



Omed-Omedan as a Traditional Cultural Expression: Legal Protection of a Communal Intellectual Property in Indonesia

Putri Triari Dwijayanthi¹, Putu Aras Samsithawrati², Dewa Ayu Dian Sawitri³

¹Faculty of Law Udayana University, E-mail: putritriari@unud.ac.id

²Faculty of Law Udayana University, E-mail: samsithawrati@unud.ac.id

³Faculty of Law Udayana University, E-mail: dewaayudiansawitri@unud.ac.id

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Corresponding Author:

Putri Triari Dwijayanthi, E-mail: putritriari@unud.ac.id

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Abstract

The study was aimed to identify, analyze and elaborate the legal arrangement for communal intellectual property protection in Indonesia, including "omed-omedan". Further, the study also examined the commercial use mechanism of Traditional Cultural Expression, including "omed-omedan". This writing was normative legal research using statutory approach and conceptual approach. The study indicates that omed-omedan shall be protected as TCE, hence any commercial use of omed-omedan by major industries and/or foreign investors must obtain a permit and fulfill other obligations including but not limited to the distribution of benefits to customary law community in Banjar Kaja, Sesetan as the custodian.

I. Introduction

Omed-omedan is a tradition usually held by customary law community in Banjar Kaja, Sesetan, Denpasar.¹ It is known as a unique tradition that has been transmitted from generation to generation by its community, which also known as "the Kissing Ritual".² The tradition has religious value related to *Ida Betara Sesuhunan* in *Pura Banjar Kaja* that is still believed by the community up until today.³

¹ Yogi Meranggi, "Balinese Perspective in Myths and Diseases: How the Society Copes and Survive the Situation," *Bali Tourism Journal* 4, no. 1 (2020): 14–18.

² I Komang Bayu Segara, "COVID-19 Canceled Omed-Omedan Festival 2020. Local Elders: The Rite Would Be Carry On!," *Bali Tourism Journal* 4, no. 2 (2020): 40–43.

³ Ni Made Yuni Artini and Ida Bagus Nyoman Wartha, "Tradisi Omed-Omedan Sebagai Pendidikan Karakter Bagi Teruna-Teruni Banjar Kaja Dalam Rangkaian Hari Raya Nyepi Di Kelurahan Sesetan Denpasar Selatan," *Jurnal Santiaji Pendidikan (JSP)* 5, no. 2 (2015).

Omed-omedan is categorized as a unique and distinctive tradition because it only involves *sekaa teruna* and *teruni* (young people) aged 17 to 30 years and are not married.⁴ The participants will be divided into 2 (two) groups, men and women. The groups will face each other and later will be tugged at each other. The tradition is held to respect the religious values that has been transmitted from generation to generation. It is held on the day after Nyepi to reflect the joy in welcoming the first day of the Saka new year, which celebrated by the youths in the village.⁵

The name of "*omed-omedan*" is derived from the Balinese language means "to pull".⁶ As mentioned previously, during the ceremony, the participants will be divided into two groups, men and women. Both will face each other.⁷ Further, the male participants will pull (*kedeng*), hug (*gelut*) and kiss (*diman*), while the other will pour buckets of water over them.⁸ The purpose of this ceremony is to strengthen the sense of affection among its community, especially the people of *Banjar Kaja, Sesetan*.⁹

The tradition of "*omed-omedan*" begins with a prayer together at the temple which is followed by a performance of male and female *Barong Bangkung*. After that, the tradition of "*omed-omedan*" will be carried out accompanied by *gamelan* music and a Hindu leader or an elder of the village will give a signal to start the ceremony.¹⁰ The origin of this ceremony is not known for certain, but it has long since ancestors and preserved for generations. Some people believe that it was originated from the Kingdom of *Puri Oka* which located in South Denpasar.¹¹ Previously, the tradition was carried out by the people as a game of tug-pull, however it developed to become more interesting, hence it turned into embracing each other.

According to the official website of Denpasar City Government, at the beginning, the game was carried out when the King of *Puri Oka* was seriously ill.¹² The King was disturbed by the noise. The King of *Puri Oka* who was disturbed finally came out to see the "*omed-omedan*" game in a sick condition, but after seeing the event, the King of *Puri Oka* recovered from his illness. After that, the King of *Puri Oka* ordered his people to hold the "*omed-omedan*" annually. It is held the day after *Nyepi* or in *Ngembak Geni*.

⁴ I Wayan Suwena, "Fungsi Dan Makna Ritual Nyepi Di Bali," *Program Studi Antropologi. Fakultas Ilmu Budaya Universitas Udayana*, 2017.

⁵ Anak Agung Gede Raka, I Wayan Parwata, and Anak Agung Gede Raka Gunawarman, *Bali Dalam Perspektif Budaya Dan Pariwisata* (Pustaka Larasan, 2017).

⁶ Ni Putu Ayu Gita Yunitasari and Sanggar Kanto Anif Fatma Chawa, "The Interpretation of the Omed-Omedan Tradition by the Community in Banjar Kaja, Traditional Village of Sesetan, Denpasar, Bali," *Interpretation* 37 (2018).

⁷ I Nyoman Jayanegara, "Tradisi Omed-Omedan Dalam Perspektif Industri Budaya," *Jurnal Bali Membangun Bali* 2, no. 2 (2019): 83-90.

⁸ Pemerintah Kota Denpasar, "Tradisi Omed-Omedan, Budaya Ciuman Yang Diwariskan Turun-Temurun," 2020, <https://www.denpasarkota.go.id/seni/tradisi-omed-omedan-budaya-ciuman-yang-diwariskan-turun-temurun>.

⁹ Jayanegara, "Tradisi Omed-Omedan Dalam Perspektif Industri Budaya."

¹⁰ Ni Luh Ketut Sukarniti, "Tradisi Omed-Omedan Banjar Kaja Kelurahan Sesetan Keca-Matan Denpasar Selatan," *Jurnal Ilmiah Cakrawarti* 3, no. 2 (2020): 87-93.

¹¹ Denpasar, "Tradisi Omed-Omedan, Budaya Ciuman Yang Diwariskan Turun-Temurun."

¹² *Ibid.*

Once the Dutch government colonized Indonesia, including Bali, the ceremony was stopped because they felt stifled by the ceremony and forbade the ritual of the game. At that time, a strange phenomenon occurred. There were 2 (two) pigs were found fighting each other in front of the temple. The villagers of Sesetan believed that it was a bad omen. The King of *Puri Oka* and his people then asked the ancestors to find out the "meaning" of the incident. Since then, the "*omed-omedan*" has been carried out by the customary law community in *Banjar Kaja*, Sesetan.

The customary law community in *Banjar Kaja*, Sesetan believe that the tradition of "*omed-omedan*" has a close relationship with the local wisdom religion, which is essentially a manifestation of religious activity. This tradition is remained existed and believed by the people of *Banjar Kaja*, Sesetan as traditional values that must be implemented.¹³ The tradition is carried out because the community believes that this annual ritual prevents disaster from descending upon the village.¹⁴

The development of tourism has caused a certain change within this tradition. Initially, the tradition was carried out in order to prevents disaster, however it has developed into an annual festival nowadays. The annual festival is held to attract tourist and following the needs of the market; therefore, it is used to generate profits.

The changes that occurred in the tradition of "*omed-omedan*" has shifted from religious value to commercial value. Originally, the tradition was held to prevents disaster only, however it is now being held as an annual festival called "*Sesetan Heritage Omed-Omedan Festival*". The tradition that was originally private has now grown by involving various parties, ranging from the government, private companies, economic actors, artists, and other parties involved in the implementation of the tradition.

The implementation of "*Sesetan Heritage Omed-Omedan Festival*" is also followed by the "*Peken Paiketan*", a place and facilities given to the economic actors to sell their products in the area around the festival.¹⁵ The procession of this tradition has also developed, which is indicated by the use of uniform by the participants. The uniform is usually printed with the logo of the supporting parties, for instance: private companies, economic actors, or other parties. This tradition is usually broadcasted by national and international media.

Based on the abovementioned, it is important to examine the legal issue related to the protection of "*omed-omedan*" as a tradition in Bali. The study is carried out related to the legal protection of "*omed-omedan*" in copyright regime in Indonesia, especially in the domain of Traditional Cultural Expression (*hereinafter* TCE) and the regulation on the commercial use of "*omed-omedan*" from copyright perspective. Bearing in mind that as a form of TCE, the tradition that is protected by copyright contain moral rights and economic rights for its customary law community, as long as the TCE is still preserved until nowadays.

¹³ I Wayan Titra Gunawijaya and Ni Putu Dian Utami Dewi, "Tradisi Omed-Omedan Sebagai Bentuk Wisata Budaya Bagi Dunia Pariwisata Di Bali," *Cultoure: Jurnal Ilmiah Pariwisata Budaya Hindu* 2, no. 1 (2021): 84-94..

¹⁴ Gunawijaya and Dewi, "Tradisi Omed-Omedan Sebagai Bentuk Wisata Budaya Bagi Dunia Pariwisata Di Bali."

¹⁵ Jayanegara, "Tradisi Omed-Omedan Dalam Perspektif Industri Budaya."

The purpose of this study was to identify, analyze and elaborate the regulation of “*omed-omedan*” in copyright perspective according to the prevailing law in Indonesia. Further, the study also examined the regulation related to commercial use of the “*omed-omedan*” in copyright perspective. In order to realize the purpose of writing, the writing will discuss the relevant substance in a structured and systematic way. First, it is discussed the regulation of legal protection against “*omed-omedan*” in the perspective of copyright based on the prevailing law in Indonesia. Second, it is discussed the regulation concerning the commercial use of “*omed-omedan*” as tradition in the perspective of copyright.

Compared with the previous studies, this writing has similarities in terms of topics, both studying the “*omed-omedan*” as tradition, however it has different focus of study. In 2019, I Nyoman Jayanegara examined about “*Tradisi Omed-Omedan dalam Perspektif Industri Budaya*”. The study mainly discussed about the development of “*omed-omedan*” that has shifted from tradition into cultural festival with a high economic value.¹⁶ In 2021, I Wayan Tirta also examined similar study concerning “*Tradisi Omed-Omedan sebagai Bentuk Wisata Budaya bagi Dunia Pariwisata Bali*”.¹⁷ The study was focused on the implementation of “*omed-omedan*” as one of the cultural tourism in Bali.

2. Research Method

This writing used normative legal research using several approaches, namely statutory approach and conceptual approach. According to Peter Mahmud Marzuki, normative legal research refers to a method that can be applied in answering legal problems that occur in the society by referring to the applicable laws, general principles of law, or doctrine.¹⁸ This technique of tracing legal materials uses document study techniques and being analyzed using qualitative analysis.

3. Result and Discussion

3.1. Legal Arrangement for Communal Intellectual Property Protection in Indonesia, including “*Omed-omedan*”

In general, the tradition of “*omed-omedan*” is recognized as one of rituals that still alive, believed and develop in the customary law community in Sasetan Village, Denpasar. This tradition is believed to be the manifestation of *masima krama* or *dharma shanti*, which emphasizes on the idea of building a harmonious relationship with the people in the community.

In the past, this tradition was abolished due to the restriction from the Dutch government who colonized Indonesia. After this tradition was stopped, a strange incident occurred in Sasetan Village, namely the appearance of 2 wild boars fighting each other. The customary law community of Sasetan Village believe that it was a bad omen, hence the Hindu leaders, who also the village elders called the local community

¹⁶ *Ibid.*

¹⁷ Gunawijaya and Dewi, “*Tradisi Omed-Omedan Sebagai Bentuk Wisata Budaya Bagi Dunia Pariwisata Di Bali.*”

¹⁸ M; Fajar and Y Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2013).

to hold *omed-omedan* again. Since then, the tradition has continued to be carried out from generation to generation as an effort to prevent the village from catastrophe.¹⁹

The existence of the *omed-omedan* tradition as one of the activities carried out by the Sesetan village community is routinely carried out every year on the first day after Nyepi. This shows the close relationship between *omed-omedan* and the concept of intangible cultural heritage.

Internationally, the protection of intangible culture heritage is provided under the Convention for the Safeguarding of the Intangible Culture Heritage (*hereinafter* Convention for the Safeguarding of the Intangible Culture Heritage). This convention has been ratified by Indonesia through Presidential Regulation Number 78 of 2007 on the Ratification of the Convention for the Safeguarding of the Intangible Cultural Heritage (State Gazette of the Republic of Indonesia of 1997 Number 81).

According to the Article 2 point 1 of the Convention for the Safeguarding of the Intangible Culture Heritage, it is stipulated that:

“The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.”

Based on the provision of Article 2 point 1 of the Convention for the Safeguarding of the Intangible Culture Heritage, it is known that intangible cultural heritage can be manifested in the form of practices, representations, expressions, knowledge, or skills as long as it is recognized by the communities, groups, or individual as part of their cultural heritage. Further, the the Article 2 point 1 of the Convention for the Safeguarding of the Intangible Culture Heritage also emphasized that intangible cultural heritage is transmitted from generation to generation, as follow:

“This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.”

The concept of “intangible cultural heritage” has similar points with the Traditional cultural expressions (*hereinafter* TCE) in copyright regime. Both are defined as a culture born from a community group and passed down from generation to generation hence, the tradition of *omed-omedan* shall be protected under the copyright regime in the domain of TCE.

According to the provisions of Law No. 28 of 2014 concerning Copyright (*hereinafter* Copyright Law), the protection of works that related to communal and traditional values, which includes traditional ceremonis, are provided in the form of TCE. The

¹⁹ Indonesia Kaya, “Omed-Omedan, Ritual Unik Pengikat Keakraban Masyarakat Sesetan - Indonesia Kaya,” 2020, <https://indonesiakaya.com/pustaka-indonesia/omed-omedan-ritual-unik-pengikat-keakraban-masyarakat-sesetan/>.

protection is regulated in Article 38 paragraph (1) of the Copyright Law.²⁰ Constitutionally, the protection against traditional values has been guaranteed and recognized in the provision of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (*hereinafter* the 1945 Constitution), which stipulated that:²¹

“The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.”

Further, the Article 28I paragraph (3) of the 1945 Constitution also stipulated that: “The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations”.²² The provisions of Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution emphasizes the recognition of the traditional communities and their rights as long as it remains alive and in accordance with the development and the prevailing law in Indonesia.²³ It means that the States has recognized and provided legal protection as well as recognition of TCE as a part of traditional rights and cultural identities of traditional community.²⁴

Basically, copyright protection is provided directly or also known as automatic protection as this principle is also a principle adopted in the Berne Convention.²⁵ The application of this principle does not impose an obligation on Authors to apply for the recordation of their works, because the recordation specified in the Copyright Law is facultative, hence direct protection is given when a Work has been expressed in a tangible form (work expression) that can be enjoyed by the five senses.²⁶ The principle of providing direct protection or automatically protection adopted by the Copyright Law is closely related to the Labor theory or also known as the Natural Right theory by John Locke which focuses on exclusive protection of Creators who are able to produce

²⁰ Dewi Kharisma and Djulaeka Djulaeka, “Perlindungan Hak Cipta Terkait Penggunaan Seni Motif Batik Tradisional Pada Suatu Produk,” *Jurnal Komunikasi Hukum (JKH)* 7, no. 2 (2021): 717-27.

²¹ Ni Putu Rai Yuliantini, Dewa Gede Sudika Mangku, and Ni Ketut Sari Adnyani, “RECOGNITION OF SOCIETY RIGHTS IN TRADITION SPECIALLY IN TOURISM REGULATION BASED ON ARTICLE 18B PARAGRAPH (2) OF THE 1945 CONSTITUTION OF THE REPUBLIC INDONESIA,” *Journal Equity of Law and Governance* 1, no. 1 (2021): 25-36.

²² Rachmad Safa'at and Moch Bakri, “Legal Protection on Traditional Culture Expression of the Indigenous Society,” *JL Pol'y & Globalization* 65 (2017): 158.

²³ Jaja Ahmad Jayus, “Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System,” *Jurnal Media Hukum* 27, no. 1 (2020): 79-98.

²⁴ Prasetyo Hadi Purwandoko, Adi Sulistiyono, and M Hawin, “The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright,” *Indonesian Journal of International Law* 18, no. 4 (2021): 543-70.

²⁵ Mahartha, Ari. "Pengalihwujudan Karya Sinematografi Menjadi Video Parodi Dengan Tujuan Komersial Perspektif Perlindungan Hak Cipta." *Jurnal Kertha Patrika* 40, no. 1 (2018).

²⁶ Dwijayanthi, Putri Triari, and Ni Ketut Supasti Dharmawan. "The Responsibilities of Influencers in Promoting Tie-Dye Motif Products Based on Copyright Law." *Substantive Justice International Journal of Law* 3, no. 2 (2020): 166-178.

intellectual works that have economic value at the expense of thought, effort, time and also cost.²⁷

The concept of copyright protection with the concept of automatic protection is related with the concept of individual or individual ownership, meanwhile TCE is closely related to shared or communal rights. Some of TCEs are transmitted from generation to generation without any information related to the creator, hence there is no certainty about the originality of the work.²⁸

Protection for TCE is given in the copyright regime given that the creation of a TCE is closely related to the creativity that comes from human intellect in the fields of knowledge, literature and art which is then realized in tangible form, hence can be seen, read, heard and so on.²⁹ Protection of TCE is an opportunity for customary law community throughout Indonesia to preserve intellectual works that have been passed down from generation to generation.³⁰ TCE is important to be protected considering that the existence of TCE has traditional values, noble norms and a strong culture that grows, lives, develops and is trusted by the customary law community as a local community.

Referring to the provisions in Copyright Law, protection of TCE is regulated in the provisions of Article 38.³¹ The provision of Article 38 paragraph (1) of the Copyright Law stipulated that: "The Copyright of traditional cultural expressions is held by the State."

According to the elucidation of the provision of Article 38 paragraph (1) of the Copyright Law, it is stipulated that TCE means one or a combination of these following expressions:

- a. "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 an informative narrative;
- b. music, including, among others, vocal, instrumental, or any combination thereof;
- c. motion, including, among others, dance;
- d. theater, including, among others, puppet shows and folk plays;

²⁷ Dharmawan, Ni Ketut Supasti. "Perlindungan Hukum Atas Karya Cipta Program Komputer di Indonesia (Stud! Perbandingan dengan Negara Maju dan Negara Berkembang)." *Masalah-Masalah Hukum* 40, no. 1 (2011): 10-17.

²⁸ Widyanti, Yenny Eta. "Perlindungan Ekspresi Budaya Tradisional Indonesia Dalam Sistem Yang Sui Generis." *Arena Hukum* 13, no. 3 (2020): 388-415.

²⁹ Ni Ketut Supasti; Dharmawan et al., *Harmonisasi Hukum Kekayaan Intelektual Indonesia* (Denpasar: Swasta Nulus, 2018).

³⁰ Yenny Eta Widyanti, "PERLINDUNGAN EKSPRESI BUDAYA TRADISIONAL INDONESIA DALAM SISTEM SUI GENERIS," *Arena Hukum* 13, no. 3 (2020): 388-415.

³¹ Sukihana, Ida Ayu, and I. Gede Agus Kurniawan. "Karya Cipta Ekspresi Budaya Tradisional: Studi Empiris Perlindungan Tari Tradisional Bali di Kabupaten Bangli." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 1 (2018): 51-62.

- e. fine art, either in two-dimensional or three-dimensional form made of various kinds materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textile, et cetera or a combination thereof; and
- f. traditional ceremonies.”

Further, according to the provision of Article 38 paragraph (2) of the Copyright Law, it is stipulated that in relation to the protection of TCE, the State has an obligation to take inventory, preserve and maintain the TCE.³² In the event there are parties who want to use the TCE, then they shall considers the values that live in the community that practice them. This regulation is clearly stipulated in the Article 38 paragraph (3) of the Copyright Law. The protection of TCE that is held by the State is endured indefinitely, which is stipulated in Article 60 paragraph (1) of the Copyright Law.³³

The protection of culture in Indonesia is also provided under the Law No. 5 of 2017 concerning Advancement of Culture (*hereinafter* Advancement of Culture Law).³⁴ According to the Article 1 point 1 of the Advancement of Culture Law, it is stipulated that: “Culture is anything pertaining to human creation, sensibility, motivation, and the work of the community.” There are several objects of Advancement of Culture, which stipulated under the Article 5 of the Advancement of Culture Law, namely:

- a. “oral traditions;
- b. manuscripts;
- c. customaries;
- d. rites;
- e. traditional knowledge;
- f. traditional technology;
- g. arts;
- h. languages;”
- i. “folk games; and
- j. traditional sports.”

According to the elucidation of Article 5 point d, it is stipulated that “rites” are the procedures for performing a ceremony or an activity based on certain values and are performed by a community group on a continuous basis and passed down across generations, such as, various celebrations, birthday commemorations, wedding ceremonies, funeral ceremonies, and faith-based rituals and all their paraphernalia. Therefore, the existence of *omed-omedan* shall be acknowledged as rites, bear in mind that it is an activity with certain values and are performed by a community group

³² Purwandoko, Sulistiyono, and Hawin, “The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright.”

³³ Dyah Permata Budi Asri, “Perlindungan Hukum Terhadap Kebudayaan Melalui World Heritage Centre UNESCO,” *Jurnal Hukum Ius Quia Iustum* 25, no. 2 (2018): 256–76.

³⁴ Puspita Ayu Permatasari, Akhmad Abdul Qohar, and Arief Faizal Rachman, “From Web 1.0 to Web 4.0: The Digital Heritage Platforms for UNESCO’s Heritage Properties in Indonesia,” *Virtual Archaeology Review* 11, no. 23 (2020): 75–93.

continuesly and passed down across generation as a faith-based rituals and all their paraphernalia.

Further, 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 No. 13 Tahun 2017) also emphasizes the protection of TCE as communal intellectual property under copyright regime.³⁵ According to the provision of Article 1 point 1 of the Permenkumham No. 13 of 2017, it is stipulated that:

“Communal Intellectual Property, hereinafter abbreviated as KIK, is intellectual property in the form of traditional knowledge, traditional cultural expressions, genetic resources, and potential geographic indications.”

In particular, the definition of TCE is emphasized in the provisions of Article 1 point 4 of the Permenkumham No. 13 Tahun 2017 which stipulates:

“Traditional Cultural Expressions are 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.”

Based on the abovementioned, it can be understood that the *omed-omedan* tradition which is one of a unique and distinctive tradition of Bali can be classified as TCE. Considering the criteria as explained in Article 38 paragraph (1) of the Copyright Law which explains the scope of TCE also includes traditional ceremonies, where the realization of traditional ceremonies is included in the form of a tradition that is still preserved to this day. In addition, the existence of the *omed-omedan* tradition which continues to be transmitted from generation to generation with the meaning and value contained in its implementation as a series of traditional ceremonies increasingly supports the existence of *omed-omedan* as TCE that should be protected by the State. TCE protection has been regulated through Copyright Law which confirms that the copyright on TCE is held by the State, unfortunately this arrangement is not sufficient considering that there are no rules in Copyright Law regarding the distribution of benefits that will be received by customary law community for the use of TCE.

3.2. Commercial Use Mechanism of Traditional Cultural Expression, Including “Omed-Omedan”

Protection of TCE has indeed been regulated in Article 38 of the Copyright Law, unfortunately further regulation on commercial use has not been regulated in Copyright Law. Regulations related to the use of culture that are related to TCE are precisely regulated in Law Number 5 of 2017 concerning the Advancement of Culture (*hereinafter* the Law on the Advancement of Culture).

³⁵ 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.

According to the provision of Article 5 of the Law on the Advancement of Culture, there are several objects that shall be protected, namely:³⁶

- a. "Oral traditions;
- b. Manuscripts;
- c. Customaries;
- d. Rites;
- e. Traditional knowledge;
- f. Traditional technology;
- g. Arts;
- h. Languages;
- i. Folk games; and
- j. Traditional sports".

Regulations related to the commercial use of objects for the promotion of culture are regulated in the provisions of Article 37 paragraph (1) of the Law on the Advancement of Culture.³⁷ According to the provision of Article 37 paragraph (1) of the Law on the Advancement of Culture, it is stipulated that:

"Major industry and/or foreign party that will Utilize Objects of Advancement of Culture for commercial purposes must have a license for the Utilization of Objects of Cultural Advancement from the Minister."

The provisions as referred to in Article 37 of the Law on the Advancement of Culture emphasize the use for commercial purposes by major industries and/or foreigners of TCE which is closely related to the licensing process, including but not limited to the inclusion of the origin of TCE and the sharing of benefits, also known as benefit sharing.³⁸ Furthermore, in the provisions of Article 37 paragraph (2) of the Law for the Advancement of Culture, it is determined that the utilization permit for large industries must meet the following requirements:

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

Regulations related to the distribution of benefits or benefit sharing on the commercial use of TCE are regulated in the provisions of Article 37 paragraph (3) of the Law on the Advancement of Culture, as follows:

³⁶ A R Zulkifli and A R Azhari, "Perlindungan Objek Pemajuan Kebudayaan Menurut Undang-Undang Nomor 5 Tahun 2017," *Doktrina: Journal of Law* 1, no. 1 (2018): 56-68.

³⁷ Nuzulia Kumala Sari and Dinda Agnis Mawardah, "SISTEM PENDATAAN KEBUDAYAAN TERPADU ALTERNATIF PERLINDUNGAN HUKUM EKSPRESI BUDAYA TRADISONAL," *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 405-18.

³⁸ Andhika Putra Herzani, "Peran Pemerintah Dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia," *Jurnal Hukum & Pembangunan* 50, no. 4 (2021): 956-78.

“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.”

This provision emphasizes the protection of copyright on the TCE which is communal, hence, all the benefits derived from the use of the TCE must be used to revive and maintain the related TCE ecosystem.³⁹ In this regard, it can be understood that benefit sharing is not an individual right, but a communal right that is used to support efforts to maintain the existence of TCE. Further, the idea of protecting TCE is in accordance with the Natural Right theory by John Locke that emphasizes the protection of creation to be provided given that in producing a creation, a Creator carries out a process that is not short-lived and is even willing to sacrifice energy, thought, money and intellect to produce a creation that has economic value.⁴⁰ Moving on from the explanation, it can be understood that *omed-omedan* as a form of TCE can be used commercially by major industries and/or foreign parties as long as it obtains a permit for the utilization of the Cultural Advancement Object from the Minister.

Furthermore, there are requirements that must be fulfilled, namely: a) approval for initial information; b) benefit sharing; and c) the inclusion of the origin of the object of cultural promotion. With regard to the distribution of benefits, the Law on the Advancement of Culture has clearly determined that the proceeds from the distribution of benefits are used to revive and maintain the ecosystem of the Object for the Advancement of Culture, including TCE.

Therefore, the use of the *omed-omedan* tradition to become an annual festival namely “Sesetan Heritage Omed-Omedan Festival”, which involves various parties ranging from the government, private companies, economic actors, artists and other parties involved in the implementation of the tradition must pay attention to these provisions. In the event that the *omed-omedan* tradition is carried out as a part of the festival which involves major industries or even foreign parties in its implementation, then those major industries or even foreign parties must obtain a permit and fulfill other obligations including but not limited to the distribution of benefits to customary law community in Banjar Kaja, Sesetan as the custodian.

4. Conclusion

Based on the abovementioned, it can be concluded that the *omed-omedan* tradition which is one of a unique and distinctive tradition of Bali can be classified as TCE. Considering the criteria as explained in Article 38 paragraph (1) of the Copyright Law that the scope of TCE also includes traditional ceremonies in the form of a tradition that is still preserved to this day. In addition, the existence of the *omed-omedan* tradition which continues to be transmitted from generation to generation with the meaning and value contained in its implementation as a series of traditional ceremonies increasingly supports the existence of *omed-omedan* as TCE that should be protected by the State.

³⁹ Retnani Amurwaningsih, “Perlindungan Budaya Tradisional Indonesia Melalui Pencatatan Dalam Sistem Pendataan Kebudayaan Terpadu,” *Jurist-Diction* 1, no. 1 (2018): 303–22.

⁴⁰ Putri Triari; Dwijayanthi and Ni Ketut Supasti Dharmawan, “View of The Responsibilities of Influencers in Promoting Tie-Dye Motif Products Based on Copyright Law,” accessed February 2, 2021, <https://substantivejustice.id/index.php/sucila/article/view/90/50>.

TCE protection has been regulated through Copyright Law which confirms that the copyright on TCE is held by the State, unfortunately this arrangement is not sufficient considering that there are no rules in Copyright Law regarding the distribution of benefits that will be received by customary law community for the use of TCE. In the event that the *omed-omedan* tradition is carried out as a part of the festival which involves major industries or even foreign parties in its implementation, then those major industries or even foreign parties must obtain a permit and fulfill other obligations including but not limited to the distribution of benefits to customary law community in Banjar Kaja, Sesetan as the custodian.

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Law and Regulations

Law No. 28 of 2014 concerning Copyright

Law Number 5 of 2017 concerning the Advancement of Culture

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 Convention for the Safeguarding of the Intangible Culture