

## **Exploring Intellectual Property Protection for Cultural Based Creative Industries and Grassroots Innovation as Competitive Advantage for Indonesia in Global Market**

<sup>1</sup>Dr. Ranti Fauza Mayana, SH and <sup>2</sup>Tisni Santika SH, MH  
<sup>1</sup>Faculty of Law, Padjadjaran University, Bandung, Indonesia  
<sup>2</sup>Faculty of Law, Pasundan University, Bandung, Indonesia

---

**Abstract:** Creativity is becoming a key driver of local and global economic growth and the economic development. The cultural based innovations in a rich cultural nation like Indonesia highly depend on the synchronization of the local creativity, technology and cultural diversity. The aim of this study is to explore cultural based creativity which is provides endless possibilities to create many innovations mostly consist of adaptation based on the existing cultures. The “grassroots” innovations in Indonesia represent the informal sector innovations which have been developed by low and middle class society at grassroots to provide solutions for their own problems. In this case current Indonesia intellectual property should be able to accommodate protection for the innovations which are adapting the existing cultural traditions and have low level of novelty and inventiveness. Therefore, it is advisable for Indonesia to focus its own intellectual property system which can provide access of intellectual property rights to the cultural based innovators so that they are having access to intellectual property protection and able to reap the fruitful benefit of their creativity and at the end promote cultural based industries as the proper beneficial sector and competitive advantages regarding Indonesia’s position in global market.

**Key words:** Cultural based industries, grassroots innovation, intellectual property rights, competitive advantage, global market

---

### **INTRODUCTION**

**Statement of the problems:** Creative and cultural based economy is the new economic concept based on idea and creativity, comes from human creation and knowledge including cultures. It plays an important role in upgrading socio-economic potential of activities that trade with creativity, knowledge and information. Creative sectors across the world are increasingly recognizing its importance as a generator of jobs, wealth and cultural engagement. The main cores of creative economy are the cultural based creativity and creative industries that lie at the intersection of arts, culture, business and technology. UNCTAD’s 2008 report creative economy suggested a more inclusive definition which brought this term into popular use and recognized the wider societal impact: the interface between creativity, culture, economics and technology as expressed in the ability to create and circulate intellectual capital with the potential to generate income, jobs and export earnings while at the same time promoting social inclusion, cultural diversity and human development. This is what the emerging creative economy has already begun to do. In creative economy, a country

should impose its advantages related to the availability of resources, cultures, knowledge and creativity. According to the Competitive Advantages of Nation theory by Economist Michael Porter, a Harvard University Professor, National Competitive Advantage (NCA) is basically an evaluation of how competitively a nation participates in international markets consist of four key factors that can modify four ingredients to become more competitive. The four ingredients are the availability of resources, the information used in deciding which opportunities to pursue, the goals of individuals and the innovation and investment pressure (Porter, 1990).

Indonesia is the 4th largest population country in the world with a very high variety of natural resources that provides high choices of utilization (Master plan of Acceleration and Expansion of Indonesia Economic Development 2011-2025, Jakarta, 2011). The fact that Indonesia is naturally and culturally rich should be the key points in fostering and promoting cultural based creative industries.

Cultural based creative industries have a very close relation and strongly linger to the society upgrading. The cultural richness provides an endless possibility of

grassroots innovations based on culture. Grassroots innovations firstly came as community solutions for sustainability but further can offer promising new ideas and practices since the innovation found very universal and practical. Grassroots innovation perceived as the more effective solution for the problem faced by low-level and middle class society.

Within its huge potentials, grassroots innovations have their own challenge to face. First their innovations mostly are locally-made in informal sector by the local inventors who are lack of awareness of their own rights of legal protection and access to industrial scale of product development. Secondly but not least important challenge is that the cultural based innovations are not well-protected by the current Intellectual property regime in Indonesia for being accused as having a low level of novelty and inventive step, whereas in the fact, the traditional knowledge and grassroots innovation can create a dozen or ten times value added to product and with the collaboration of local creativity and cultural diversity Indonesia should be able to generate economic growth sustainably in every level class of society.

#### **Objectives:**

- To identify the relationship between Indonesia's natural and cultural richness and the potencies of cultural based industries.
- To identify the proper and suitable Intellectual Property Rights Protection for cultural based products.
- To identify the competitive edge of Indonesia's cultural based creative industries in global market

**Significance of the study:** This research project will aim towards finding the relationship between Indonesia's cultural richness and the potential of grassroots innovation in creating cultural based industries as the forming pillar of creative economy also identify the proper and suitable measures of protecting the cultural base products with intellectual property rights and also to identify the competitive edge of Indonesia's cultural based creative industries in global market. The result from this research can be adapted and be useful in terms of society upgrading in terms of human resources, natural resources role in product development in the frame cultural based creative industries.

#### **Theoretical study**

**Intellectual property:** Intellectual property refers to creations of the mind: inventions; literary and artistic works and symbols, names and images used in commerce. Intellectual property rights are the exclusive rights

granted by the government as the result obtained from human intellectual activity and as a sign that it is has intangible and economic value used in business activities. Intellectual property rights is a form of tribute to the innovators of the work which are also expected to encourage the innovation (Ministry of Industry, 2007).

Intellectual property is divided into two categories: Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications. Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings and broadcasters in their radio and television programs.

**Cultural based creative industries:** "Culture" is that complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society (Avruch, 1998).

Undeniably, culture and creativity has been the bond that binds the society and the nations but in this knowledge based economy era, culture and creativity are much more than that they are catalyst for development that millions of people across the world are make a living out of them. Irina Bokova The Director General of UNESCO stated that the cultural and creative industries has capitalizing US\$2,250 billions and nearly 30 million jobs worldwide and become a major drivers of the economies of developed as well as developing countries (Anonymous, 2008). Indeed, they are among the most rapidly growing sectors worldwide. It can forge a better future for many countries around the globe.

Cultural knowledge and art can be the source of creativity with considerable potential in industrial sector but despite the considerable potentials, the cultural based creativities remain undervalued, unrecognized and unprotected especially in terms of their capability to be the driver for grassroots innovations and their urgency to be acknowledged and protected as the part of intellectual property.

**Grassroots innovation and creative economy:** Grassroots innovation is defined as innovative product and process created at the bottom level of society, mostly due to necessity, hardship and challenges in their daily life (Gupta, 2007).

Grassroots innovation strongly connected with traditional knowledge that originates from intellectual

activity in a wide range of social, cultural, environmental and technological contexts; commercialization of grassroots innovation product are the important key to emerge creative economy as the new economic concept based on ideas and creativity comes from human creation and knowledge including cultures. Creative economic focused on goods and services based on skill, talents and creativity as intellectual property.

## **MATERIALS AND METHODS**

This research is preceded by studying and identifying the literature on theories and concept related to the theme discussed. The method is qualitative research characterized by its aims which relate to understanding some aspect of social life in exploring the possibilities of intellectual property rights law to be enacted in order to protect the cultural based product as the main core of grassroots innovation. This methods is aim to provides information about the “human” side of this issue.

Qualitative methods are also expected to be effective in identifying the problems in intangible forms such as social norms, socioeconomic phenomena, cultural value and the society’s awareness of their rights and role in determining local economic growth. This qualitative research also expected to be able to interpret the appropriate legal protection of cultural base intellectual property products and provide recommendations for the better system as the conclusions

## **RESULTS AND DISCUSSION**

**Identification of the relation between Indonesia’s cultural richness and cultural based industries potential:** Consisting of >17,000 islands, Indonesia, the world’s largest archipelagic country in the world, lies across the equator. It is situated southeast off the Asian mainland and northwest of Australia with a population of approximately 245 million people with 300 ethnic groups living on different islands. In addition to its multiethnic background, Indonesia’s unique culture is rooted in the country’s history as an outpost of Malay, Chinese, Indian, Arab and Dutch explorers, colonists and traders.

The cultural diversity is the inevitable source of creation, combining with traditional knowledge can be used to create and produce the useful products and processes that can be industrialized in the form of grassroots innovations.

The examples of considerable potencies of natural and cultural richness grassroots innovations in Indonesia

can be found in herbal medicines. The fact that 40% of western pharmaceutical products are found to contain Asian plant extract alone, with the USD 43 Billions of estimated monetary benefit of herbal medicine in global market and 5% up to 15% of annual growth.

Another potential example of promising grassroots innovation is Angklung, a product originates from traditional knowledge with plenty of commercialization potential with intellectual property approaches for example copyrights for a specific music creation using Angklung as the instruments, books on how to play the Angklung in specific version (not in general), build business potential with local empowerment like had been doing by Saung Angklung Udjo, create the home-based or locally made industries of Angklung production, or apply the unique characteristics of Angklung to another potential products.

Another example is Batik. Batik is a masterpiece of our cultural heritage which has continued to flourished over the years and has shown signs of becoming even more widespread boosted by the dynamic development in technology, aesthetics and economy. Batik has developed to be an important industry that contributes considerably to the Indonesian economy through export and has the huge possibility to expand Indonesia’s share in the world market.

**Identification of proper and suitable intellectual property rights protection for cultural based products:** In a short point, cultural based products mostly produced by the combination of cultural and human creativity. Cultural as the common heritage of mankind lies in public domain which makes culture as common property. Human creativity adds some values to the cultural knowledge and forming useful products and beneficial processes. Creativity comes from intellectual effort to solve the problem, fulfill the needs or even create a whole new product. As mentioned above, Intellectual property rights are the exclusive rights granted by the government as the result obtained from human intellectual activity.

This two important element of cultural creativity as common property and intellectual property as the exclusive rights with private individual dimension raised a problem in combining both to create the protection. Differ from another intellectual property for example copyrights, patent, industrial design and trademark; these cultural based products are lack of novelty, originality and inventive step since they are taking long periods existing cultures as the inspiration.

Based on current condition in Indonesia, there are possibilities to use Geographical Indication as the measures to protect cultural based-products. Since,

traditional knowledge and grassroots innovations are collectively owned by a community (through the concept of ownership may differ from the modern/Western concept) and are not the private or individual property. Traditional knowledge and grassroots innovations also tend to have strong local and dimension and bears cultural significance for its holder and large scope of society.

A geographical indication is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin (Geographical Indication: an Introduction WIPO Publication WIPO Publication No. 952(E) ISBN 978-92-805-2280-8). Geographical Indication in Indonesia stated in Article 56 verse 1 Law Number 15 Year 2001 about Trademark and defined as stated:

“Geographical Indication protected as a sign that indicates the true origin of a product as the result of geographical factor including natural factor and human factor or the combination of both factors produce a special mark and certain quality to the products”

Several scholars and policy-makers have proposed Geographical Indications as the preferred Intellectual property Rights to integrate traditional Knowledge and locally made grassroots innovations into the global market (Gopalakrishnan *et al* 2007; Das, 2006; Martens, 2012). There are few benefits in using Geographical Indication to protect the cultural based products:

- Geographical indication can be used as the marketing strategy in local and global market
- Giving the value added to the products and increases the welfare of the producers
- Develop the geographical indication product reputation in the scope of global market
- Geographical indication protection is a tool to avoid unfair competition and misleading information of source

Geographical indications are applicable to wide variety of goods varying from natural, agricultural to manufactured products. If any name is related with the specific geographical area and that any particular area has an indicative power, the legal protection under Geographical indications can be claimed.

The natural and cultural richness in Indonesia provides many possibilities of natural-cultural and human creativity combination in grassroots level to produce many high quality products, Nowadays, there are over 30 products that have been granted geographical

indication protections for examples, Arabica Kintamani Bali Coffee, Arabica Gayo Coffee, Jepara Carved Furniture, Muntok White Pepper of Bangka Belitung, Mole Tobacco, Lombok leafy vegetables, honey of Sumbawa, Adan Krayan Rice, Srintil Tobacco Temanggung and so many others.

Those facts and due to their place and cultural-based collective nature, geographical indications are seen as compatible with local, community and cultural-based creativity and innovation and have been hailed as “poor people’s intellectual property rights” (Sunder, 2007).

In order to be effective, Geographical Indications must be designed through a participatory process where the producers of knowledge and innovators are closely involved. Geographical indications are designed to preserve a “culture of production” and well as a “culture of consumption” and most Geographical Indications have been granted to commodities with a cultural significance (Broude 2005).

#### **Identification of Indonesia’s cultural based creative industries competitive advantage in global market:**

Although, there is a grouping of developed countries, developing countries and even Least Developed Countries (LDCs) global economic competition involve all countries around the globe without exception.

Synchronized to the Theory Competitive Advantages of Nation by Economist Michael Porter, Indonesia need to evaluation of how competitively we are participates in international markets by measuring four key factors that can modify four ingredients to become more competitive. The four ingredients are the availability of resources, the information used in deciding which opportunities to pursue, the goals of individuals and the innovation and investment pressure.

**The availability of resources Indonesia:** Indonesia has abundantly huge amount of three most important resources needed to support cultural based industries, they are natural resources, cultural resources (including traditional knowledge) and human resources.

**The information used in deciding which opportunities to pursue:** Traditional and cultural knowledge as one of the most important source for grassroots innovations have been studied for their content, value system and poverty reduction potential (Warren *et al.*, 1995, Woytek *et al.*, 2004).

The fact that traditional knowledge consists of many information to formulate natural resources into useful products and beneficial process can be the determinant factor in deciding to pursue opportunity in developing

cultural based creative industry as the competitive factor for Indonesia abroad.

**The goals of individuals:** In the socio-economic projection, individuals of Indonesia mostly placed in the bottom of the pyramid but with very high variety cultural and traditional knowledge aspect. The main potential of cultural based industries and grassroots innovation in solving daily problems and society upgrading. The individuals play important role as the motor of creative based industry to enhance their own socio economic position and further will contribute to the poverty reduction then at the end raised the welfare of the state in whole terms.

**The innovation and investment pressure:** The sustainable use and intellectual property protection rights for the products rose from combination of natural resources, cultural resources (including traditional knowledge) and human resources will be such great investment pressure for Indonesia in the terms of poverty eradication and socio-economic upgrading. On the other hands, cultural based industries supported by grassroots innovation will be a huge and significant competitive advantage in global market.

## CONCLUSION

Culture and creativity are the catalyst for development that millions of people across the world are make a living out of them and become a major drivers of the economies of developed as well as developing countries. They are also the most rapidly growing sectors worldwide. It can forge a better future for many countries around the globe.

Indonesia has abundant resources to create high cultural based industries; this fact should be supported by the creation of an ideal ecosystem for grassroots innovation, recognition and acknowledgment of traditional and cultural based knowledge by providing a suitable and equitable intellectual property rights protection in order to enlarge the potencies of cultural based industries as a tool to reduce poverty, socio-economic upgrading and as the competitive advantage of Indonesia's position in global market.

## REFERENCES

- Anonymous, 2008. Indonesian republic ministry of trade, batik, a cultural beauty partnership between Indonesia and world communities, 2008. Ministry of Trade Indonesia Ministry, Central Jakarta, Indonesian.
- Avruch, K., 1998. Culture and Conflict Resolution. United States Institute of Peace Press, Washington, USA.
- Broude, T., 2005. Taking trade and culture seriously: Geographical indications and cultural protection in WTO law. *U. Pa. J. Intl. Econ. L.*, 26: 623-623.
- Das, K., 2006. International protection of India's Geographical indications with special reference to Darjeeling tea. *J. World Intellectual Property*, 9: 459-495.
- Gopalakrishnan, N.S., P.S. Nair and A.K. Babu, 2007. Exploring the relationship between geographical indications and traditional knowledge: An analysis of the legal tools for the protection of geographical indications in Asia, ICTSD programme on intellectual property rights and sustainable development. International Centre for Trade and Sustainable Development, Geneva, Switzerland.
- Gupta, A.K., 2007. Reciprocating learning from creative people: Scouting and documentation of grassroots innovations and traditional knowledge. Proceedings of the APCTT Conference on Scouting and Documentation of Grassroots Innovations and Traditional Knowledge, June 4-5, 2007, APCTT, Nanjing, China, pp: 8-14.
- Martens, P., 2012. Can traditional knowledge owners and producers in developing. Master Thesis, Maastricht University, Maastricht, Netherlands.
- Ministry of Industry, 2007. Government policy in intellectual property rights protection and professional services trade liberalization in the field of law. Ministry of Industry, Jakarta, Indonesia.
- Porter, M.E., 1990. The competitive advantage of nations. *Harvard Bus. Rev.*, 68: 73-93.
- Sunder, M., 2007. The invention of traditional knowledge. *Law Contemp. Prob.*, 70: 97-124.
- Warren, D. M., Slikkerveer, L. J. and D. Brokensha, 1995. *The Cultural Dimension of Development: Indigenous Knowledge Systems*. Intermediate Technology Publisher, London, England, UK.
- Woytek, R., S.P. Mehta and P.C. Mohan, 2004. Local pathways to global development. Knowledge and Learning Group Africa Region, Africa.