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Inventory of Communal Intellectual Property: Among IPR or Cultural Advancement

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<p>Article Info</p> <p>Keywords: Legal Protection; Traditional Knowledge; Sui Generis</p>	<p>Abstract</p> <p>Introduction: This article is to examine the arrangement of the Inventory of Communal Intellectual Property (ICP) in the perspective of the Culture Advancement or IPR and to locate the ideal future concept regarding the Inventory of Communal Intellectual Property (ICP).</p> <p>Purposes of the Research: The purpose of this research is to analyze the Communal Intellectual Property (ICP) inventory concept in the perspective of IPR or Cultural Advancement.</p> <p>Methods of the Research: This research uses normative legal research with the statutory approach and conceptual approach</p> <p>Results / Findings / Novelty of the Research: In this research was found that the inventory concept in the Cultural Advancement Law is more sustainable rather than Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017, subsequent to the inventory is conducted and it will be continued to the next stage are securing, maintaining, salvaging, and publishing</p>	

1. INTRODUCTION

Indonesia is a country rich in various languages, religions, beliefs, ethnic groups, and customs. Indonesia has hundreds of ethnic nations and even thousands. Every ethnic group has their own culture and customs. Preserving the culture and customs of each ethnic group

is momentous because customs are an inherent identity of an ethnic group. If culture and customs disappear, so will ethnic identity.¹

Cultural diversity and traditions are born from the life process of Indonesian people who depend on their natural conditions. Nature and the development of Indonesian people's life cannot be separated, because of the natural conditions affect people's lifestyles which then result in a diverse culture. Apart from natural conditions, the culture also born by the intellectual abilities of the Indonesian people who had always creative and passionate. The creation of human taste and intention in a community such as social phenomenon will be created a culture and tradition. All of that creativity then produces culture and tradition as a form of intellectual works, one of which is traditional culture.²

Culture is a valuable investment for the future of the nation's civilization development. Culture as a nation's investment is not only calculated through statistical figures but also should be seen as a cultural object in the form of tangible and intangible. Cultural Human Resources, as well as other data related to culture which is a valuable asset of Indonesia and will become a component to build a nation's civilization. Traditional culture is one of intellectual work which needs to be protected. Traditional culture that known as the Indonesian identity can be utilized economically for the development and social welfare. One form of the traditional culture intellectual work is the expression of folklore.³

Expression of folklore are related to a collective entity, namely a group of people, a society, a small group, or indigenous people. Expression of folklore have no individual nature since they express a shared cultural identity. A society considers its expression of folklore an important part of its cultural heritage.⁴

Indonesia advances its traditional cultures in ways of world civilization and makes Culture as new form of investment assets to build the nation's future and civilization for reaching of national objectives as mandated by the 1945 Constitution of the Republic of Indonesia. To advance Indonesian National Culture in the dynamics of world development, the strategic ways are needed cultural preservation efforts. According to that, at this time the Government has issued a regulation regarding the Culture Advancement that enacted in the Law Number 5 of 2017 concerning the Culture Advancement (hereinafter referred to as the Culture Advancement Law). The advancement means Protection, Development, Utilization, and Guidance in order to create an Indonesian society that is politically sovereign, economically independent, and has a personality in culture.⁵

The development of cultural protection continued to grow until on July 14, 2017, the Ministry of Law and Human Rights of the Republic of Indonesia issued *Permenkumham 13 of 2017 concerning Intellectual Property Data* (hereinafter referred to as *Permenkumham 13 of 2017*), the purpose of issuing this ministerial regulation is to protect communal intellectual property that still exists. However, after examining the Culture Advancement Law with

¹ Perlindungan Ekspresi Budaya Tradisional, Reh Bungana Beru Perangin-angin, Fakultas Ilmu Sosial Universtias Negeri Medan, 2017, Seminar Nasional Tahunan.

² Nisara, Penguasaan. "Penguasaan Negara Atas Ekspresi Budaya Tradisional Dalam Perspektif Hak Cipta di Indonesia." *Jurnal Hukum PRIORIS* 2, no. 4 (2016): 246-55.

³ Wedhitami, Bayangsari. "Upaya Perlindungan Ekspresi Budaya Tradisional Dengan Pembentukan Peraturan Daerah." *Legal Reform* 9, no. 2 (2014): 32-48.

⁴ Kusuma, Purnama Hadi, and Kholis Roisah. "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 107-20.

⁵ Marina, Liza, and Dessy Sunarsi. "Kepastian perlindungan hukum kesenian tradisional sebagai ekspresi budaya tradisional dalam menunjang kepariwisataan Indonesia." *Jurnal Industri Pariwisata* 2, no. 1 (2019): 27-35.

Permenkumham 13 of 2017, there are similarities between both regulations. Those regulations both regulate the inventory of traditional cultural objects, namely the notion of communal intellectual property has similarities with the purpose of objects protected in Culture Advancement Law.

The definition of Communal Intellectual Property (CIP) based on Article 1 Number 1 *Permenkumham 13 of 2017* is wealth in the form of traditional knowledge, expression of folklore, genetic resources and potential geographical indications. It further regulates in Article 5 of the Culture Advancement Law, that the object of protection is in the form of oral traditions, manuscripts, customs, rites, traditional knowledge, traditional technology, arts, languages, folk games and traditional sports. According to the elucidation of the protection as stipulated in *Permenkumham 13 of 2017* and Culture Advancement Law shall cause overlapping authorities, especially in conducting an inventory because the inventory object will be inventoried twice. As of, it will be impacted to the authority in each authorized body, because it is conducted by two different ministry institutions. In the Culture Advancement Law will be conducted by the Minister of Education and Culture through the Integrated Cultural Data Collection system, meanwhile in the *Permenkumham 13 of 2017* inventory will be conducted by the Minister of Law and Human Rights through the Communal Intellectual Property Data Center.

According to the abovementioned, the issues in this research are how to regulate the communal intellectual property inventory concept based on the perspective of IPR and Cultural Advancement and how the future ideal concept of inventorying communal intellectual property.

2. METHOD

To discuss the issues discussed in this research uses a normative legal research method which is conducted by positioning legal norms as the object of research, in this case by conducting research on conflict norms regarding the regulation of Communal Intellectual Property (CIP) inventory obligations in the IPR Perspective or Cultural Advancement. Therefore, this research is a normative legal research method, the approach used in this research is a statutory approach and a conceptual approach. The technique of collecting legal materials is carried out through literature research by understanding and examining the substance content contained in each legal material. The legal materials used in this research consist of primary legal materials which include statutory regulations that have a binding and coercive nature such as the Culture Advancement Law, *Permenkumham 13 of 2017*, and other related regulations as well as secondary legal materials consisting of books, legal journals, and other relevant legal papers. The analytical techniques used in the legal arguments used in this research are comparative techniques, argumentative techniques, and prescriptive techniques.⁶

3. RESULTS AND DISCUSSION

⁶ Diantha, 2016, I Made Pasek. *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*.n hlm. 12

3.1. Arrangement of the Communal Intellectual Property Inventory Concept Based on the Intellectual Property Rights and Cultural Advancement Perspective

According to the KBBI, inventory is the recording or registration of office property (schools, households and so on) used in carrying out tasks and also means recording or collecting data (about activities, results achieved, public opinion, newspapers, culture and so on). Inventory is fundamental stage in recording goods or objects that are considered important, such as culture.

Culture as a result of learning cycle shall continue to develop along with the learning outcomes obtained by humans, but cultural development certainly does not mean eliminating the roots of its authenticity. "This view of life (believes) or norms and values is an absolute element in a great culture and civilization everywhere, and therefore is an absolute ingredient as well."⁷

Culture is an important thing to be protected with the aim of maintaining the identity of a nation, therefore Indonesia continues to protect and preserve culture, through various ways, one of which is making rules regarding cultural preservation, which are contained in the Cultural Advancement Law. Culture based on Article 1 point 1 of the Cultural Advancement Law is everything related to creativity, taste, initiative, and the work of the community, the objects of cultural advancement based on Article 5 of the Cultural Advancement Law are in the form of oral traditions, manuscripts, customs, rites, traditional knowledge, traditional technology, arts, languages, folk games and traditional sports.⁸

Judging from the object of cultural advancement, it can be seen that these objects have similarities with objects of Intellectual Property, especially Communal Intellectual Property (CIP). Article 1 number 1 of the *Permenkumham 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." If further explained, examples of traditional knowledge are technical skills (know how), skills, innovations, concepts, learning, agricultural knowledge, technical knowledge, ecological knowledge, knowledge of medicine including related drugs and

⁷ Edi Sedyawati, 2007, *Budaya Indonesia, Kajian arkeologi, seni dan sejarah*, Jakarta: PT. RajaGrafindo Persada, h. 55.

⁸ Purba, Eva Juliana, Akbar Kurnia Putra, and Budi Ardianto. "Perlindungan Hukum Warisan Budaya Takbenda dan Penerapannya di Indonesia." *Uti Possidetis: Journal of International Law* 1, no. 1 (2020): 90-117.

healing procedures, as well as knowledge related to resources of genetics, community customs, rites (magical),⁶ celebrations, traditional economic systems, social organization systems, knowledge and behavioral habits regarding nature and the universe, traditional medicine, and/or skills in making traditional crafts, traditional food/drinks, modes of transportation traditional (Article 3 *Permenkumham 13 of 2017*).

What is meant by expression of folklore are⁴ textual verbal, music, motion, theatre, visual arts, traditional ceremonies, architecture, landscapes, and/or other forms of expression according to developments (Article 4 paragraph (1) of *Permenkumham 13 of 2017*). What is meant by genetic resources are plants/plants or parts thereof that have real or potential value, animals/animals or parts thereof that have real or potential value, micro-organisms or parts thereof that have real or potential value (Article 5 *Permenkumham 13 of 2017*). And examples of potential geographic indications are natural resources, handicrafts; and/or industrial products (Article 6 *Permenkumham 13 of 2017*). Based on this explanation, it can be seen that there are similarities between objects in the culture advancement and objects from CIP.

The Advancement Culture Inventory concept, namely in the Advancement Culture Law, a concept created by the government to protect culture, in addition to the inventory in the Advancement Culture Law, it also regulates the development, utilization and guidance of cultural objects. the concept of inventory as regulated in the Advancement Culture Law is conducted through the Integrated Cultural Data Collection System, which has several stages, namely⁴ recording and documenting, determining and updating data, and carrying out an inventory carried out by the Minister of Education and Culture.⁹

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. Regulations regarding CIP inventory are regulated in *Permenkumham 13 of 2017*, the purpose of protecting, preserving, developing, and/or exploiting Communal Intellectual Property. The inventory method regulated in the *Permenkumham 13 of 2017* is by field/feasibility studies, administrative completeness, proposing the determination of inventory results and/or data exchange.

Based on the abovementioned, there is a conflict of vertical norms, namely between the Advancement Culture Law and *Permenkumham 13 of 2017*, regarding the inventory

⁹ ⁴¹zani, Andhika Putra. "Peran Pemerintah Dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia." *Jurnal Hukum & Pembangunan* 50, no. 4 (2021): 956-978.

obligations that are each conducted by the government, namely the Advancement Culture Law observes through the Minister of Education and Culture, and is inputted through the Integrated Cultural System, while in the *Permenkumham 13 of 2017* mandated through the Minister of Law and Human Rights and inputted through the CIP Data Center, in addition to this the object of protection of each regulation has similarities, namely there is traditional knowledge.

3.2. Upcoming Arrangement of the Communal Intellectual Property Inventory Concept Based on the Intellectual Property Rights and Cultural Advancement Perspective

The renewal of the concept of cultural inventory must be carried out in the future so as not to cause overlapping norms between the Advancement Culture Law and *Permenkumham 13 of 2017*. The update was carried out by examining the concept of cultural protection of each regulation, in *Permenkumham 13/2017* only regulates the inventory of Communal Intellectual Property (CIP) which is also part of culture, while in the Advancement Culture Law it does not only regulate inventory but starts from the existence of protection which consists of stages of inventory, security, maintenance, rescue, publication. Furthermore, there is a part in the development, utilization, and coaching.

Protection of Cultural Objects is the Second Part of CHAPTER I The advancement of what is written in the Advancement Culture Law, as explained in the Advancement Culture Law. The protection of Cultural Objects that regulated in Articles 16 to 21 of the Advancement Culture Law consist of recording and documenting, determination and updating of data that will be connected to the Integrated Cultural Data Collection System. The inventory shall be conducted by the authority of the Central Government or Regional Government. The inventory process as well as regulated in Articles 22 25 of the Advancement Culture Law which essentially states the Government the Central and Regional Governments are obliged to protect cultural objects.

The purpose of those regulation above is to prevent any claims on the intellectual property by foreign parties regarding the Cultural Advancement Object. Upon the maintenance process as regulated in Articles 24 to 25 of the Advancement Culture Law, states that maintenance is conducted by the Central Government and/or Local Governments. The maintenance stage has its aim to avoid any damage, loss or destruction to the Cultural Advancement Object. The next stage of the inventory process is the rescue process as regulated in Article 26 to Article 27 which states the Cultural Advancement Object is conducted by means of revitalization, repatriation and/or restoration. The last stage is Protection Section, namely Publication which is regulated in Article 28 and Article 29 of the Advancement Culture Law that explains the Central and/or Regional Governments are obliged to publish on the inventory, security, maintenance and rescue of the Cultural Advancement Objects.

The Advancement Culture Law mandates the Government or private body to conduct any activities in such away to develop cultural elements (Article 30 Advancement Culture Law). The development activity means conducted any kinds of efforts such as, 1. Publishing or publication; 2. Research and development; and 3. Enrichment of diversity

from cultural elements. Dissemination activities are intended as of culture is not confined to its own territory. Culture shall be known by others outside its territory.

Research and development on the Cultural Advancement Objects is momentous for the culture promotion. For example, research and development conducted on traditional knowledge such as traditional medicine will not preposterous moment in development of pharmaceutical field. If this going well, it will be impacted the development of traditional medicine wealth that will fast grow up and supported the future of pharmaceutical field. In this case, the 2016 Patent Law has provided regulatory space in the form of an acknowledgment of traditional wisdom in the field of medicine.¹⁰ Article 26 paragraph (1) of the 2016 Patent Law affirms that "If the invention is related to and/or derived from genetic resources and/or traditional knowledge, it must be stated clearly and correctly the origin of the genetic resources and/or traditional knowledge in the description".

According to above stated, to know any inventions came from the development of traditional knowledge, it should be recorded in the database on traditional knowledge. Without those database, it is quite hard to prove that an invention is derived from the traditional knowledge's development.¹¹ In other words, the implementation of the inventory of cultural promotion objects is directly related to the implementation kinds of laws in the field of intellectual property such as the *Permenkumham 13 of 2017*. Furthermore, regarding enrichment of diversity activities, it is need any effort to maintain cultural diversity in Indonesia. According to the data that undeniable fact, in Indonesia have various ethnic groups as the cultural diversity. However, enrichment also means enriching various cultures through the process of assimilation, acculturation, adaptation, and innovation. Simply, the culture becomes more dynamic in line with the development of science and technology. Maybe it will be not best ways when the medicine science has developed in such a way, while people still use a superstitious-based treatment system. Culture is always be opened for any kinds of innovation actions.

The Advancement Culture Law opens up the widest opportunities for Indonesian society to take any benefits of the cultural promotion object such as to conduct such knowledge-based research, which in turn can produce useful inventions in field of traditional medicine knowledge. In the field of art, everyone is given the opportunity to use traditional arts as raw materials for creative works in the modern era such as the art of the carrying community can be used as material or a source of inspiration in creating new works, which may have the opportunity to get Copyright protection.¹² It is just need the cultural promotion object shall be done without destroying the noble values and wisdom that involved. In addition, the utilization conducted by large companies or foreign parties shall be done by first obtaining permission from the public authorities. Such permits shall be granted, with following terms and condition, namely: (1) prior inform consent; (2)

¹⁰ Sardjono, Agus. "HKI dan UU Pemajuan Kebudayaan." *JIPRO: Journal of Intellectual Property* (2019): 45-61.

¹¹ Puspitasari, Wina. "Perlindungan hukum terhadap pengetahuan tradisional dengan sistem perizinan: aspekif negara kesejahteraan." *Padjajaran Journal of Law* 1, no. 1 (2014). 38-56

¹² Atsar, Abdul. "Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta." *Law Reform* 13, no. 2 (2017): 284-291.

sharing of benefit arising from the utilization; (3) acknowledgement as stipulated in the Article 37 Advancement Culture Law.¹³

Promotion is an attempt to introduce Indonesian culture to the international society. The promotions of Indonesian culture shall be notified to other nations that Indonesia have a wide diversity of culture and this situation will generate international interest to the Indonesian cultural heritage. When the other nations interest to the Indonesian cultural heritage, it will be a good impact to other sector in such a way, which in the business realm will become the superior product of the Indonesian nation. As a superior product, cultural heritage has high competitiveness, precisely because of the its uniqueness and quality. The Indonesian government has even established a non-ministerial institution, which is authorized to promote any form of creativity industry or nation's society through the creative economy policies, which in turn will contribute to constant income of national GDP.

Article 24 paragraph (3) Advancement Culture Law confirms that the maintenance of cultural promotion objects is conducted to prevent damage, loss or destruction of its. Whereas, preservation is an effort to prevent the extinction of the culture of a certain ethnic group. The Advancement Culture Law obliges the Government to conduct conservation or maintenance. Likewise, the wider community is also given the opportunity to actively participate to preserve cultural advancement objects (Article 24 paragraphs (1) and (2) of the 2017 Advancement Culture Law). Conservation efforts include the following activities (Article 24 paragraph (4) Advancement Culture Law): "Maintaining the nobility and wisdom of cultural promotion objects; a. Using objects of cultural advancement in daily life; b. Maintaining the diversity of the promotion of culture objects; c. Turn on and maintain the cultural ecosystem; d. Inherit the cultural advancement object to the next generation."

According to Umar, strategy can be defined as a process of determining planning by leaders and control holders in an organization that focuses on the direction of achieving long-term goals, accompanied by ways or efforts to achieve these goals.¹⁴ According to Waryoko, strategy is a response conducted by every organization continuously in dealing with any problems that arise. The strategy is also conducted in an adaptive manner that is adapted to the current situation and conditions, both the organization's internal conditions and external situations and conditions.¹⁵ The strategy intended in this research is a strategy based on the promotion of culture by considering the ten objects of cultural promotion contained in Advancement Culture Law as a strategic consideration in taking steps to protect, maintain, and utilize cultural objects.

The purpose of the Advancement Culture Law is to increase cultural resilience and the contribution of Indonesian culture in the midst of world civilization. According to the definition of Lemhannas, "Cultural Resilience is a dynamic condition of a nation, containing tenacity and resilience which contains an ability to develop national strength in facing and overcoming all challenges, threats, obstacles and disturbances, both coming from outside and from within, directly or indirectly, directly endanger the preservation of culture. Thus, culture will encourage the creation of increased awareness of community development which is packaged in local values from community groups."¹⁶

¹³ Sardjono, Agus. "HKI dan UU Pemajuan Kebudayaan." *JIPRO: Journal of Intellectual Property* (2019): 45-61.

¹⁴ Umar, H, 2003, *Metode Riset Perilaku Organisasi*, Jakarta: Gramedia Pustaka Utama. Hlm: 31.

¹⁵ Waryoko, B.S., 2009, *Strategi Pemberdayaan Pemuda Indonesia (Studi Kasus Pemuda Di Organisasi Kemasyarakatan Pemuda (OKP) Di Provinsi DKI Jakarta)*, Universitas Indonesia, Tesis. Hlm: 9

¹⁶ Lemhannas, 1991, *Kewiraan Untuk Mahasiswa*, Jakarta: Gramedia Pustaka Utama.

Therefore, in this case the researcher provides the concept that to avoid overlapping norms, authority between ministries and the same data in different systems²⁴, namely the Integrated Culture Registration System and CIP Data Center, the inventory is carried out in accordance with the provisions of the Advancement Culture Law because in the Advancement Culture Law it is not³² only regulates inventory but protection to guidance, but the cultural data can be confirmed to the Ministry of Law and Human Rights if the cultural object is included in the CIP.

4. CONCLUSION

According to the discussion abovementioned, it can be concluded that the inventory is the first step for cultural protection because the inventory will be recorded regarding the culture. Regarding the inventory arrangements regulated in Culture Advancement Law and *Permenkumham 13 of 2017*, whereas the Minister of Law and Human Rights has regulated the inventory of CIP on its regulation, however the discussion shown that CIP is part of Culture, as of the future concept of Culture Advancement should be protected by the Culture Advancement Law because the protection is more gradual and broad, not only limited to inventory, but also protection to cultural development.

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