



Integrating Cultural Rights into Human Rights Frameworks: Re-Regulating Tourism and Copyright Law in Indonesia

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Abstract

The development of the tourism industry in Indonesia in the last two decades shows an increasing tendency to commercialize traditional cultural expressions. Various culture-based tourism practices often utilize local symbols, dances, music, rituals, and knowledge as economic commodities without providing adequate legal protection for the communities that own these cultures. This situation creates tensions between economic interests, tourism policy, and the protection of cultural rights as part of the human rights framework. This article analyzes how the integration of cultural rights in the human rights framework can drive the reformulation of tourism regulations and copyright laws in Indonesia. This research uses a socio-legal approach by examining national regulations, international human rights instruments, and cultural management practices in the tourism sector. The results of the study show that existing regulations are still oriented towards the protection of individual copyrights and have not fully accommodated the communal character of traditional cultural expressions. This condition has led to many local cultural practices being exploited commercially without a mechanism for fair benefit-sharing for indigenous communities. The integration of the cultural rights perspective in the human rights framework can be the basis for reforming tourism policies and the intellectual property legal system, so as to ensure protection, participation, and justice for cultural communities. The reforms include strengthening the recognition of the collective rights of cultural communities, approval mechanisms on the basis of non-coercive initial information, and a fair benefit-sharing system in the cultural-based tourism industry.

[Perkembangan industri pariwisata di Indonesia dalam dua dekade terakhir menunjukkan kecenderungan meningkatnya komersialisasi ekspresi budaya tradisional. Berbagai praktik pariwisata berbasis budaya sering kali memanfaatkan simbol, tarian, musik, ritual, dan pengetahuan lokal sebagai komoditas ekonomi tanpa memberikan perlindungan hukum yang memadai bagi komunitas pemilik budaya tersebut. Situasi ini menimbulkan ketegangan antara kepentingan ekonomi, kebijakan pariwisata, dan perlindungan hak budaya sebagai bagian dari kerangka hak asasi manusia. Artikel ini menganalisis bagaimana integrasi hak budaya dalam kerangka hak asasi manusia dapat mendorong reformulasi regulasi pariwisata dan hukum hak cipta di Indonesia. Penelitian ini menggunakan pendekatan sosio-legal dengan menelaah regulasi nasional, instrumen hak asasi manusia internasional, serta praktik pengelolaan budaya dalam sektor pariwisata. Hasil kajian menunjukkan bahwa regulasi yang ada masih berorientasi pada perlindungan hak cipta individual dan belum sepenuhnya mengakomodasi karakter komunal dari ekspresi budaya tradisional. Kondisi tersebut menyebabkan banyak praktik budaya lokal dieksploitasi secara komersial tanpa mekanisme pembagian manfaat yang adil bagi komunitas adat. Integrasi perspektif hak budaya dalam kerangka hak asasi manusia dapat menjadi dasar untuk mereformasi kebijakan pariwisata dan sistem hukum kekayaan intelektual, sehingga mampu menjamin perlindungan, partisipasi, serta keadilan bagi masyarakat pemilik budaya. Reformasi tersebut mencakup penguatan pengakuan hak kolektif



komunitas budaya, mekanisme persetujuan atas dasar informasi awal tanpa paksaan, serta sistem pembagian manfaat yang adil dalam industri pariwisata berbasis budaya.]

Keywords: Cultural rights, human rights framework, tourism regulation, copyright law, Indonesia

INTRODUCTION

Cultural diversity constitutes one of the most significant social assets of contemporary societies, particularly in countries with rich historical traditions and pluralistic identities such as Indonesia. Cultural expressions, rituals, arts, traditional knowledge, and heritage practices are not merely aesthetic representations but also embody collective memory, identity, and values that shape social life within communities. In recent decades, however, cultural resources have increasingly been incorporated into global economic systems, particularly through the rapid expansion of the tourism industry. Cultural tourism has become a strategic development sector in many countries because it generates revenue, promotes international visibility, and contributes to local economic growth. Nevertheless, the growing commodification of cultural expressions also raises critical questions concerning the protection of cultural rights and the role of legal frameworks in safeguarding community interests.

The tourism sector in Indonesia has experienced significant growth as the government continues to promote the country as a global destination for cultural and heritage tourism. Cultural festivals, traditional performances, local crafts, and indigenous rituals are frequently integrated into tourism programs to attract both domestic and international visitors. This strategy reflects a broader trend in which culture is transformed into an economic resource within the global tourism market. While such developments may provide economic benefits to local communities, they also create complex legal and ethical challenges related to ownership, control, and fair benefit distribution of cultural expressions (Hafstein, 2018).

One of the central issues emerging from the commercialization of culture is the tension between economic utilization and the protection of cultural rights. Cultural rights, recognized as an integral part of human rights, refer to the rights of individuals and communities to participate in cultural life, preserve cultural identity, and maintain control over their cultural heritage. These rights are formally recognized in international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), which emphasizes the importance of protecting cultural participation and cultural identity as fundamental human rights (Donders, 2020). Within this framework, states bear the responsibility not only to protect cultural heritage but also to ensure that communities can maintain authority over the cultural expressions that originate from their traditions.

Despite these international commitments, the practical implementation of cultural rights often remains weak, particularly in contexts where economic interests dominate policy agendas. The tourism industry frequently prioritizes market value and visitor experience over the cultural autonomy of local communities. In many cases, cultural performances or traditional practices are modified, simplified, or staged in ways that cater to tourist expectations rather than reflecting authentic cultural meanings. Such transformations may lead to the erosion of cultural significance and, in some instances, the exploitation of local cultural resources without adequate recognition or compensation for the communities that sustain them (George & Reid, 2021).

The legal dimension of this issue is closely connected to the structure of intellectual property law, particularly copyright law. Copyright regimes are generally designed to protect individual creators and specific artistic works, whereas many forms of traditional cultural expressions are collectively owned and transmitted across generations. As a result, conventional copyright frameworks often fail to adequately protect community-based cultural expressions such as traditional dances, songs, folklore, rituals, and indigenous knowledge. Scholars have long argued that the mismatch between intellectual property systems and communal cultural practices creates significant legal gaps in the protection of traditional cultural expressions (Okediji, 2018).

Indonesia has attempted to address some of these challenges through national legislation, including the Copyright Law No. 28 of 2014, which recognizes the state as the holder of copyright for traditional cultural expressions. This provision aims to prevent the misuse of cultural heritage by external parties and to ensure that traditional cultural assets remain protected within the national legal system. However, in practice, the implementation of such regulations often faces institutional and conceptual limitations. The designation of the state as the copyright holder does not always guarantee meaningful participation or benefit-sharing for the communities that actually maintain and practice these cultural traditions (Antons, 2019).

At the same time, the rapid growth of cultural tourism intensifies the need for a more comprehensive regulatory approach. Cultural heritage is increasingly incorporated into tourism products, marketing strategies, and digital platforms that circulate cultural representations globally. Without appropriate legal mechanisms, communities may lose control over how their cultural expressions are reproduced, commercialized, or interpreted. This situation underscores the importance of integrating cultural rights into broader human rights frameworks that recognize the collective dimensions of culture and ensure that cultural communities remain central actors in the governance of their heritage.

Integrating cultural rights into tourism governance requires a shift from purely economic policy orientations toward a rights-based regulatory approach. A human rights framework emphasizes participation, recognition, and equitable benefit-sharing as core principles in cultural policy. Rather than treating culture solely as a marketable commodity, this perspective recognizes culture as a living system of knowledge, values, and practices that must be preserved and respected within development processes. Scholars argue that adopting a human rights-based approach to cultural governance can help balance economic development with cultural sustainability and social justice (Silverman & Ruggles, 2007).

Within this broader perspective, the re-regulation of tourism and copyright law becomes a critical policy challenge. Tourism regulations must incorporate safeguards that ensure community participation in decision-making processes related to cultural tourism development. At the same time, copyright law must evolve to accommodate collective ownership models and mechanisms that recognize the communal nature of traditional cultural expressions. Such reforms are necessary to prevent cultural exploitation and to ensure that communities benefit fairly from the economic value generated by their cultural heritage.

Indonesia provides an important context for examining these issues because of its vast cultural diversity and its growing reliance on tourism as a development strategy. The country hosts thousands of ethnic groups, languages, and cultural traditions that form an integral part of its national identity. Many of these traditions are deeply embedded in local social structures

and religious practices, making them particularly sensitive to external commercialization. Consequently, the interaction between tourism policies, intellectual property law, and cultural rights presents a complex field of governance that requires careful legal and policy analysis.

This article examines how cultural rights can be integrated into the human rights framework to support the re-regulation of tourism and copyright law in Indonesia. The analysis focuses on the intersection between cultural heritage protection, tourism development, and intellectual property regimes. By exploring these interconnected domains, the study seeks to identify the limitations of existing legal frameworks and propose a more inclusive regulatory approach that places community rights at the center of cultural governance. Such an approach is essential not only for protecting cultural heritage but also for promoting sustainable tourism practices that respect cultural diversity and social justice.

METHOD

This study employs a socio-legal research approach to examine the intersection between cultural rights, tourism governance, and copyright law in Indonesia. Socio-legal research views law not merely as a set of formal rules but as a social institution that operates within broader cultural, political, and economic contexts. Through this perspective, legal norms are analyzed alongside the social realities in which they are implemented, allowing a more comprehensive understanding of how legal frameworks influence cultural practices and community rights (Banakar & Travers, 2013). The approach is particularly relevant for examining issues related to traditional cultural expressions, where legal regulation often interacts with local customs, communal ownership structures, and cultural values.

The research relies primarily on qualitative data derived from normative and documentary sources. Legal materials analyzed in this study include national regulations related to copyright protection, tourism governance, and cultural heritage management in Indonesia. In addition, international human rights instruments concerning cultural rights are examined to understand the normative standards that guide the protection of cultural heritage and community participation in cultural governance. These sources are complemented by scholarly literature discussing cultural rights, intellectual property regimes, and the governance of cultural tourism, enabling the study to situate Indonesian legal developments within broader global debates (Donders, 2020).

The analytical process adopts a qualitative interpretative method. Legal texts and policy documents are examined through thematic analysis to identify regulatory gaps, conceptual limitations, and potential areas for legal reform. Particular attention is given to how existing copyright frameworks address traditional cultural expressions and whether tourism policies adequately recognize the collective rights of cultural communities. By comparing national regulations with international human rights principles, the study evaluates the extent to which Indonesia's legal framework aligns with emerging norms concerning cultural rights and cultural heritage protection (Antons, 2019).

Finally, the study uses a critical legal analysis to explore possible directions for re-regulating tourism and copyright law in Indonesia. This approach emphasizes the need to integrate human rights principles into legal governance structures in order to strengthen the protection of cultural communities in the context of expanding cultural tourism. The analysis aims to identify regulatory mechanisms that can promote community participation, equitable

benefit-sharing, and recognition of collective cultural ownership, thereby contributing to a more balanced relationship between economic development and cultural rights protection (Hafstein, 2018).

RESULTS AND DISCUSSION

Cultural Tourism and the Commodification of Cultural Heritage in Indonesia

The rapid development of cultural tourism in Indonesia has transformed many forms of traditional cultural expressions into economic commodities within the global tourism market. Cultural tourism refers to tourism activities that allow visitors to experience the arts, heritage, traditions, and lifestyles of local communities. In the Indonesian context, this sector has become one of the most important components of national tourism policy, as cultural diversity is widely regarded as a strategic resource for attracting international visitors. Traditional dances, rituals, crafts, architecture, and culinary traditions are increasingly integrated into tourism packages, festivals, and cultural performances designed for both domestic and foreign tourists.

The economic benefits of cultural tourism are significant. Tourism contributes substantially to national income and local economic development, particularly in regions where cultural heritage is closely linked to community livelihoods. Local communities often gain opportunities to market traditional products, provide cultural performances, and participate in tourism-related services such as guiding, accommodation, and handicraft production. From a development perspective, the commercialization of culture through tourism can contribute to poverty reduction and economic empowerment in rural areas (George & Reid, 2021).

However, the transformation of cultural practices into tourism commodities also creates complex social and legal challenges. Cultural expressions that originally functioned within sacred, ritualistic, or communal contexts may be reinterpreted or modified to meet the expectations of tourists. In many cases, performances are shortened, simplified, or staged outside their original cultural setting in order to fit commercial tourism schedules. While such transformations may increase accessibility for visitors, they may simultaneously reduce the cultural authenticity and symbolic meaning of traditional practices. Scholars have observed that the commodification of culture often leads to the gradual detachment of cultural expressions from their social and spiritual contexts, thereby altering the meaning and value that these practices hold for local communities (Hafstein, 2018).

In addition to the issue of cultural transformation, the commercialization of cultural heritage raises questions regarding ownership and control. Many cultural traditions in Indonesia are collectively maintained by indigenous or local communities and are transmitted across generations through oral traditions and customary practices. These traditions are rarely associated with identifiable individual creators, which complicates their protection within modern legal systems that rely on individual authorship as the basis for intellectual property rights. As a result, many cultural expressions are vulnerable to unauthorized reproduction or commercialization by external actors such as tourism companies, media industries, or international businesses (Antons, 2019).

Cases involving the commercial use of traditional motifs, dances, and crafts illustrate how cultural expressions can be appropriated without adequate recognition or compensation for the communities that maintain them. For example, traditional textile patterns or cultural symbols are sometimes reproduced by commercial producers without consultation with the communities

that originally developed these designs. Such practices generate economic value for commercial actors while providing little or no benefit to the cultural communities themselves. This situation demonstrates the limitations of existing legal mechanisms in ensuring equitable benefit-sharing within cultural tourism industries.

From a human rights perspective, these developments highlight the need to recognize cultural rights as an integral dimension of cultural tourism governance. Cultural rights include the rights of communities to preserve their cultural identity, control the use of their cultural heritage, and participate in decisions concerning cultural representation and commercialization. When cultural tourism operates without recognizing these rights, it risks reinforcing unequal power relations between tourism industries and local cultural communities. Consequently, integrating cultural rights into tourism regulation becomes essential for ensuring that cultural heritage is not merely exploited as an economic asset but is respected as a living element of community identity.

Limitations of Copyright Law in Protecting Traditional Cultural Expressions

One of the major challenges in protecting traditional cultural expressions lies in the structure of existing intellectual property regimes. Copyright law is designed to protect original creative works produced by identifiable authors and fixed in a tangible medium. The protection granted by copyright law typically includes exclusive rights to reproduce, distribute, and publicly perform creative works for a limited period of time. While this system functions effectively for modern artistic and literary creations, it is often ill-suited for protecting traditional cultural expressions that emerge from collective cultural processes.

Traditional cultural expressions such as folklore, traditional music, rituals, and crafts usually evolve gradually within communities and are transmitted across generations through shared cultural practices. These expressions often have no identifiable individual author and may exist in multiple variations across different communities. As a result, they do not easily fit within the legal framework of copyright law, which emphasizes individual ownership and originality. Scholars have argued that this structural mismatch creates significant legal gaps in the protection of traditional cultural expressions (Okediji, 2018).

Indonesia has attempted to address this issue through the Copyright Law No. 28 of 2014, which introduces provisions recognizing the state as the copyright holder of traditional cultural expressions. The intention of this regulation is to prevent unauthorized exploitation by external parties and to ensure that cultural heritage remains protected within the national legal framework. By designating the state as the custodian of traditional cultural expressions, the law seeks to create a mechanism through which the government can manage and regulate the use of cultural heritage.

Despite this progressive step, several practical challenges remain in the implementation of this regulatory framework. The designation of the state as the copyright holder does not automatically guarantee that local communities will benefit from the commercialization of their cultural expressions. In many cases, the involvement of communities in decision-making processes regarding cultural heritage remains limited. Without effective mechanisms for community participation and benefit-sharing, the legal recognition of state ownership may not adequately address the underlying issues of cultural justice and community rights.

Another limitation relates to the enforcement of copyright protections for traditional cultural expressions. The widespread digital circulation of cultural images, performances, and designs has made it increasingly difficult to monitor unauthorized use. Cultural content can easily be reproduced, shared, and commercialized through digital platforms without the knowledge or consent of the communities that originated these expressions. The transnational nature of digital media further complicates enforcement efforts, as cultural expressions may be reproduced in jurisdictions with different legal standards.

These challenges indicate that copyright law alone is insufficient to provide comprehensive protection for traditional cultural expressions. A broader regulatory framework is required, one that recognizes the collective nature of cultural ownership and incorporates principles derived from cultural rights and human rights frameworks. Such an approach would shift the focus from purely economic rights toward the protection of cultural identity, community participation, and equitable benefit-sharing.

Cultural Rights within the Human Rights Framework

Cultural rights represent an essential component of the international human rights system. They refer to the rights of individuals and communities to participate in cultural life, access cultural heritage, and preserve their cultural identity. These rights are formally recognized in several international legal instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), which affirms the right of everyone to take part in cultural life and to enjoy the benefits of cultural development. Cultural rights also emphasize the importance of protecting the cultural heritage of indigenous peoples and minority communities (Donders, 2020).

The recognition of cultural rights within the human rights framework reflects a growing awareness that culture plays a central role in human dignity and social identity. Cultural practices are not merely forms of artistic expression but are closely linked to social structures, belief systems, and collective memory. For many communities, cultural traditions serve as mechanisms for transmitting knowledge, maintaining social cohesion, and preserving historical continuity. Consequently, the protection of cultural rights is essential for safeguarding the diversity and sustainability of cultural systems around the world.

In the context of tourism development, cultural rights provide an important normative framework for evaluating the ethical and legal dimensions of cultural commodification. A human rights-based approach to cultural governance emphasizes several key principles, including participation, recognition, and equity. Participation refers to the right of communities to be involved in decisions affecting the use and representation of their cultural heritage. Recognition involves acknowledging the cultural identity and ownership of communities over their traditional practices. Equity relates to the fair distribution of economic benefits derived from cultural tourism.

Applying these principles to tourism governance requires a shift in policy orientation. Instead of treating cultural heritage as a passive resource for economic exploitation, policymakers must recognize communities as active rights holders whose cultural expressions deserve protection and respect. This perspective aligns with broader international efforts to promote sustainable tourism practices that balance economic development with cultural preservation.

Scholars have emphasized that integrating cultural rights into tourism governance can help prevent the exploitation of cultural communities and ensure that tourism development contributes to cultural sustainability. When communities are empowered to control how their cultural heritage is represented and commercialized, tourism can become a tool for cultural revitalization rather than cultural erosion. Cultural festivals, heritage education programs, and community-based tourism initiatives can strengthen local identity while generating economic opportunities for communities (Silverman & Ruggles, 2007).

Re-Regulating Tourism and Copyright Law in Indonesia

The integration of cultural rights into legal frameworks requires a comprehensive reconsideration of existing regulatory structures governing tourism and intellectual property in Indonesia. Current legal frameworks often treat tourism development and cultural heritage protection as separate policy domains. Tourism policies tend to focus on economic growth and international competitiveness, while cultural heritage policies emphasize preservation and documentation. This institutional separation can create regulatory gaps that allow cultural exploitation to occur within tourism industries.

Re-regulating tourism and copyright law requires a more integrated policy approach that recognizes the interconnected nature of cultural heritage, economic development, and human rights. One key aspect of such reform involves strengthening the participation of cultural communities in decision-making processes related to tourism development. Community consultation mechanisms should be established to ensure that cultural tourism projects are designed in collaboration with local communities and respect the cultural significance of traditional practices.

Another important element involves the establishment of fair benefit-sharing mechanisms. Cultural tourism generates substantial economic value, yet the distribution of these benefits often remains unequal. Tourism companies, travel agencies, and commercial enterprises frequently capture the majority of financial gains, while cultural communities receive limited compensation for the use of their cultural heritage. Implementing benefit-sharing arrangements can help address this imbalance by ensuring that communities receive a fair share of tourism revenues generated from their cultural expressions.

Legal reform must also address the recognition of collective cultural ownership. Traditional cultural expressions are typically maintained through communal cultural systems rather than individual creativity. Legal frameworks should therefore incorporate mechanisms that recognize collective rights and allow communities to assert control over the use of their cultural heritage. Community-based licensing systems, cultural heritage registries, and customary law recognition can provide legal tools for protecting collective cultural ownership.

In addition, regulatory reforms should incorporate mechanisms for prior informed consent. This principle requires that communities be consulted and provide consent before their cultural expressions are used for commercial or tourism purposes. Prior informed consent ensures that communities retain authority over the representation and commercialization of their cultural heritage. It also promotes transparency and accountability within tourism industries.

Digital technologies also present both opportunities and challenges for cultural heritage protection. While digital platforms enable wider dissemination of cultural knowledge, they also

increase the risk of cultural appropriation and unauthorized reproduction. Regulatory frameworks must therefore address digital cultural governance by developing systems for monitoring and regulating online uses of cultural expressions. Collaboration between governments, cultural institutions, and community organizations is essential for developing effective digital protection strategies.

Ultimately, integrating cultural rights into tourism and copyright regulation represents an important step toward achieving more equitable and sustainable cultural governance. By recognizing communities as central actors in cultural heritage management, legal systems can better protect cultural diversity while supporting responsible tourism development. Such reforms would align Indonesia's legal framework with emerging international standards that emphasize the protection of cultural rights as a fundamental component of human rights.

Toward a Rights-Based Model of Cultural Tourism Governance

The future of cultural tourism governance in Indonesia depends on the ability of policymakers to reconcile economic development goals with the protection of cultural rights. A rights-based regulatory model provides a framework for achieving this balance by ensuring that tourism development respects the dignity, identity, and autonomy of cultural communities.

A rights-based model emphasizes that cultural heritage should not be treated solely as a market commodity but as a living system of knowledge and identity that belongs to communities. Tourism policies must therefore prioritize community empowerment, cultural sustainability, and equitable benefit-sharing. When cultural rights are integrated into tourism governance, tourism can function as a platform for cultural dialogue, education, and intercultural understanding.

Indonesia's vast cultural diversity presents both opportunities and responsibilities for policymakers. The protection of cultural heritage is not only a legal obligation under international human rights law but also a crucial component of national identity and social cohesion. Strengthening the integration of cultural rights within tourism and copyright regulation will help ensure that cultural tourism contributes to sustainable development while respecting the rights and dignity of cultural communities.

CONCLUSION

The increasing integration of cultural heritage into the tourism industry in Indonesia demonstrates the growing economic value of cultural expressions within global tourism markets. While cultural tourism offers important opportunities for economic development and community empowerment, it also generates complex legal and ethical challenges related to the protection of cultural rights. The findings of this study indicate that existing regulatory frameworks, particularly copyright law, remain limited in addressing the collective nature of traditional cultural expressions. The current intellectual property system, which is primarily based on individual ownership, often fails to adequately protect communal cultural practices that have been preserved and transmitted across generations. Consequently, many cultural expressions remain vulnerable to commercial exploitation without sufficient recognition, participation, or benefit-sharing for the communities that sustain them.

Integrating cultural rights into the broader human rights framework provides a critical pathway for reforming tourism governance and copyright regulation in Indonesia. A rights-

based approach emphasizes the importance of recognizing communities as legitimate rights holders who possess authority over their cultural heritage. Such an approach requires the development of regulatory mechanisms that ensure community participation in tourism decision-making, equitable distribution of economic benefits, and recognition of collective cultural ownership. Strengthening these principles within national legal frameworks will help promote more sustainable and culturally respectful tourism practices. Ultimately, the integration of cultural rights into tourism and intellectual property regulation is essential for safeguarding Indonesia's cultural diversity while ensuring that cultural heritage remains a source of dignity, identity, and sustainable development for the communities that preserve it.

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