

The Utilization of Cultural Artifacts Used in Business Activities Reviewed from Intellectual Property Rights Regulations in Indonesia



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ABSTRACT: The utilization of cultural artifacts used in business activities requires an utilization permit from The Department of Tourism or The Ministry of Education, Culture, Research, and Technology. In utilizing them, legal protection is necessary to ensure the protection of human rights. Permission to utilize cultural artifacts is mandatory, and sanctions will imposed. This research uses the doctrinal approach by analyzing secondary data, especially about intellectual property rights regulations. The results of this research conclude that to utilize cultural artifacts in business activities requires permission from the Department of Tourism or The Ministry of Education, Culture, Research, and Technology. Utilizing cultural artifacts in business activities ruled by Articles No. 32-38 of Law No. 5 of 2017 on Cultural Advancement and Article No. 33 of Government Regulation No. 56 of 2022 on Communal Intellectual Property. Those articles discussed that any person who wants to utilize cultural artifacts has to get permission from the minister above, otherwise will get administrative sanctions. The mentioned administrative sanctions include verbal warnings, written warnings, administrative fines, temporary cessation of activities, and revocation of permits.

KEYWORDS: Cultural artifacts, Commercial, Intellectual Property Rights

I. INTRODUCTION

Indonesia is a country rich in cultural diversity and traditions. This is because Indonesia is a country with a total of 17,504 islands¹ and is inhabited by more than 1.128 ethnic groups².

Indonesia's cultural diversity came from local cultures that continue to grow and evolve within society. The influence of various cultures is evident and has an impact on society to create culture itself.

Cultural diversity is inherited from ancestors centuries ago. Cultural heritage or in Indonesian terms traditional cultural expressions are all forms of expression of creative works, both tangible and abstract, or a combination of both that show the existence of a traditional culture that is held communally and across generations.³ Tangible traditional cultural expressions refer to human creations that can be moved or cannot be moved, such as artifacts, temples, keris (traditional dagger), angklung (musical instrument), gamelan (traditional ensemble), historical sites, statues, and many more. While, abstract⁴ traditional cultural expressions are aspects of traditional culture that can only be captured by the five senses other than the sense of touch, such as various concepts and cultural knowledge, examples of intangible traditional cultural expressions are folk songs, regional languages, traditional songs, traditional paintings, and many more.

The diversity of traditional cultures and natural resources in Indonesia is a form of communal intellectual property. Communal intellectual property refers to intellectual property that is owned collectively and has economic value while upholding the moral, social, and cultural values of the nation.⁵

¹ Indah Nur Fitriani and Moch. Arifien, Juhadi. 2018. *The Phenomenon of Indonesia's Outermost Small Islands and Administrative Territories (Book Nontextual Supplement for Social Science Learning in Junior High School*. Edu Geography. Vol. 6 No. 1. Page 25.

² Mugia Bayu Raharja. 2017. *Fertility by Ethnicity in Indonesia: Analysis of 2010 Population Census Data*. Journal of Indonesia's Population. Vol 12 No. 1. Page 69.

³ Communal Intellectual Property. 2022. *Traditional Cultural Expression*. <https://www.dgip.go.id/menu-utama/kikomunal/pengenalan>.

⁴ Ayu Citra Santyaningtyas. 2020. *Strategies for The Protection of Traditional Cultural Expressions in Indonesia*. Heritage Journal. Vol. 8 No. 1 Page 107.

⁵ Government Regulations No. 56 of 2022 on Communal Intellectual Property

The Utilization of Cultural Artifacts Used in Business Activities Reviewed from Intellectual Property Rights Regulations in Indonesia

The rights to communal intellectual property are held by the state. The state is obligated to inventory, safeguard, and maintain communal intellectual property. The right to communal intellectual property is an inclusive moral right, which is held and/or carried by the local community. Inclusive moral rights for potential geographical indications receive exclusive protection after being registered as geographical indications by the provisions of laws and regulations.⁶

Traditional cultural expressions are important to preserve and protect. One way to preserve it is by utilizing it. The utilization of cultural heritage is regulated in Articles No. 32 – 38 of Law No. 5 of 2017 on The Advancement of Culture. The utilization of cultural heritage according to Article No. 32 Paragraph (2) of the Cultural Advancement Law is to build the nation's character; increase cultural resilience; improve community welfare; and increase Indonesia's active role and influence in international relations. The utilization of cultural heritage to build a nation's character and improve cultural resilience according to Article No. 33 Paragraph 1 of The Cultural Advancement Law is through the internalization of cultural values; innovation; increase adaption to change; cross-cultural communication; and intercultural collaboration. The utilization of cultural heritage is to improve the welfare of the community according to Article No. 34 Paragraph 1 is done through the processing of cultural heritage products while maintaining the values of cultural dignity and wisdom. The utilization of cultural heritage to increase Indonesia's active role and influence in international relations according to Article No. 35 Paragraph 1 is carried out through cultural diplomacy, and increase international cooperation in the field of culture.⁷

One expression of traditional culture is artifacts. According to the Big Indonesian Dictionary (KBBI), artifacts are objects, such as tools, jewelry, and similar, that show human craftsmanship (especially in the past) and are discovered through archaeological excavation. Artifacts can be made of wood, stone, metal, bronze, animal bones, or others. Theoretically, artifacts are divided into two types, "moving artifacts" means objects that can be moved easily and are often just called artifacts. In addition, there are also so-called "immovable artifacts", which cannot be moved, except by destroying the structure and matrix. Immovable artifacts" are including various monuments from various periods of human cultural development.⁸

Monuments that are categorized as immovable artifacts are examples of traditional cultural expressions. These objects can also be utilized to improve the welfare of the community, such as using images of monuments to be applied to a product. Products with images or shapes of monuments are commonly called souvenirs.

The utilization of images or forms of monuments, then made into a souvenir is included in Industrial Design Rights. Industrial Design Rights is an exclusive rights granted by the State of the Republic of Indonesia to the designers for the results of their creation, allowing them or authorized parties to give consent to these rights for a specific period of time.⁹

Industrial design on communal intellectual property (monuments) can be utilized for business activities, utilizing cultural artifacts (images of monuments) as souvenirs and then selling them is an example of copyright as an economic right. Economic rights in copyright law refer to property rights where the copyright owner uses or gives the right to others to use their work for economic benefit.¹⁰ In Indonesia, economic rights are the exclusive rights to the creator of the copyright holder to obtain the economic benefits from their creation.¹¹ The types of acts included in economic rights are:¹² a. Publishing Creation;

- b. Duplicating the Creation in all its forms;
- c. Translating Creation;
- d. Adapting, arranging, or transforming Creation;
- e. Distribute the Creation or its copies;
- f. Performing Creation;
- g. Announcing Creation;
- h. Communicating Creation; and
- i. Leasing Creation.

(2) Every person who implements the economic rights as referred to in Paragraph (1) is required to obtain permission from the Creator or Copyright Holder.

(3) Any person who without the authorization from the Creator or Copyright Holder is prohibited from reproducing and/or commercially using the Creation.

⁶ Ibid.

⁷ Law No. 5 of 2017 on The Advancement of Culture

⁸ Agus Ari Munandar. 2013. *ARTIFACTS IN GEOGRAPHIC SPACE: Artifact Studies in Historical Geography*. History and Culture. Vol. 7. No. 2. Page 8.

⁹ Paragraph No. 5 Article No. 1 of Law No. 31 of 2000 on Industry Design

¹⁰ Diah Imaningrum Susanti, Raymundus I Made Sudhiarsa, Rini Susrujani. 2019. *Traditional Cultural Expression and Intellectual Property Rights*. Malang: Duima Publisher. Page 190.

¹¹ Article No. 8 of Law No. 28 of 2014 on Copyright.

¹² Diah Imaningrum Susanti, Raymundus I Made Sudhiarsa, Rini Susrujani. *Op. Cit.* Page 191.

The Utilization of Cultural Artifacts Used in Business Activities Reviewed from Intellectual Property Rights Regulations in Indonesia

In Indonesia, the copyright holder of communal intellectual property is the state, so the utilization of objects for the advancement of culture (immovable artifacts: monuments), requires an object utilization permit.

II. FORMULATION OF THE PROBLEM

Based on the text above, this paper will focus on the following:

1. How is the utilization of cultural artifacts used in business activities viewed from the perspective of Intellectual Property Rights regulations in Indonesia?
2. What is the legal protection for cultural artifacts used in business activities in Indonesia?

III. RESEARCH PURPOSES

This article aims to:

1. Explaining how the utilization of cultural artifacts used in business activities is viewed from the perspective of Intellectual Property Rights regulations in Indonesia.
2. Explaining the legal protection for cultural artifacts used in business activities in Indonesia.

IV. RESEARCH METHODS

This research uses a doctrinal approach by doing a literature study on secondary data consisting of primary legal materials and secondary legal materials. The primary legal materials consist of legislative regulations (Law No. 5 of 2017 on Cultural Advancement along with Government Regulation No. 56 of 2022 on Communal Intellectual Property), while the secondary legal materials consist of intellectual property rights related to the utilization of cultural artifacts for business activities from various reference books and scientific journals.

This paper will qualitatively analyze based on the principles of intellectual property rights and legal protection regarding primary legal materials, which encompass all policies and legislative regulations related to the legal protection of cultural artifacts utilized for business activities.

V. DISCUSSION

1. The Utilization of Cultural Artifacts Used in Business Activities Reviewed from Intellectual Property Rights in Indonesia

Cultural artifacts are objects or items that hold historical, social, and cultural value for a group or society. Cultural artifacts can be physical such as weapons, traditional clothing, jewelry, musical instruments, and architectural structures, as well as nonphysical objects such as legends, folklore, language, and traditions.

Cultural artifacts are usually symbols of a group's cultural identity, representing values, beliefs, and cultural heritage passed on from generation to generation. Cultural artifacts are also often considered as cultural heritage that must be preserved and protected, as they have high historical and aesthetic value. The utilization of cultural artifacts can be done in various fields, including art, and, tourism, and business. However, the use of cultural artifacts must be done with utmost respect for the values and cultural traditions represented by the artifacts, and it should not cause harm or damage to the cultural artifacts themselves.

This is an example of a product that contains a cultural artifact that is used in business activities:



Figure 1. A logo contains a cultural artifact, a monument of Tugu Yogyakarta.¹³

Souvenirs and merchandise with artifact motifs or designs can be popular products in the market. Culture-based products have several benefits: introducing local cultural property, maintaining the sustainability of local culture, potential business opportunities, local community improvement, promoting cultural tourism, creativity and innovation, and community approach.¹⁴ The product evokes a personal bond because it represents the identity of the wearer's cultural roots, the work of artisans becomes a souvenir of

¹³ From @bakpiatugujogja/X

¹⁴ People's Cabinet. 2023. *Cultural Entrepreneurs Inspiring Local Artifacts Are...* <https://kabinetrakkyat.com/wirauasaha-kerajinaninspirasi-artefak-budaya-lokal-adalah/>.

The Utilization of Cultural Artifacts Used in Business Activities Reviewed from Intellectual Property Rights Regulations in Indonesia

domestic and international travelers as a sign of having visited the area where the craft originated, and, local cultural handicraft products are also a means of inter-regional solidarity and a generator of pride in the diversity of nation.¹⁵

In utilizing cultural artifacts, companies must pay attention to aesthetic aspects, which involve respecting the values and cultural traditions represented by the artifact. Companies must ensure that the use of cultural artifacts does not cause controversy or unwanted misunderstanding.

Monuments are examples of cultural artifact objects. Cultural artifacts are among the objects of cultural advancement. Therefore, when utilizing cultural artifacts, requires a permit for the utilization of cultural advancement objects. The permission to utilize cultural advancement objects, as stated in Article No. 33, Paragraph No. 5 of Government Regulation No. 56 of 2022 on Communal Intellectual Property, is granted by the relevant minister. Any individual, large industries, and or foreign entities, can utilize cultural artifacts that are part of communal intellectual property. There are provisions that need to be fulfilled for the utilizing communal intellectual property, and these provisions are: mentioning the origin of the communal intellectual property community, maintaining the values, meanings, and identity of the communal intellectual property, and paying attention to the values that exist within the society.¹⁶

The utilization of cultural advancement object permits are needed to ensure that products regarding cultural advancement objects are safe, do not violate copyright, and do not damage legally protected cultural heritage sites. Permits to utilize cultural advancement objects are obtained from The Department of Tourism or The Minister of Education, Culture, Research, and Technology¹⁷, depending on the type of product being sold and the place where the product is being sold. However, certain types of products produced from the utilization of cultural advancement objects may not require specific permits. For instance, miniatures or small items made from materials that have no potential to damage cultural advancement objects.

The permit for the utilization of cultural advancement objects has the following conditions: has approval based on preliminary information, benefit sharing, and mentioning the origin of the cultural advancement object.¹⁸ If these provisions are violated or if the permit is misused, administrative sanctions will be imposed. The intended administrative sanctions include verbal warnings, written warnings, administrative fines, temporary cessation of activities, and revocation of the permit.¹⁹

2. Legal Protection for Cultural Artifacts Used in Business Activities in Indonesia

Cultural artifacts are important to protect. Protecting cultural artifacts is very important because these artifacts are very valuable and irreplaceable human cultural heritage. Cultural artifacts produced by humans in the past have high historical, artistic, and cultural value.

Protecting cultural heritage is an effort to ensure that this heritage remains sustainable and can be enjoyed by future generations. Protecting cultural artifacts can provide economic benefits to communities living around historical and cultural sites. Protecting cultural artifacts is the responsibility of all humans, as it is done to maintain a valuable cultural legacy for future generations.

Indonesia, as a legal state, has legal protection that is used to provide protection to that are harmed by others and this protection is given to people so that they can enjoy all the rights granted by law in other words, legal protection is a variety of legal efforts that must be provided by the legal apparatus to provide a sense of security, both in mind and physical from disturbances and various threats from any party.²⁰

Preventive legal protection, legal subjects are given the opportunity to file an objection or opinion before a government decision gets a definitive form. The aim is to prevent the occurrence of disputes. Preventive legal protection means government actions that are based on freedom of action because, with the protection of preventive legal protection, the government is encouraged to be careful in making decisions that are based on discretion. In Indonesia, there is no specific regulation regarding preventive legal protection.²¹

Repressive legal protection has the aim of resolving disputes. Handling legal protection by the General Courts and Administrative Courts in Indonesia is included into this legal protection category. The first principle of this legal protection against government action rests on and is sourced from the concept of recognition and protection of human rights because according to history from the west, the birth of concepts about the recognition and protection of human rights directed towards restriction and laying obligations of society and government. The second principle that underlies legal protection against acts of government is the

¹⁵ The Ministry of Industry of the Republic of Indonesia. 2015. <https://www.kemenperin.go.id/artikel/12064/Tiga-Keunggulan-Produk-BerbasisBudaya>.

¹⁶ Government Regulation No. 56 of 2022 on Communal Intellectual Property

¹⁷ Law No. 11 of 2010 on Cultural Conservation and Government Regulation No. 1 of 2022 on the National Register and Preservation of Cultural Conservation.

¹⁸ Paragraph 2 Article No. 37 Law No. 5 of 2017 on The Advancement of Culture..

¹⁹ *Ibid*, Paragraph 3.

²⁰ Satjipto Raharjo. 2000. *Legal Studies*. Bandung: Limited Liability Company. Citra Aditya Bakti. Page 74.

²¹ Philipus M. Hadjon. 1987. *Legal Protection for Indonesia's People*. Surabaya: Build Knowledge. Page 30.

²² *Ibid*.

The Utilization of Cultural Artifacts Used in Business Activities Reviewed from Intellectual Property Rights Regulations in Indonesia

principle of the rule of law. Linked with the recognition and protection of human rights, recognition and protection of human rights gets main place can be linked with the purpose of a legal state.²²

The main functions of legal protection are: 1. Protecting individual rights, 2. Ensuring justice, 3. Providing a basis for security and order, 4. Providing legal certainty, and 5. Facilitating social and economic development.

Legal protection for cultural artifacts used in business activities depends on the laws and regulations applicable in a particular country. However, generally, there are some legal principles that can be used to protect cultural artifacts that are used in business activities, such as:

1. Copyright: If cultural artifacts used in business activities are protected by copyright, then the use and copying of these artifacts must comply with the applicable copyright laws. This includes paying royalties to the copyright owner if required.
2. Trademark: Cultural artifacts used as trademarks must be registered as trademarks and protected by trademark laws. Unauthorized use of a trademark may be considered a trademark infringement and may be prosecuted.
3. Cultural protection: Some countries have laws that protect artifacts as part of their cultural heritage. This can include protecting against the misuse of taking cultural artifacts for business activities.
4. Contract law: If cultural artifacts are used for business activities through a contract or agreement, the contract must contain provisions regarding ownership rights and the use of cultural artifacts. This includes agreements and payments to the owner of the cultural artifacts.
5. Intellectual Property Law: Intellectual property law protects intellectual property which produced from intellectual labor, such as patents, industrial designs, and trade secrets. If cultural artifacts are used for business activities that involve intellectual property, intellectual property law can be used to protect these rights.

Cultural artifacts that are traditional cultural expressions are regulated under Indonesian copyright law. Over a span of 32 years, the copyright law in Indonesia has undergone four changes. Law No. 6 of 1982 on copyright, Law No. 7 of 1987 on copyright, and Law No. 12 of 1997 on Amendments to Law No.6 of 1982 as Amended by Law No. 7 of 1987. In all four laws, traditional cultural expressions are included as one of the fields protected by copyright law.

Regarding the utilization of cultural artifacts used for business activities, regulated in Articles No. 32-38 of Law No. 5 of 2017 on cultural advancement, and Article No. 33 of Government Regulation No. 56 of 2022 on communal intellectual property. Article No. 32 of Cultural Advancement Law is about who can utilize the object of the cultural advancement, which are the Central Government, the Local Governments, and/or Any Person. While on Paragraph 2 discusses the purpose of utilizing objects of cultural advancement, which are: the internalization of cultural values, innovation, increase adaption to deal with change, crosscultural communication, and intercultural collaboration.

Article No. 33 of Cultural Advancement Law is about how to utilize cultural advancement objects to build the national character and improve cultural resilience.

Article No. 34 of Cultural Advancement Law is about how to utilize cultural advancement objects to improve the welfare of the community, which is by making these cultural advancement objects into products.

Article No. 35 of Cultural Advancement Law is about how to utilize cultural advancement objects to improve Indonesia's active role and influence international relations, by diplomacy and increasing international cooperation in the cultural field.

Article No. 36 of Cultural Advancement Law is about active support for the utilization of cultural advancement objects from the central government.

Article No. 37 of Cultural Advancement Law is about the licensing to utilize cultural advancement objects for commercial purposes, large-scale industrial, and/or foreign parties are required to carry out such licensing. The license has the following conditions: obtaining approval based on initial information, benefit sharing, and inclusion of the origin of the cultural advancement object. The central government must use the results from benefit sharing to revive and maintain the ecosystem of cultural advancement objects.

Article No. 38 of Cultural Advancement Law is about the misuse of utilization permits will get sanctions. The intended sanctions referred to: verbal warnings, written warnings, administrative fines, temporary suspension of activities, and license termination.

The last is Article No. 33 of Communal Intellectual Property Government Regulation is about the provisions regarding the utilization of communal intellectual property: mention the origin of the indigenous community of communal intellectual property; pay attention to the values and the identity that live in the community of its bearers. If the communal intellectual property holds sacred, secret, and/or closely held nature, permission must be obtained from the indigenous community.

VI. CONCLUSION

Cultural artifacts are objects or items that hold historical, social, and cultural value for a group or society. Monuments are examples of cultural artifacts. Cultural artifacts can be utilized for business purposes, such as turning them into souvenirs or merchandise. The utilization of cultural artifacts for business activities is to expand the customer base and increase profits. However, the use of cultural artifacts must be done with utmost respect for the values and cultural traditions represented by the artifacts, and

The Utilization of Cultural Artifacts Used in Business Activities Reviewed from Intellectual Property Rights Regulations in Indonesia

it should not cause harm or damage to the cultural artifacts themselves. Utilizing cultural artifacts requires a permit for the utilization of cultural advancement objects. The permission to utilize cultural advancement objects is regulated in Article No. 33 of Government Regulation No. 56 of 2022 on communal intellectual property. The utilization of a cultural advancement object permit is needed to ensure that products regarding cultural advancement objects are safe, do not violate copyright, and do not damage legally protected cultural heritage sites. Permits to utilize cultural advancement objects are obtained from The Department of Tourism or the Ministry of Education, Culture, Research, and Technology, depending on the type of product being sold and the place where the product is being sold. However, certain types of products produced from the utilization of cultural advancement objects, may not require specific permits. For instance, miniatures or small items made from materials that have no potential to damage cultural advancement objects. The permit for the utilization of cultural advancement objects has the following conditions: has approval based on preliminary information, benefit sharing, and mentioning the origin of the cultural advancement objects. If these provisions are violated or if the permit is misused, administrative sanctions will be imposed. The intended administrative sanctions include verbal warnings, written warnings, administrative fines, temporary cessation of activities, and revocation of permission.

The legal protection for the cultural artifacts used in business activities depends on the laws and regulations applicable in a particular country. Cultural artifacts that are traditional cultural expressions are regulated under Indonesian copyright. Over a span of 32 years, copyright law in Indonesia has undergone four amendments. Law No. 6 of 1982 on Copyright, Law No.7 on Copyright, and Law No. 12 of 1997 on Amendments to Law No. 6 of 1982 as Amended by Law No. 7 of 1987. In all four laws, traditional cultural expressions are included as one of the fields protected by copyright law. Regarding the utilization of cultural artifacts used for business activities, regulated in Articles No. 32-38 of Law No. 5 of 2017 on Cultural Advancement and Article No. 33 of Government Regulation No. 56 of 2022 on Communal Intellectual Property.

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