



Penta-Helix Collaboration: Enhancing the Protection of Communal Intellectual Property in Bali

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Abstract

This study aims to elaborate the policies related to the protection of communal intellectual property related to creative economy businesses in the tourism sector and to strengthen the protection of communal intellectual property by carrying out an inventory of traditional cultural expressions in Bali, especially in Gianyar Regency based on a penta-helix collaboration. This is socio-legal research with statutory, conceptual, economic, and technological approaches. The study indicated that communal intellectual property in the form of traditional cultural expressions has high economic value hence, it can be used to support the tourism creative economy business while still prioritizing the values that are believed by the community. Inventory must be carried out in accordance with Article 7 of Permenkumham 13/2007. The inventory has been carried out in Bali, although it has not been maximized. Inventory of traditional cultural expressions shall be carried out sustainably in the form of a penta-helix collaboration.

I. Introduction

Bali's tourism industry has always centered on religious and cultural travel that is influenced by Hinduism.¹ Bali's many artistic masterpieces are transformed by the sophisticated local customs and culture and the sacred *Hindu-Dharma* ideals. It should not be surprising that Bali is known as Indonesia's art center and one of the top vacation destinations for art fans given that it is home to many exceptional artists.²

The uniqueness and distinctiveness of Balinese culture that has developed from ancestral heritage can be categorized as the work of ancestors passed down from generation to generation, which is usually known as Communal Intellectual Property

¹ I Gede Mudana, Ni Made Ernawati, and Mihai Voda, "Analysis of the Evolving Cultural Tourism Implementation in Bali Indonesia," *Multicultural Education* 7, no. 6 (2021): 608-19, <https://doi.org/10.5281/zenodo.5035637>. p. 609

² Baladika Badra Anggakara, "Balinese Art: Learning More About Bali's Cultural Heritage," *Indonesia Design*, April 24, 2020, <https://indonesiadesign.com/story/balinese-art-learning-more-about-balis-cultural-heritage>.

(*hereinafter* Communal IP). The discourse on the importance of protecting the rights of Communal IP, as part of Copyright which does not only recognize individual ownership, has received serious attention widely. Several research studies have given serious attention to the parts of Communal IP that need to be protected properly, including Traditional Cultural Expressions (*hereinafter* TCEs).

TCEs also known as a culture born from community groups and passed down from generation to generation in the form of music, dances, songs, handicrafts, games, designs, rituals, folklore, and other art forms.³ In Bali, TCEs have been acknowledged to play a strategic role in supporting the development of tourism.⁴

Since 2022, Bali has been appointed as a Pilot Project for the development of intellectual property (*hereinafter* IP) and tourism.⁵ There is a lot of potential for Communal IP as a cultural heritage and tourism potential owned by the Province of Bali, including Balinese art. Balinese art is fundamental to Bali's culture. The *Kamasan* Style is often known as traditional or classic paintings in Bali. The paintings that define the *Kamasan* Style were created in the 17th century and are examples of Balinese painting's first "traditional style". The three Bali cities that have emerged as the epicenters of Balinese art are Ubud, Sanur, and Batuan (Gianyar). Each of the three locations' artworks exhibits a variety of distinctive characteristics.

Further, there are 2 (two) problems that arise, namely: 1) What are the arrangements regarding the protection of communal intellectual property in Indonesia? and 2) How is the implementation of the communal intellectual property inventory in Gianyar Regency? This is socio-legal research that uses several approaches namely: statutory, conceptual, economic, technological, and fact approaches. The materials were collected by inventorying legal materials and recording the subject matter in detail by interviewing key persons and/or maestros for the empirical research.

By conducting an inventory of traditional cultural expressions in Bali, particularly in Gianyar Regency based on a penta-helix collaboration, this study aimed to strengthen the protection of communal intellectual property and to elaborate policies related to the protection of communal intellectual property related to the creative economy businesses in the tourism sector. As a result, the writing will discuss pertinent material in a disciplined and methodical manner.

This paper is comparable to earlier studies in that it discusses the protection of TCEs as a component of communal IP, but it has a different area of study. Similar research was conducted in 2022 by Nenny Dwi Ariani, Rohaini, and Sunaryo on the topic of "Legal Protection of Traditional Cultural Expression as a Copyright in Indonesia".⁶ The study mainly discussed the form of the legal protection of TCE as copyrights. In 2023, Desak

³ Michael Blakeney, "Protecting the Knowledge and Cultural Expressions of Aboriginal Peoples.," *University of Western Australia Law Review* 39, no. 2 (2015): 180–207.

⁴ Ni Ketut Supasti Dharmawan et al., "Protecting Balinese Culinary Innovation through Patent Law," *International Journal of Innovation, Creativity and Change* 9, no. 10 (2019): 116–26.

⁵ Editorial Team, "Ministry of Law and Human Rights: Bali Becomes A Pilot Project for Intellectual Property Development and Tourism," *Voice of Indonesia*, June 14, 2022, <https://voi.id/en/news/179064>.

⁶ Nenny Dwi Ariani, "Legal Protection of Traditional Cultural Expression as a Copyright in Indonesia" (Universitas Lampung International Conference on Social Sciences (ULICoSS 2021), Atlantis Press, 2022), 579–82, <https://doi.org/10.2991/assehr.k.220102.079>.

Putu Dewi Kasih, et al. conducted research concerning "Policies concerning Sacred and Open Traditional Cultural Expressions: Tourism and Creative Economy in Bali Context".⁷ The study was focused on the policies concerning sacred and open TCEs and their implementation on the protection of sacred and open TCEs related to creative economy business.

Meanwhile, this writing is focused on the regulation related to the protection of Communal IP in Indonesia, as well as the implementation of Penta-Helix collaboration in the inventory process of Communal IP in Batuan Village in Gianyar Regency. Thus, this study is important to be carried out.

2. Research Method

This is socio-legal research with statutory, conceptual, factual, economic, and technological approaches. The research was carried out by examining several regulations related to Communal IP in Indonesia and the actual condition in the Batuan Village, Gianyar, Bali.

3. Result and Discussion

3.1. Regulations Related to the Protection of Communal Intellectual Property in Indonesia

a. Communal Intellectual Property Protection in Law No. 28 of 2014 concerning Copyright

Generally, Intellectual Property Rights (*hereinafter* IPR) refers to the rights given to someone over the creations of their minds⁸, which is used to meet the needs and welfare of human life.⁹ They usually give the creator an exclusive right over the use of their creation for a certain period of time.¹⁰ IPRs are customarily divided into two major areas, namely: 1) Copyrights and rights related to copyrights; and 2) Industrial Rights. Usually, it appears as a personal intellectual asset that has had a significant influence on human civilization in the field of literary and artistic work. However, there are some regulations that recognize the existence of collective rights of communities in the form of Communal IP.¹¹

Pursuant to Article 1 of Law No. 28 of 2014 concerning Copyright (*hereinafter* Copyright Law), it is known that the protection of copyright is vested automatically as an exclusive right of the author on the basis of declaratory principle after works are embodied in tangible form without reducing by virtue restriction in accordance with the provision of

⁷ Desak Putu Dewi Kasih et al., "Policies Concerning Sacred And Open Traditional Cultural Expressions: Tourism and Creative Economy In Bali Context," *Jatiswara* 38, no. 1 (2023): 14–27, <https://doi.org/10.29303/jtsw.v38i1.475>.

⁸ World Trade Organization, "What Are Intellectual Property Rights?," accessed August 18, 2023, https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm.

⁹ Taufik H Simatupang, "Initiating the Concept of Sui Generis of the Legal Protection of Communal Intellectual Property in the Philosophy of Science Perspective," *Jurnal Penelitian Hukum De Jure* 22, no. 2 (2022): 243–56, <http://dx.doi.org/10.30641/dejure.2022.V22.243-256>.

¹⁰ "What Are Intellectual Property Rights?"

¹¹ Enninya S. Nwauche, "The Emerging Right to Communal Intellectual Property," *Marquette Intellectual Property Law Review* 19, no. 2 (2015): 220–44.

prevailing law and regulations. Further, according to Copyright Law, the protected work shall be provided in every literary work in the fields of science, art, and literature produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise in expressed form.¹²

In general, there are 4 (four) types of Communal IP, namely: 1) Traditional Knowledge; 2) Traditional Cultural Expressions (TCEs); 3) Genetic Resources, and 4) Geographical Indication.¹³ Further, TCEs also known as “expressions of folklore”¹⁴, may be transformed in the form of dance, art, music, names, signs and symbols, performance, ceremonies, architectural forms, handicrafts, narratives, or other artistic of cultural expressions.¹⁵

The existence of TCEs is considered as part of the identity and heritage of a traditional or indigenous community that are passed down from generation to generation.¹⁶ TCEs are integrated with the culture and social identity of its community or custodians, embody know-how and skills, and transmit core values and beliefs.¹⁷

According to the Copyrights Law in Indonesia, any works that belong to communal and contain traditional values shall be protected in the form of TCEs. The protection is emphasized in Article 38 paragraph (1) of Copyright Law. The elucidation of Article 38 paragraph (1) emphasizes that TCEs means one or a combination of the following forms of expressions:

1. Textual verbal, both oral and in writing, in the form of prose or poetry, in various themes and content of the message, which may be a literary work or informative narrative;
2. Music, including among others, vocal, instrumental, or any combination thereof;
3. Motion, including among others, dance;
4. Theater, including among others, puppet shows and folk plays;

¹² Antonio Rajoli Ginting, “Tinjauan Hukum Sistem Pemberian Royalti Bagi Pemain Film,” *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 81, <http://dx.doi.org/10.30641/kebijakan.2021.V15.677-690>.

¹³ Ria Wierma Putri and Yunita Maya Putri, “Perlindungan Bagi Hak Kekayaan Intelektual Komunal,” *Jurnal Hukum DE'RECHTSSTAAT* 7, no. 2 (2021): 173–84.

¹⁴ Giovanna Carugno, “How to Protect Traditional Folk Music? Some Reflections upon Traditional Knowledge and Copyright Law,” *International Journal for the Semiotics of Law-Revue Internationale de Sémiotique Juridique* 31, no. 2 (2018): 261–74, <https://doi.org/10.1007/s11196-017-9536-7>.

¹⁵ Ayu Citra Santyaningtyas and Mahmood Zuhdi Mohd Noor, “Preserving of Traditional Culture Expression in Indonesia,” *Asian Social Science* 12, no. 7 (2016): 59–65, <http://dx.doi.org/10.5539/ass.v12n7p59>.

¹⁶ Ni Ketut Supasti Dharmawan, “Protecting Traditional Balinese Weaving Trough Copyright Law: Is It Appropriate?,” *Diponegoro Law Review* 2, no. 1 (2017): 57–84, <https://doi.org/10.14710/dilrev.2.1.2017.57-84>.

¹⁷ Kasih et al., “Policies Concerning Sacred And Open Traditional Cultural Expressions: Tourism and Creative Economy In Bali Context.”

5. Fine arts, either in two-dimensional or three-dimensional form made of various kinds materials such as leather, wood, bamboo, metal, ceramics, paper, textile, et cetera or a combination thereof; and
6. Traditional ceremonies.

According to the provision of Article 38 paragraph 2, it is known that TCEs can be transformed in several forms. The protection of TCEs is provided under the copyright regime solely because it is closely related to the creativity that comes from human intellect in the fields of knowledge, art, and literary works that are transformed as expressed works, thus it can be seen, read, heard, and so on.¹⁸

TCEs have been acknowledged to have traditional values, noble norms, and a strong culture that grows, lives, develops, and is believed by the customary law community as its custodian.¹⁹ Given the situation, TCEs are considered communal rights and protected as Communal IP. However, there are lots of TCEs transmitted from generation to generation without sufficient information related to the creator, hence there is no certainty about the originality or ownership of the work.²⁰ Therefore, the inventory process is crucial to be carried out in identifying the ownership of Communal IP, including TCEs.

b. Communal Intellectual Property Protection in Law No. 5 of 2017 concerning the Advancement of Culture

The protection of Communal IP is also provided under Law No. 5 of 2017 concerning the Advancement of Culture (*hereinafter* Advancement of Culture Law). Pursuant to Article 1 point 1, it is clearly stated that: "Culture is anything pertaining to human creation, sensibility, motivation, and the work of community."

Further, the provision of Article 5 of Advancement of Culture Law clearly mentioned the objects of Advancement of Culture, which include: 1) oral traditions; 2) manuscripts; 3) customaries; 4) rites; 5) traditional knowledge; 6) traditional technology; 7) arts; 8) languages; 9) folk games; and 10) traditional sports. In order to provide proper protection of the objects of Advancement of Culture as an effort to preserve sustainability, the provision of Advancement of Culture Law emphasized the urge for inventorization, safeguarding, sustentation, salvage, and publication.

According to Article 16 paragraph (1) of Advancement of Culture Law, it is understood that there are several stages to be carried out in order to support the inventorization of objects of Advancement of Culture, namely: 1) Recording and documenting; 2) Stipulating; and 3) Data updating. The inventorization is conducted through the Integrated Database on Culture.

Pursuant to Article 17 of Advancement of Culture Law, it is understood that "the Central Government and/or Regional Governments in accordance with their respective

¹⁸ Kasih et al.

¹⁹ Prasetyo Hadi Purwandoko, Adi Sulistiyono, and M Hawin, "The Implementation of the Traditional Cultural Expression (TCE) Protection Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright," *Indonesian J. Int'l L.* 18 (2020): 543, <https://doi.org/10.17304/ijil.vol18.4.823>.

²⁰ Purwandoko, Sulistiyono, and Hawin.

authorities are obliged to record and document the Object of Cultural Advancement". Further, the Advancement of Cultural Law also allowed any Person to be able to record and document the Object of the Advancement of Culture and this process shall be facilitated by the Central Government and/or Regional Government. Following the provisions, it can be understood that both the Central Government and/or Regional Government and the community can work together in conducting the inventory process.

Following Article 22 of the Advancement of Culture Law, the protection of Objects of Advancement of Cultural Law is provided by safeguarding. The Central Government and/or Regional Government must safeguard the objects, while any Person may take an active role in the safeguarding process. It is conducted solely to prevent a foreign party from claiming the IPR of Objects of Advancement of Culture. The safeguarding process can be conducted by:

1. Continually updating the data in the Integrated Database on Culture;
2. Inheriting Objects of Advancement of Culture to the next generation; and
3. Promoting Objects of Advancement of Culture as World Cultural Heritage.

Further, the protection of Objects of Advancement of Culture can be carried out by sustentation, salvage, and publication. These processes can also be carried out by the Central Government and/or Regional Government together with the community.

Sustentation of Objects of Advancement of Culture is carried out in order to prevent damage, losses, or obliteration of the object itself. It can be carried out by:

1. Preserving the noble values and wisdom of Objects of Advancement of Culture;
2. Applying Objects of Advancement of Culture in daily life;
3. Preserving the diversity of Objects of Advancement of Culture;
4. Vitalizing and preserving the Cultural ecosystem of any Object of Advancement of Culture; and
5. Inheriting Objects of Advancement of Culture to the next generation.

The salvage of objects of Advancement of Culture is carried out through revitalization, repatriation, and/or restoration. Any relevant information to the inventorization, safeguarding, sustentation, and salvage of the Objects of Advancement of Culture must be publicized. It is made to disseminate information to the public through various forms of media, both domestically and internationally.

Further, the Advancement of Culture Law also emphasizes the commercial use of objects for the promotion of culture, which is regulated under the provision of Article 37 paragraph (1) of the Advancement of Culture Law.²¹ According to Article 37 paragraph (1) of the Advancement of Culture Law, it is stated that: "Major industry and/or foreign

²¹ Putri Triari Dwijayanthi et al., "Omed-Omedan as a Traditional Cultural Expression: Legal Protection of a Communal Intellectual Property in Indonesia," *Jurnal Magister Hukum Udayana* 11, no. 4 (2022): 772-85, <https://doi.org/10.24843/JMHU.2022.v11.i04.p05>.

party that will Utilize Objects of Advancement of Culture for commercial purpose must have a license for the Utilization of Objects of Cultural Advancement from the Minister”.

The provisions as referred to Article 37 of the Advancement of Culture Law emphasize the use for commercial purposes by major industries and/or foreigners of the object of advancement of culture, which includes Communal IP. The commercial use of Communal IP is closely related to the licensing process, including but not limited to the inclusion of the origin of Communal IP and the benefit sharing. Furthermore, Article 37 paragraph (2) of the Advancement of Culture Law states that the utilization permit for large industries must meet several requirements, *inter alia*:

- a. Having the approval based on informed consent;
- b. Having a benefit-sharing scheme; and
- c. Acknowledging the origin of the Objects of Advancement of Culture.

Further, the distribution of benefit sharing is regulated under Article 37 paragraph (3) of the Advancement of Culture Law. It is stated that “the Central Government must use the shared benefits as referred to in section (2) letter b to vitalize and sustain the ecosystem related to the Objects of Advancement of Culture”.

Those provisions emphasize the protection of the objects of advancement of culture, which is similar to the object of TCE as a part of Communal IP; hence all the benefits derived from the use of Communal IP must be used to revive and maintain the existence of the ecosystem of Communal IP itself. Thus, it can be seen that benefit sharing is considered a communal right that is used to support and maintain the existence of Communal IPs, including TCEs. Therefore, any major industry and/or foreign party must have a permit for the utilization of Communal IP, including TCEs if it is going to be used for commercial purposes.

c. The Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 concerning Communal Intellectual Property Data

The protection of Communal IP is also emphasized under the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 concerning Communal Intellectual Property Data (*hereinafter Permenkumham 13/2017*). According to *Permenkumham 13/2017*, it is known that the protection of Communal IP is provided under copyright regime.²²

Based on Article 1 point 1 of *Permenkumham 13/2017*, Communal IP is defined as intellectual property in the form of traditional knowledge, traditional cultural expressions, genetic resources, and potential geographic indications. Further, the provision of Article 1 point 4 defines TCE as all forms of expression of copyrighted works, both in the form of objects and intangibles, or a combination of both that indicate the existence of a traditional culture that is held communally and across generations.

²² Dwi Martini et al., “Urgensi Perlindungan Kekayaan Intelektual Atas Motif Kain Tenun Lombok Dalam Rangka Meningkatkan Pemberdayaan Perempuan Adat Di Desa Sukarara,” *Prosiding PEPADU 3* (2021): 455–64.

Pursuant to *Permenkumham 13/2017*, it can be seen that the inventory process is important to be carried out in order to protect the Communal IP, including TCEs. This process shall be carried out by the Minister as a defensive mechanism for protecting TCE. In carrying out the inventory process, the Minister shall work hand-in-hand with other institutions and/or Regional Government.²³ There are various steps in conducting the inventory process, namely:

1. Field/feasibility studies;
2. Administrative requirements;
3. Proposing the determination of the result of the inventory; and/or
4. Data exchange.

In order to be able to carry out the inventory process properly, the applicant is obliged to fill out a form, namely, the Inventory Form of Communal Intellectual Property (*hereinafter* the Inventory Form). There are two major issues shall be prepared in filling out the Inventory Form, namely: 1) valid data related to the existence of the Communal IP; and 2) A Description of the Communal IP supported with sufficient information such as in written form (books or journals), photos, or videos.

Based on the *Permenkumham 13/2017*, it is known that the inventory process is essential to be carried out as a defensive mechanism. Therefore, collaboration between all stakeholders is playing huge role in gathering all data related to the existence of Communal IP and the description of the Communal IP itself.

d. Bali Provincial Regulation No. 4 of 2020 concerning Strengthening and Advancing Balinese Culture

Heading and The provision of Bali Provincial Regulation No. 4 of 2020 concerning Strengthening and Advancing Balinese Culture (*hereinafter* Pergub Bali 4/2020) does not regulate the protection of Communal IP explicitly. Pursuant to Article 7 (1) letter (b), (k), (l), (n), (o), and (r) of *Pergub Bali 4/2020*, the protection is provided for rites, art, and traditional architecture, folk games, traditional sport, and clothing. All of the objects as mentioned under Article 7 (1) letter (b), (k), (l), (n), (o), and (r) of *Pergub Bali 4/2020* fall into a form of expression categorized as TCEs under the *Permenkumham 13/2017*.

Given the situation, it can be seen that the Government of Bali Province has acknowledged the urge to protect Communal IP. Thus, the Government of Bali Province shall carry out the inventory process by collecting sufficient data related to any Communal IP that exists in Bali properly.

e. Regent Regulation of Gianyar Regency No. 86 of 2021 concerning the Protection of Regional Culture and Intellectual Property

The Regional Government of Gianyar Regency has issued a Regent Regulation of Gianyar Regency No. 86 of 2021 concerning the Protection of Regional Culture and

²³ Kasih et al., "Policies Concerning Sacred And Open Traditional Cultural Expressions: Tourism and Creative Economy In Bali Context."

Intellectual Property (*hereinafter Pergub Gianyar 86/2021*) in order to provide proper protection of Communal IP. It is emphasized under Article 3 of *Pergub Gianyar 86/2021*.

According to Article 5 of *Pergub Gianyar 86/2021*, protection is provided for regional culture and intellectual property, namely:

- a. Traditional Knowledge;
- b. Traditional Cultural Expressions;
- c. Genetic Resources;
- d. Potential Geographic Indication;
- e. Cultural Landscape.

Based on Article 12 of *Pergub Gianyar*, it is known that the protection of regional culture and intellectual property is carried out through inventorization, safeguarding, sustentation, salvage, and publication. The protection mechanism regulated under this provision is in accordance with the mechanism as regulated under Article 22 of the Advancement of Culture Law.

Further, the protection of Communal IP is provided under Article 20 and Article 21 of *Pergub Gianyar 86/2021*. Pursuant to Article 20 of *Pergub Gianyar 86/2021*, it is known that the Regional Government of Gianyar is the legitimate holder of the copyright of regional culture and Communal IP in Gianyar, especially in the event that the author is unknown. Further, the use of regional cultural and Communal IP as mentioned in Article 5 of *Pergub Gianyar 86/2021* by other parties, including foreign parties for commercial use must have a utilization permit from the region and be subject to benefit sharing. However, according to the provision of Article 21, it is known that the right to use regional cultural and Communal IP can be transferred to other parties as long as the claim to ownership of the specific regional culture and Communal IP is legitimately proven

3.2. The Implementation of Inventory Process of Communal Intellectual Property in Gianyar Regency by Penta Helix Collaboration

Following the regulations concerning the protection of Communal IP, it can be seen that the inventory process is playing a huge role as a defensive mechanism. It focuses on preventing Communal IP from being lost or extinct. Further, it may prevent a foreign party from claiming the Communal IP.

Given the situation, many communal works have strategic potential to support economic growth in Indonesia, including Gianyar Regency in Bali. Communal works in the form of Communal IP (including TCEs) have been acknowledged to have economic value that can be used to support community welfare. Therefore, the inventory process is essential to be carried out by the Central Government and/or Regional Government. Further, in order to enhance the protection of Communal IP, the inventory process may be carried out by the community and is facilitated by the Central Government and/or Regional Government.

Pursuant to Article 38 paragraph (2), the obligation to conduct the inventory process lies with the State. This process can be conducted by the Ministry of Law and Human Rights. The State shall carry out the inventory process, from collecting sufficient information related to the TCEs until completing the recordation process to provide legal certainty to the custodian as the bearer of TCEs.²⁴

The protection of Communal IP, which includes TCE cannot be separated with several theories that underlie the need for implementing legal protection for IPR, as stated by Robert M. Sherwood. According to Robert M. Sherwood, there are 5 (five) theories related to protection of IPR, namely 1) Reward Theory; 2) Recovery Theory; 3) Incentive Theory; 4) Risk Theory; and 5) Economic Growth Stimulus Theory.

According to Reward Theory, it is known that every Creator is entitled to an award for his work.²⁵ In other words, it can be understood that Creator was awarded (*reward*) on creative effort in producing a work in science, art, and literature. Hence, the Creator or the custodian of Communal IP shall be rewarded properly for his work by mentioning the Creator and/or the origin of the work itself.

According to Recovery Theory, it can be understood that the Creator must be given the opportunity to recover from his/her sacrifices.²⁶ Given that the Creator has spent time, cost, and energy in producing his/her creation. Hence, the Creator or the custodian of Communal IP requires replacement as a “recovery”.

In accordance with the Reward Theory, the Incentive Theory emphasizes the need to provide incentives to the inventors for their creative effort in producing Creation in the fields of art, science, and literature.²⁷ This theory contends that IP protection must be given to Creators in order to give them the incentive for their works.²⁸

Further, the Risk Theory emphasizes that the protection of IPR shall be provided given that the process of creating a Creation always carries risk.²⁹ This theory recognizes that IPR is a work of art that contains risk that may allow others to create the work in advance or even fix the work, hence it is reasonable to provide legal protection against activities that contain these risks. Sherwood argues that risk may arise from illegal use that causes harm economically and morally for the Creator.

²⁴ Purwandoko, Sulistiyono, and Hawin, “The Implementation of the Traditional Cultural Expression (TCE) Protection Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright.”

²⁵ Desak Putu Dewi Kasih et al., “Enhancing Protection for Balinese Traditional Cultural Expression: A Government and Academician Cooperation Approaches” (3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022), Atlantis Press, 2023), 226–34, https://doi.org/DOI.10.2991/978-2-494069-93-0_27.

²⁶ Y Annalisa, “An Inventory of Traditional Cultural Expression as Copyright: A Requirement for the ASEAN Economic Community,” *Intellectual Property Rights Review* 1, no. 2 (2018): 25–34.

²⁷ Annalisa.

²⁸ Seana Valentine Shiffrin, “The Incentives Argument for Intellectual Property Protection,” *Intellectual Property and Theories of Justice*, 2008, 94–105.

²⁹ Nina Nurani, Rida Nurjanah, and Iwan Prihantoro, “Competence of Human Resources of Small and Medium Enterprises (MSMEs) of West Java through Intellectual Property Rights (IPR) Protection in the COVID-19 Pandemic Era,” *PalArch's Journal of Archaeology of Egypt/Egyptology* 17, no. 10 (2020): 3878–96.

Every creation produced by the creator contains an economic value. It can be used to provide a stimulus for the economic development of a country. Therefore, according to Economic Growth Stimulus Theory, the protection of IPR is essential to be provided.

The inventory process shall include field study or feasibility, administrative requirements, and proposing the recordation of the results as TCE with the custodian also allowed to deliver the documentation of the TCE accompanied with the description of the name, area, or location, and its form to the Minister for recordation process. The submission of the TCE inventory results and documentation is required in paragraph (2) to provide proper classification based on the characteristics including the sacredness, secret or open, and/or when it needs to be firmly adhered to.³⁰ This process is expected to include adequate planning and utilization of the TCE to ensure that it will provide benefits to the custodians.

Following the provisions of the *Permenkumham* 13/2017, there is a form that shall be submitted for the inventory process. Two major issues shall be prepared in order to be able to fill the Inventory form properly, namely: 1) Valid data related to the existence of the Communal IP in concern; and 2) A description of the Communal IP work that is supported by other documentation, for instance in a written form (books or journals), photos or videos.

In 2022, research has been carried out by the Faculty of Law, Udayana University, together with the Regional Government of Gianyar and the Custodian of *Drama Tari Wayang Wong Pura Taman Pule Desa Adat Mas, Ubud – Gianyar (Krama Pekamsan Pura Dhang Kahyangan Taman Pule Desa Adat Mas)*. By conducting a study in-depth, it is known that *Drama Tari Wayang Wong Pura Taman Pule Desa Adat Mas, Ubud – Gianyar* can only be used by the community carrying them for sacred purposes. Hence, it is classified as a preserve, sacred TCE, and cannot be used commercially.³¹

Following the previous research, the Faculty of Law, Udayana University, together with the Regional Government of Gianyar decided to conduct a similar collaboration related to the inventory process of IPR, including Personal and Communal IP. On this occasion, the research was conducted in Batuan Village, Gianyar by implementing Penta Helix Collaboration.

Penta Helix Collaboration is a collaboration among five stakeholders, namely the government, society, academics, business actors, and the media.³² The concept of the Penta Helix Collaboration shows the role of each stakeholder, hence there are no overlapping between roles and it is more effective and efficient during its

³⁰ Purwandoko, Sulistiyono, and Hawin, "The Implementation of the Traditional Cultural Expression (TCE) Protection Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright."

³¹ Direktorat Jendral Kekayaan Intelektual Kementerian Hukum & HAM Republik Indonesia, "Drama Tari Wayang Wong Pura Dhang Kahyangan Taman Pule Desa Adat Mas," Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum & HAM RI, 2021, <https://kikomunal-indonesia.dgip.go.id/index.php/jenis/1/ekspresi-budaya-tradisional/29729/drama-tari-wayang-wong-pura-dhang-kahyangan-taman-pule-desadadat-mas>.

³² Eko Priyo Purnomo et al., "Penta-Helix Approach as a Strategy to Recovery Tourism in Bali Due to COVID-19 Pandemic," 2021, 122–27, <https://doi.org/10.1145/3484399.3484417>.

implementation.³³ This concept is a reference in developing synergies between related stakeholders in supporting as optimally as possible in order to achieve goals. It is clear that this concept has an important role to play in supporting the goals of the inventory process itself.

According to Penta Helix Collaboration, it is known that each stakeholder has their own role. Generally, the role of each stakeholder is described as follow:³⁴

1. The government, acts as a regulator or controller that has regulations and responsibilities in developing objects. It involves several activities such as planning, implementation, monitoring, control, promotion, financial allocation, licensing, programs, legislation, development and knowledge, public innovation policy, support for innovation networks and public-private partnership. The government also play huge role in coordinating the stakeholders involved;
2. The private sector, acts as an enabler. It provides infrastructure by supporting changes in business human resources in collaborative governance, while also acting as budget promoter in providing added value or income in the form of funding for the development of the sector;
3. Academic, acts as the drafter, a source of knowledge by using the latest concepts and theories relevant to the activities or sectors developed;
4. Media, acts as an expander. It plays a strategic role in supporting publications in promotion and creating brand images. It can be said to be a fairly influential element in tourism development;
5. Community, acts as an accelerator. The community can also act as an intermediary or as a liaison between stakeholders to a growing business. The community can include the official community or the community which has an important role in the development of respective sector.

The implementation of Penta Helix Collaboration shall be implemented in the inventory process in Gianyar. In order to achieve the respective goal of completing recordation as the result of the inventory process, there should be a specific role for each stakeholder. The role of stakeholders in the Penta Helix Collaboration for Inventory Process of Communal IP in Gianyar Regency is described as follows:

Table 1. The Implementation of Penta-Helix Collaboration in Gianyar

Stakeholders	Roles
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³³ Bambang Tri Atmojo, Siswidiyanto Siswidiyanto, and Oscar Radyan Danar, "Penta-Helix Collaboration in the Development of Papua Province's Creative Economy," *Jurnal Borneo Administrator* 19, no. 1 (2023): 69-84, <https://doi.org/10.24258/jba.v19i1.1110>.

³⁴ Made Kembar Sri Budhi, Ni Putu Nina Eka Lestari, and Ni Nyoman Reni Suasih, "The Recovery of the Tourism Industry in Bali Province through the Penta-Helix Collaboration Strategy in the New Normal Era," *Geo Journal of Tourism and Geosites* 40, no. 1 (2022): 167-74, <https://doi.org/DOI.10.30892/gtg.40120-816>.

The Regional Government of Gianyar Regency	<ol style="list-style-type: none">1. Collecting a list of Communal IP in Gianyar.2. Synergizing the policies of the national law and regulations related to the protection of IP Communal with the Regency policies in Gianyar regarding the protection of Communal IP.3. Socialize the urge to protect Communal IP in the community.4. Providing facilities for the recordation process.5. Synergize each stakeholder's roles so they can achieve the goals of protecting Communal IP as part of supporting the creative economy.
Private Sector	<ol style="list-style-type: none">1. Sharing technology that can be used by the custodian in collecting data as well as process the recordation properly.2. Providing funding assistance for the recordation process.
Academics/Higher Education	<ol style="list-style-type: none">1. It educates businesses and other actors on the regulation related to the protection of communal IP as well as the urge to protect it.2. Finding data or sources directly from the custodian.3. Assisting other stakeholders in composing a description of communal IP4. Assisting other stakeholders in collecting supporting data.5. In-depth interviews with key respondents.6. Double-check with the relevant maestros.7. Determining the relevant maestros.8. Classifying communal IP as open or sacred.
Community/Society	<ol style="list-style-type: none">1. Providing input for any existing communal IP.

	2. Providing input on resource in composing description related to the communal IP
Media	1. It published the communal IP to be known both in national and international levels.

Given the situation, the Faculty of Law, Udayana University, and the Regional Government of Gianyar through *Badan Riset dan Inovasi Daerah* (hereinafter BRIDA) decided to conduct a discussion with the local community in Batuan Village, named *Komunitas Pelukis Baturulangun Batuan* (hereinafter *Baturulangun Community*). As Academics and Government, BRIDA and the Faculty of Law, Udayana University work hand-in-hand in collecting data or sources directly from the custodian as the respective community.

Initially, BRIDA took the lead in collecting the list of Communal IPs in Gianyar. Further, BRIDA and the Faculty of Law, Udayana University socialize the urge to protect Communal IP in the community. The Faculty of Law, Udayana University as Academics/Higher Education educates businesses and other actors on the regulation related to the protection of communal IP as well as the urge to protect it. The Faculty of Law, Udayana University also assist other stakeholder in collecting data as well as composing a description of respective Communal IP.

Later on, all the information is collected by conducting in-depth interviews with key respondents. Further, the Faculty of Law, Udayana University also double-checks with the relevant maestros in order to get clear and sufficient information.

According to *Baturulangun Community*, the Batuan Art Painting was initially used for sacred purposes. It was widely known around 1930 when an anthropologist, Margaret Mead and Gregory Bateson conducted research and asked the kids in Batuan to draw their experience through paintings.³⁵ Unexpectedly, magical nuance dominates their artworks.

Generally, Batuan Village is known for its artistic work. From time to time, Batuan Art Painting, or *Seni Lukis Batuan* has become very popular, and a lot of tourists visit the village just to see the art of painting. Up until now, Batuan Village is famous for Balinese-style painting art.³⁶

The Batuan Art Painting focused on folklore themes (*Tantri, Rajapala, Calonarang*), puppet stories (Mahabharata and Ramayana), daily lives, and religious ceremonies/rites. However, during its development, several painters also raised the theme of contemporary life by incorporating images of airplanes, cars, tourist figures, etc.

³⁵ Hildred Geertz, *Images of Power: Balinese Paintings Made for Gregory Bateson and Margaret Mead* (University of Hawaii Press, 1994). p. 1

³⁶ "Ubud Center, All About Ubud & Information Center," accessed August 18, 2023, <https://www.ubudcenter.com/mas-village/>.

The Batuan Art Painting is unique and interesting because the technique is still traditional, hence it takes a long time to finish. Although the themes raised by the current generation of Batuan Painters tend to be contemporary, the painting techniques used are still applying traditional Batuan style, namely *nyeket*, *ngorter*, *nyawi*, *nyigar*, *ngucek* and *manyunin*. This technique is the signature of Batuan Art Painting. It shows that even though the theme of Batuan Art Painting always develops with the times, the Batuan Painters still preserve the traditional Batuan style technique.

During the research, the Faculty of Law, Udayana University emphasized the urge for the protection of Personal and Communal IP by conducting recordation and inventory processes for respective IPR. In terms of Personal IP, the painters were encouraged to record their artistic work by carrying out recordation for each artwork. Further, the traditional Batuan Style technique shall be preserved and classified as one of Communal IP in the form of TCE.

Following the inventory process, there are two classifications of TCEs, namely: 1) Sacred TCE known as Closed TCE, and 2) Not Sacred TCE as Open TCE. Sacred or Closed TCEs are sacred in nature and cannot be used for commercial purposes. This kind of TCE is solely used for sacred purposes. Meanwhile, the Open TCEs usually transformed across generations in custodian communities. This kind of TCE can be used for commercial purposes, given that it is not sacred. Therefore, the Open TCEs can be developed to support creative economy businesses in the tourism sector.

There are several steps that should be carried out in order to find out whether a TCE falls into a sacred or open category, such as:³⁷

- a. Finding data or sources directly from the custodian;
- b. In-depth interview with key respondents;
- c. Double-check with the relevant TCE's maestros;
- d. Determining the relevant maestros;
- e. Classifying TCE as open or sacred.

The Batuan Art Painting with traditional Batuan style technique has been known worldwide to be one of the Balinese Painting styles. Along with its popularity, there are a lot of tourists who have come to Batuan Village just to see the painting. Some of them even decided to learn from the Batuan painters. Therefore, the Batuan Art Painting with traditional Batuan style can be classified as Open TCE. However, the use of TCE leads to profit-making or commercial purposes shall be authorized by the custodian.

During the research, obstacles arose in composing a proper description of the Batuan Art Painting and finding sufficient written resources. Fortunately, the obstacles could be overcome by implementing Penta-Helix Collaboration between government, and other stakeholders. The collaboration of the Regional Government of Gianyar Regency, Faculty of Law and custodian of the Batuan Art Painting has resulted in several

³⁷ Kasih et al., "Policies Concerning Sacred And Open Traditional Cultural Expressions: Tourism and Creative Economy In Bali Context."

recording for personal IP and now are moving on to the recording of Batuan Art Painting as Communal IP that classify as Open TCE.

The implementation of Penta-Helix Collaboration is very useful in the inventory process, especially in collecting sufficient data in order to be able to compose a proper definition of the TCE. Thus, the description is accurate, clear, firm, and approved by the Custodian. Further, the inventory process will be submitted to the Directorate General of Law and Human Rights of Indonesia to be recorded as a preserved TCE. In the event that all the submitted data meets the requirement, then a certificate of recording will be issued. The Recording serves as a defensive measure in the legal context.

Further, after the recording process is done, all the information related to the Batuan Art Painting as Communal IP can be used by business actors to attract more tourists to come and visit Batuan Village under the permission of the Custodian. Moreover, once the Batuan Art Painting is classified as Communal IP and recorded as Open TCE, then any commercial use of Batuan Art Painting as Communal IP utilized by a major industry and/or foreign party must have a license for the Utilization of Objects of Cultural Advancement from the Minister. It is in accordance with the provision of Article 37 paragraph (1) of the Advancement of Culture Law.

Moreover, the protection of Batuan Art Painting as Communal IP shall be provided given that it is a form of work that belongs to the communal and contains traditional values. It is in accordance with the reward theory mentioned by Robert M. Sherwood. This theory emphasizes that every Creator is entitled to an award for his work. Therefore, every party who use Batuan Art Painting must mention the origin of the work.

Further, any commercial use of Batuan Art Painting as Communal IP utilized by a major industry and/or foreign party must have a license for the Utilization of Objects of Cultural Advancement from the Minister. The commercial use of Communal IP is closely related to the licensing process, including but not limited to the inclusion of the origin of Communal IP and the benefit sharing. It is in accordance with both reward and incentive theory. By providing such protection, it is hoped that the existence of Batuan Art Painting will be one of the economic stimulus growths in Gianyar Regency.

Based on the above-mentioned, it can be seen that the implementation of the inventory process of Communal IP in Bali, especially Gianyar Regency has been carried out in Penta Helix Collaboration. It shows that collaboration plays a huge role during the inventory process, especially in collecting information and supporting data. Hence, it still needs to be carried out simultaneously due to the large variety of Communal IP itself. Therefore, more cooperation shall be carried out in order to provide protection of Communal IP nowadays.

4. Conclusion

Based on the above-mentioned, it can be concluded that the protection of Communal IP has been provided in Indonesia, both at the National and Regional levels. The protection of Communal IP is provided under the Copyright regime solely because it is closely related to the creativity that comes from human intellect in the fields of knowledge, art, and literary works that are transformed as expressed works. hence the inventory process plays playing essential role. According to the Copyright Law, it is known that the

obligation of the inventory process shall be carried out by the State. In order to conduct a proper inventory process, the Minister shall carry out the process hand-in-hand as in Penta-Helix Collaboration. By implementing Penta-Helix Collaboration, the inventory process will involve the government at the national and regional levels, academicians, business actors, custodians as the community as well as the media. Further, after the recordation process is done, all the information related to the Batuan Art Painting as Communal IP can be used by business actors to attract more tourists to come and visit Batuan Village under the permission of the Custodian. Moreover, once the Batuan Art Painting is classified as Communal IP and recorded as Open TCE, then any commercial use of Batuan Art Painting as Communal IP utilized by a major industry and/or foreign party must have a license for the Utilization of Objects of Cultural Advancement from the Minister. It is in accordance with the provision of Article 37 paragraph (1) of the Advancement of Culture Law.

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Law and Regulations

Law No. 28 of 2014 concerning Copyright

Law No. 5 of 2017 concerning the Advancement of Culture

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 concerning Communal Intellectual Property Data

Bali Provincial Regulation No. 4 of 2020 concerning Strengthening and Advancing Balinese Culture

Regent Regulation of Gianyar Regency No. 86 of 2021 concerning the Protection of Regional Culture and Intellectual Property