed due to the importance of inventorying CIP, which is currently still not comprehensively recorded. In fact, several previous laws have mandated this; for example, Law No. 28/2014 on Copyright requires an inventory of

Traditional Cultural Expressions, and Law No. 5/2017 on the Promotion of Culture mandates an inventory of Traditional Knowledge. In addition, various other regulations are also related to CIP, including Law Number 5 of 1994 on the Ratification of the *United Nations Convention on Biological Diversity*, Law Number 11 of 2013 on the Ratification of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity*, as well as Law Number 13 of 2016 on Patents, and Law Number 20 of 2016 on Trademarks and Geographical Indications.¹⁵

This Government Regulation is specifically designed to bring together various necessary legal provisions that may have previously been scattered, to create a solid legal basis for the implementation of the CIP inventory. The inventory itself covers important categories such as Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources, Indications of Origin, and Potential Geographical Indications. Thus, this regulation aims to ensure that all forms of CIP can be systematically recorded and recognized. GR of CIP is essentially a crucial step taken by Indonesia to inventory and document communal intellectual property that was previously scattered across various laws and regulations. This initiative should be applauded as a valuable initial effort to recognize and value CIP as an integral part of Indonesia's rich cultural heritage and national identity. However, while GR of CIP has successfully provided the basic legal framework for this inventory process, it should be noted that there are still some important elements that have not been explained in detail in the regulation. One element that remains significantly unfulfilled is the absence of specific regulations or guidance on dispute resolution mechanisms related to CIP. This is particularly important given the potential for conflicts or disputes over rights to CIP, whether between different groups of Indigenous peoples themselves or between indigenous peoples and external parties who may seek to exploit CIP without proper authorization or compensation.¹⁶

In addition, the GR of CIP also has limitations as it does not comprehensively cover the concept of active law enforcement by the state in protecting CIP. This means that, while this regulation has successfully laid the foundation for the recognition and inventory of CIP, it has yet to detail the concrete and proactive steps that must be taken by the state to ensure that these rights to CIP are protected and effectively enforced in practice. This gap creates an urgent need for improvement and updating of these regulations. The addition of clear enforcement mechanisms as well as detailed dispute resolution procedures will be vital to making the legal protection of CIP in Indonesia more effective, comprehensive, and able to respond to existing challenges. From the description of several legal protections of CIP in Indonesia, there are various challenges in the implementation and effectiveness of its legal protection. One of the main challenges is the lack of understanding and knowledge of CIP in indigenous communities themselves. This can leave indigenous peoples vulnerable to exploitation and theft by parties trying to capitalize on their knowledge and cultural heritage for their own benefit.

In addition, low legal awareness among the public of the importance of respecting and protecting CIP is often at the root of the problem. This lack of understanding can trigger various forms of rights violations, whether intentional or not. A concrete example is the use of indigenous peoples' traditional knowledge or cultural heritage without proper authorization, or without proper compensation for the owning community. This highlights the need for more massive education to raise public awareness of the values and rights attached to CIP.

The issue of law enforcement is also a significant challenge in efforts to protect CIP. Various factors, such as the lack of adequate resources and capacity on the part of law enforcement, coupled with various other legal obstacles, can hinder the effectiveness of law enforcement. As a result, this can lead to violations of the legal certainty of CIP rights, leaving CIP owners vulnerable to exploitation and difficulties in obtaining justice. Greater investment in training and resources is needed to strengthen law enforcement officials to more effectively protect CIPs.

On the other hand, the exploitation and theft of CIP not only has economic impacts but also has a profound impact on the cultural and spiritual aspects of indigenous peoples. CIP is not just a material asset; it is a core representation of the identity, traditions, and spiritual values that have been inherent and passed down for generations within an Indigenous community. Such practices of exploitation and theft can seriously threaten the cultural and spiritual survival of Indigenous peoples, undermine their relationship with their ancestral heritage, and create feelings of cultural humiliation and restraint. Therefore, the detrimental effects of this exploitation and theft clearly demand that legal and policy safeguards are always enforced, keeping pace with the times but without in any way eroding local potentials, especially those of Indigenous peoples.

4. Conclusion

This research underlines that IP, as a fundamental right protected by the Constitution, is closely related to human rights and aims to value human creativity and innovation. In Indonesia, the foundation of IP protection is very strong, based

on Pancasila philosophically, the 1945 Constitution legally, and the culture of society sociologically. Globally, the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs) is an important instrument that sets minimum standards for IP protection, encouraging innovation, technology transfer, and knowledge dissemination. Although Indonesia is rich in cultural and biological diversity (*megadiversity*), and has a variety of tribes, languages, arts, and traditional knowledge which are valuable assets, unfortunately, the potential of IP is often only seen as a historical heritage without maximizing its contribution to economic development. The trade sector, which is vital for economic growth, relies heavily on technological excellence and IP as one of the key determining factors. Therefore, protecting IP, which includes Traditional Cultural Expressions (TCE), Traditional Knowledge (TK), Genetic Resources (GRs), Indications of Origin (IO), and Potential Geographical Indications (PGI)-is crucial to strengthen comparative advantage and prevent harmful biopiracy and misappropriation practices.

The enactment of Government Regulation No. 56 of 2022 on Communal Intellectual Property (GR of CIP) is a step forward in efforts to inventory and recognize CIP, although previously CIP has been regulated scattered in individual laws such as the Patent Law (for Traditional Knowledge and Genetic Resources), Trademark and Geographical Indication Law (for Geographical Indications), Plant Variety Protection Law (for Local Varieties), and Copyright Law (for Traditional Cultural Expressions). However, the GR of CIP still has limitations, especially in terms of dispute resolution mechanisms and active enforcement by the state, which are crucial to ensure effective and comprehensive protection. Other significant challenges include low indigenous and public understanding of CIP, which increases vulnerability to exploitation, as well as a lack of resources and law enforcement capacity. Exploitation and theft of CIP not only have economic impacts but also threaten the cultural and spiritual identity of indigenous peoples. Therefore, in order to maintain cultural sustainability, improve welfare, and protect valuable resources, it is necessary to improve laws and policies that are adaptive to the times, while still respecting and empowering local potential and indigenous peoples as the main guardians of the CIP heritage.

Compliance with ethical standards

Disclosure of conflict of interest

No conflict of interest to be disclosed.

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