

Socio-Legal Review of The Implementation of Identification and Inventory of Communal Intellectual Property for Tourism Development

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Abstract

Introduction: Communal Intellectual Property can be used to support the development of Intellectual Property-based Tourism.

Purposes of the Research: The purpose of this study is to examine the effectiveness of the law in implementing the Identification and Inventory of Communal Intellectual Property as a form of preventive legal protection for Communal Intellectual Property (IPR) and government efforts in implementing the Identification and Inventory of Communal Intellectual Property to support Intellectual Property-based Tourism Development.

Methods of the Research: The research method used in this study is a socio-legal approach. The data analysis technique used is a qualitative descriptive analysis technique.

Results of the Research: The implementation of the Identification and Inventory of Communal Intellectual Property in Central Lombok Regency has not been effective. This is because the identification and inventory of Communal Intellectual Property (CIP) has not been implemented in an orderly manner by the local government/community so that legal certainty and justice are achieved for CIP owners/Communal communities. The Government Regulation has not been complied with and enforced. There is a discrepancy between the rules and their implementation. In addition, the level of community compliance, Law enforcement by law enforcement officers also has a major influence on the effectiveness of the law. Government efforts to overcome the ineffective implementation of Identification and Inventory, include making Regional Regulations that require each Village to identify and inventory Communal Intellectual Property, establishing Partnerships and Cooperation with third parties or managers in utilizing Communal Intellectual Property for the development of Intellectual Property-based tourism, Regional Governments must encourage investors to invest their capital in building Infrastructure and Facilities for Tourism Destinations based on Intellectual Property, Utilizing Technology and Digital Marketing for the development of Intellectual Property-based Tourism, and Regional Governments must focus and pay special attention to the Intellectual Property-based tourism industry.

Keywords: Legal Effectiveness; Communal Intellectual Property; Tourism.

Submitted: 2024-09-07

Revised: 2025-06-23

Accepted: 2025-06-26

Published: 2025-06-29

How To Cite: Abdul Atsar, Ida Surya, Lalu Guna Nugraha, and Saroj Jha. "Socio-Legal Review of The Implementation of Identification and Inventory of Communal Intellectual Property for Tourism Development." SASI 31 no. 2 (2025): 107-116. <https://doi.org/10.47268/sasi.v31i2.2315>

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INTRODUCTION

Basically, IP can be seen as two parts, namely personal IP and communal IP. Personal IP is something that should be upheld by individuals or legal entities privately. While Communal IP is the opposite of personal IP. Communal IP does not come from individuals but from a group of people or regions or countries. *Communal IP is an inseparable part of society, especially among the Indonesian people who consist of various ethnic groups spread from*

Sabang to Marauke.¹ Communal intellectual property refers to works that are the result of collective creation by a community, rather than individual creations.² Intellectual property owned by the Community is the identity or characteristic of the Community or region and has cultural values adopted by the region. Communal Intellectual Property Rights (CIC) are in the form of Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources (GR), and Geographical Indications (GI). The communal principle is characterized by: developing and emerging among the community, ownership and preservation are communal (shared), showing the identity and culture of a particular community³ Therefore, communal intellectual property is closely linked to society and exists within the general public, not privately.

The protection of communal intellectual property rights has added value because it is not based on the concept of “first come first serve” as is used in the general registration of individual property rights.⁴ The value of communal intellectual property is not only a value based on culture and morals but also an economic value in the communal intellectual property. This economic value can be an income for the region/village. Each region has communal intellectual property, Communal Intellectual Property (CIP) is intellectual property owned by the general public in a communal manner. CIP is a valuable asset that can advance the economy of a region/village⁵ Optimal management of regional/village intellectual property resources can provide material and immaterial benefits. As long as the village is able to manage the CIP well, the village will obtain economic value.

Article 1 number 1 of the Regulation of the Minister of Law and Human Rights 13 of 2017 regulates the meaning of Communal Intellectual Property (CIP), "in the form of wealth in the form of traditional knowledge, traditional cultural expressions, genetic resources and potential geographical indications. Communal intellectual property (CIP) is intellectual property owned by the general public that is communal in nature. Communal IP is based on the interests of the community. The name itself is communal, its basis is togetherness. IP produced from the community will be based on community welfare. This is the main point of why we need to increase our concern for Communal IP. Caring is not only about preserving but also protecting. It is different, but the essence is the same, namely for togetherness and to be enjoyed together.

Communal IP can be seen in various forms, for example: traditional knowledge of village communities in herbal medicine or traditional medicine procedures, geographical indication products originating from the region and related to natural products, indications of origin can become Communal IP products, namely with the existence of products produced by the community and produced so that they become characteristics of regional products. We can see indications of origin in various forms of superior regional products. The value of communal intellectual property is not only a value based on culture and morals

¹ M. Citra Ramadhan and Fitri Yanni Dewi Siregar, "Protecting Communal Intellectual Property In Indonesia: Constraints Faced By The Directorate General For Intellectual Property," *Kanun Jurnal Ilmu Hukum* 24, no. 3 (2022): 267-77, <https://doi.org/10.24815/kanun.v24i3.28098>. p. 268.

² Echa Cristi and Hamzah, "Legal Protection of Communal Intellectual Property as A Basic Capital for National Development Based on Local Wisdom," *Journal of Law and Social Change Review* 1, no. 1 (2025): 14-30, <https://jurnal.sshpublikasi.com/index.php/JLSCR/article/view/2>. p. 15.

³ Sudarmanto, *KI Dan HKI Serta Implementasinya Bagi Indonesia* (Jakarta: Gramedia Pustaka Utama, 2012). p. 21.

⁴ Robiatul Adawiyah and Rumawi, "Pengaturan Hak Kekayaan Intelektual Dalam Masyarakat Komunal Di Indonesia," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 10, no. 1 (2021): 1-16.

⁵ Zulkifli Makkawaru, "Perlindungan Kekayaan Intelektual Daerah Belum Optimal," *Clavia* 17, no. 1 (2019): 63-72, <https://journal.unibos.ac.id/clavia/article/view/1235>.

but also the economic value of the communal intellectual property. This economic value can be an income for the region/village. The core of economic rights in Communal IP is shared welfare.

Intellectual property rights management needs to be carried out by the community and government, especially intellectual property based on local wisdom. Local wisdom is the values that grow and develop in the community and in this local wisdom can be identified as intellectual property that is communal in nature.⁶ Proper IPR management will generate income for business actors, with the Intellectual Property Asset Management system. Starting from the identification of intellectual property assets, strategies for obtaining/registering Intellectual Property Rights to strategies for Commercializing Intellectual Property Rights to exploit the economic value of an intellectual property asset.

The research is considered important because it measures the extent to which the effectiveness of the law in implementing the Identification and Inventory of Communal Intellectual Property as a form of preventive legal protection for Communal Intellectual Property (IPR) so that the Intellectual Property of the West Lombok Community is not claimed by other regions or even other countries when Lombok tourism is already world-famous. Therefore, the government must make efforts to implement the Identification and Inventory of Communal Intellectual Property as one of the comprehensive steps in the form of preventive, repressive, and derivative protection. Preventive protection aims to minimize violations, repressive responding to violations that occur, and derivatives provide solutions or compensation for the injured party. This is considered necessary to support the Development of Intellectual Property-Based Tourism. So that the Communal Intellectual Property owned by the Central Lombok Community can be protected by moral rights and economic rights from other regions/other countries that will commercialize it without permission from the Communal community.

Communal Intellectual Property (CIP) Management is not only to obtain economic value but can also provide a distinctive feature for the region or village. Communal Intellectual Property Management, not only to obtain economic value, but also can provide a distinctive feature for a region or village. In addition, Communal Intellectual Property Management can be developed as a supporting force for Intellectual Property-based Tourism development because Tourism makes a great contribution both to GDP and to employment. Tourism is widely recognized as a significant and important economic activity in many parts of the world. It plays a crucial role in generating revenue, creating jobs, and fostering overall economic growth. Over the longer term, growth of tourism sector will continue to be strong so long as the investment and development take place in an open and sustainable manner.⁷ By developing intellectual property-based tourism, it will become a development model or strategy to add to the tourist destinations in the Lombok area, especially in Central Lombok Regency.

Yatini in her research entitled "Implementation of Communal Intellectual Property Inventory as an Effort to Protect Cultural Heritage in East Kalimantan. Where she discusses identifying the potential and constraints in the inventory of CIP in East Kalimantan Province

⁶ Yuli Prasetyo Adhi, Dewi Sulistianingsih, and Rini Fidiyani, "Pengelolaan Kekayaan Intelektual Berbasis Kearifan Lokal Sebagai Penguatan Budaya Literasi, Kreativitas, Dan Inovasi," *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal Of Legal Community Engagement)* 4, no. 1 (2021): 18–30, <https://doi.org/10.15294/jphi.v4i1.49934>.

⁷ Bogdan Sofronov, "The Economic Impact on Global Tourism," *Annals of Spiru Haret University. Economic Series* 17, no. 2 (2017): 127–39, <https://www.ceeol.com/search/article-detail?id=561416>. p. 127.

and explores the efforts of the East Kalimantan regional government in implementing the inventory of CIP.⁸ Meanwhile, Rindia Fanny Kusumaningtyas et al., discussed the results of legal counseling on the Identification and Inventory of Communal Intellectual Property for Village Apparatus and Communities in Bandungan District, the results of counseling and assistance provide insight development on the importance of identifying and inventorying culture included in Communal Intellectual Property.⁹ Meanwhile, the research conducted by the researcher is how effective the legislation is in implementing the Identification and Inventory of Communal Intellectual Property as a form of preventive legal protection for Communal Intellectual Property (IPR) and how the government's efforts in implementing the Identification and Inventory of Communal Intellectual Property to support Intellectual Property-Based Tourism Development.

METHODS OF THE RESEARCH

This research is a type of non-doctrinal legal study (socio-legal research). This socio-legal research has two characteristics, the first is conducting a study of laws and regulations and policies to explain the philosophical, sociological, and legal problems of written law. Second, socio-legal research uses an interdisciplinary approach, especially with the social sciences to explain legal phenomena in the social and cultural context in which the law is located.¹⁰ The statute approach is used to understand the rules on intellectual property law, especially traditional knowledge. The conceptual approach is used to understand the concepts of intellectual property rights. While the sociological approach is an approach or a method whose discussion of an object is based on the society in the discussion. Qualitative data analysis aims to understand, interpret, and draw conclusions from non-numerical data, which comes from interviews, field notes, or documents. This process involves several main steps, including data collection, data reduction, data presentation, and drawing conclusions.

RESULTS AND DISCUSSION

A. Effectiveness of Law in Implementing Identification and Inventory of Communal Intellectual Property

Registration of Communal Intellectual Property (CIP) can be done at the CIP Data Center managed by the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. In general, the requirements for registering CIP are as follows: (1) filling out the Communal Intellectual Property form with valid data; (2) making a stamped statement letter; (3) providing supporting data in the form of images, photos, videos, and others, as documentation; and there is no charge for Communal Intellectual Property inventory.

The IPR Inventory concept is the process of recording Communal Intellectual Property (CIP) in the form of traditional knowledge, expression of folklore, genetic resources and potential geographic indications.¹¹ If the Communal Intellectual Property inventory application has been approved, Directorate General of Intellectual Property will provide a

⁸ Yatini, "Pelaksanaan Inventarisasi Kekayaan Intelektual Komunal Sebagai Upaya Melindungi Warisan Budaya Di Kalimantan Timur," *Yuriska: Jurnal Ilmiah Hukum* 13, no. 2 (2021): 128–50, <https://journal.uwgm.ac.id/yuriska/article/view/1894>.

⁹ Rindia Fanny Kusumaningtyas et al., "Identifikasidaninventarisasikekayaanintelektual Komunal Bagi Perangkat Desa Dan Masyarakat Di Kecamatan Bandungan," *Abdi Massa: Jurnal Pengabdian Nasional* 3, no. 4 (2023): 11–20, <https://doi.org/10.69957/abdimass.v3i04.524>. p. 12.

¹⁰ Sulistyowati Irianto and Shidarta, *Metode Penelitian Hukum: Konstelasi Dan Refleksi* (Jakarta: Yayasan Obor Indonesia, 2011).

¹¹ Desak Putu Dewi Kasih et al., "Inventory of Communal Intellectual Property: Among Intellectual Property Right and Cultural Advancement," *SASI* 29, no. 1 (2023): 29–37, <https://doi.org/10.47268/sasi.v29i1.1162>. p. 33.

Communal Intellectual Property Inventory Registration Letter. The letter contains the following: name of Communal Intellectual Property, Indigenous Community, Type of Communal Intellectual Property, classification, location of Communal Intellectual Property, and inventory number. Some things to keep in mind when a Communal Intellectual Property will be inventoried are: 1) The main purpose of the inventory is to protect the rights of Indigenous Communities, in the sense that the hopes of Indigenous Communities are prioritized; 2) Ensure that the recorded information cannot be accessed carelessly, especially if it has been made in digital form; 3) Personal IP training is needed for Indigenous Peoples; 4) Customary law should be an important consideration in the process of access permits and profit sharing; 5) Indigenous Peoples must be involved in the process of granting access permits and profit sharing; 6) Should be translated into an international language; 7) If possible, show the benefits of a IP clearly.

Identification is an action that will be carried out with several processes such as searching, finding, researching, recording data and information about someone or something. Inventory is the recording or registration of what is considered important. Communal Intellectual Property is Intellectual Property that is owned by a group, unlike other types of Intellectual Property that are owned exclusively and individually. Communal Intellectual Property is a traditional cultural heritage that needs to be preserved, considering that this culture is the identity of a group or community. So what is meant by Identification and Inventory of Communal Intellectual Property is an act of finding, researching, recording data and seeking information about intellectual property owned by a particular group or community in this case the Central Lombok Community. Legal protection of IPR is obtained through a constitutive system and a declarative system. The constitutive registration system (first to file system) regulates that registration is a form of legal protection that creates legal certainty. One of the factors that is an obstacle in the implementation of the Identification and Inventory of Communal Intellectual Property, namely: Low knowledge about the importance of identifying and inventorying a cultural heritage as Communal Intellectual Property owned by the community in Sade Village, Pujut District, Central Lombok Regency is feared to cause problems in the field of Intellectual Property Rights, especially the problem of theft of cultural heritage by irresponsible parties. There are still many village officials and communities in Pujut District who have just realized the importance of Communal Intellectual Property Rights.

The effectiveness of law is an activity that shows a general problem formulation strategy, namely a comparison of legal reality with legal ideals. Specifically, the level between law in action and law in theory is seen, in other words, this activity will show the relationship between law in action and law in theory.¹² When someone says that a legal rule has succeeded or failed to achieve its goal, this is usually measured by whether its influence has succeeded in regulating certain attitudes, actions or behavior, so that it is in accordance with its goal or not.¹³ There are four factors that influence the effectiveness and functioning of law in society, namely: 1) The rule of law or the regulation itself. In the theory of legal science, there are three things that can be distinguished regarding the validity of law as a rule, namely: a) The rule of law applies legally, if its determination is based on a higher level rule or is formed on a basis that has been determined; b) The rule of law applies sociologically, if the rule is effective. This means that the rule can be enforced by the

¹² Soerjono Soekanto and Mustafa Abdullah, *Sosiologi Hukum Dalam Masyarakat* (Jakarta: Rajawali Pers, 1987).

¹³ Soekanto and Abdullah, p. 103.

authorities even though it is not accepted by the community (theory of power), or this rule applies because of public recognition; c) The rule of law applies philosophically, if it is in accordance with the ideals of law as the highest positive value.¹⁴ 1) Law Enforcers Law enforcers or people who are tasked with implementing the law have a very broad scope, because they include both direct and indirect involvement in the field of law enforcement; 3) Facilities/Facilities. Facilities are very important to make a particular rule effective. The facilities in question are primarily physical facilities that function as supporting factors; 4) Community members. One of the factors that causes a regulation to run effectively is the community members. This means that there is public awareness to comply with a regulation, the degree of compliance.¹⁵

Factors that make the implementation of the Identification and Inventory of Communal Intellectual Property of the Central Lombok community ineffective are: 1) the lack of understanding of Intellectual Property and the classification of Intellectual Property Rights; 2) the absence of regional regulations governing Intellectual Property Protection; 3) the absence of synergy between the central and regional governments, especially at the village and sub-district levels; 4) lack of observers who are moved to conduct an inventory and identification of Intellectual Property Rights in their area.

The spirit of the new concept promoted Gov.Reg. 56/2022 is not to prohibit other parties from using the Communal IP but to emphasise that inclusive rights apply in the protection of Communal IP.¹⁶ The effectiveness of the law can be seen from the extent to which Government Regulation Number 56 of 2022 concerning Communal Intellectual Property achieves its desired goals, namely the identification and integration of Communal Intellectual Property in an orderly manner by the regional government/community so that legal certainty and justice are achieved for CIP owners/Communal communities.

The Government Regulation Number 56 of 2022 concerning Communal Intellectual Property has not been complied with and enforced. There is a discrepancy between the rules and their implementation. In addition, the level of community compliance also greatly affects the implementation of these regulations. Law enforcement by law enforcement officers also has a major impact on the effectiveness of the law. Factors that influence can be influenced by various factors, such as social, economic, political, cultural conditions, and the level of public understanding of government regulations. The effectiveness of the law is not only seen from the existence of these government regulations, but also from how these government regulations are applied and implemented in community life. The implementation of the Identification and Inventory of Communal Intellectual Property Rights will not run effectively if training is not carried out first. Training on Personal Intellectual Property Rights for Indigenous Communities is useful when Indigenous Communities want to document Intellectual Property Rights. Thus, Personal Intellectual Property Rights as a result of the documentation in question (for example making video recordings) also belong to the members of the Indigenous Community themselves. In addition, the translation of the substance of Intellectual Property Rights into foreign

¹⁴ Zainuddin Ali, *Filsafat Hukum* (Jakarta: Sinar Grafika Offset, 2006).

¹⁵ Djaenab, "Efektifitas Dan Berfungsinya Hukum Dalam Masyarakat," *Ash-Shahabiah: Jurnal Pendidikan Dan Studi Islam* 4, no. 2 (2018): 148-53, <https://journal-uim-makassar.ac.id/index.php/ASH/article/view/191>. p. 151.

¹⁶ Miranda Risang Ayu Palar, Laina Rafianti, and Helitha Novianty Muchtar, "Inclusive Rights to Protect Communal Intellectual Property: Indonesian Perspective On Its New Government Regulation," *Cogent Social Sciences* 9, no. 2 (2023): 1-19, <https://doi.org/10.1080/23311886.2023.2274431>. p. 17.

languages and clear information about its benefits are very useful if there are foreign parties who are interested in utilizing a Intellectual Property Rights.

The ideal mechanism for conducting the Identification and Inventory of Communal Intellectual Property that can be carried out by the local government to be effective, the Local Government through the Tourism Office and/or through the Education and Culture Office or related agencies must provide legal counseling on the importance of legal protection for Communal Intellectual Property and its utilization in order to develop tourism in Central Lombok Regency and provide assistance to village governments in conducting the Identification and Inventory of Communal Intellectual Property. In addition, there must be regulations that specifically regulate the Protection of Communal Intellectual Property such as the Regulations of the West Java Provincial Government, the Tipan Regency Government, South Kalimantan and the West Manggarai Regency Government. In addition, the government must also make a Circular to the Village Government which requires the identification and Inventory of Communal Intellectual Property to be carried out and recorded at the Directorate General of Intellectual Property in each Village so that the local government has a database on Communal Intellectual Property recorded in the Intellectual Property database.

B. Government Efforts to Address Effectiveness in the Implementation of Identification and Inventory of Communal Intellectual Property to Support Intellectual Property-Based Tourism Development

The role of the government in protecting through the inventory of communal intellectual property in Central Lombok has not planned and implemented the documentation or recording process of communal intellectual property in its region so that the existing intellectual property is not managed optimally so that it is hoped that it will bring benefits to the community in the future.

The local government must make various efforts so that intellectual property is recorded in the Intellectual Property Database of the Directorate General of Intellectual Property (DJKI). The local government must cooperate with the Regional Office of the Local Ministry of Law to conduct an inventory and identification of intellectual property through digital reporting. The local government should form a unit or institution that handles this issue. It can be through the education and culture office or tourism office in each region.

Digitalization is one concrete way for the Indonesian state to make efforts to inventory and database communal intellectual property. Digitalization is inevitable with the very fast information technology conditions.¹⁷ As a property right, of course the owner of the property (including the ownership of community property) has the right to do, use, exploit its economic value, sell its external products, manage new creations resulting from its modifications, and so on. This right can also be held by a rights holder other than the owner of this intellectual property right through the granting of rights through a license which of course has an economic effect in the form of royalties.

The role of the government in developing and managing tourism based on Communal Intellectual Property is to provide infrastructure that displays the culture or characteristics of the tourist area, expand various forms of art and creative performance facilities,

¹⁷ Dewi Sulistianingsih, Yuli Prasetyo Adhi, and Pujiono, "Digitalisasi Kekayaan Intelektual Komunal Di Indonesia," *Seminar Nasional Hukum Universitas Negeri Semarang* 7, no. 2 (2021): 645–56, <https://proceeding.unnes.ac.id/snh/article/view/723>.

coordination activities between government officials and the private sector, regulation and general promotion to other regions and abroad.

The village government must also continue to develop tourism villages based on Communal Intellectual Property which have great potential to become a source of economic income for local communities and an attractive cultural attraction for tourists. Efforts made by the local government include: 1) Making Regional Regulations and even if necessary village regulations that require each village to identify and inventory Communal Intellectual Property; 2) The local government must establish Partnerships and Collaborations with third parties or custodians in utilizing KIK to develop tourism based on Intellectual Property (IP Tourism); 3) the local government must encourage investors to invest in building Infrastructure and Facilities for Tourism Destinations based on Intellectual Property; 4) Utilizing Technology and Digital Marketing for the development of Tourism based on Intellectual Property; 5) Local governments must focus and pay special attention to the culture-based tourism industry and intellectual property (Culture Tourism and IP Tourism).

CONCLUSION

The implementation of the Identification and Inventory of Communal Intellectual Property in Central Lombok Regency has not been effective. This is due to: 1) lack of understanding of Intellectual Property and the classification of Communal Intellectual Property (CIP); 2) the absence of regional regulations governing the Protection of Communal Intellectual Property; 3) the absence of synergy between the central and regional governments, especially at the village, sub-district and district levels; 4) lack of observers who are moved to conduct an inventory and identification of Communal Intellectual Property in their regions. Government efforts to overcome the ineffectiveness of the implementation of the Identification and Inventory of Communal Intellectual Property to support the Development of Intellectual Property-based Tourism, include: 1) Making Regional Regulations and even if necessary village regulations that require each village to identify and inventory Communal Intellectual Property; 2) The regional government must establish Partnerships and Collaboration with third parties or custodians in utilizing Communal Intellectual Property to develop Intellectual Property-based tourism (IP Tourism); 3) Local Governments must encourage investors to invest in building Infrastructure and Facilities for Tourism Destinations based on Intellectual Property; 4) Utilizing Technology and Digital Marketing for the development of Tourism based on Intellectual Property; 5) Local governments must focus and have special attention in the tourism industry based on culture and Intellectual Property (Culture Tourism and IP Tourism). Based on the conclusions above, the suggestions that researchers can provide are as follows: 1) The local government of Central Lombok Regency should create regional regulations to protect Communal Intellectual Property in Central Lombok Regency so that it can support development in Central Lombok based on intellectual property or IPTourism; 2) The local government of Central Lombok Regency must make various efforts to overcome obstacles and find a formulation to identify and inventory Communal Intellectual Property, by creating a database on communal intellectual property and recording it at the Directorate General of Intellectual Property and utilizing and managing Communal Intellectual Property to become a new tourist destination.

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