

## 1. INTRODUCTION AND CONTEXT

Foreign access to Indonesia has positive and negative effects. External influences get into Indonesia through tourism, trade, and cooperation in the form of arts, festivals and other activities. Such activities bring a positive impact as it enriches Indonesian society. Simultaneously, these activities challenge society to be more careful towards all external influences. Foreign access strengthens Indonesian people by demonstrating authenticity. As time goes by, frequent visitors to Indonesia desire to find out about the original work of a respective region.

Besides the positive effects, there are also adverse effects from foreign access to Indonesia. The issue which receives the most concern is value degradation. Generally, younger generations seem

based high schools shows that many teenagers traditional music or watch traditional leather performance thoroughly and intensely discuss it.

<sup>1</sup> This issue cannot be easily measured, as it might have risen out of the continuous news and posts shared on social media such that people think that their great value in society has declined.

Foreign access to Indonesia's market through international trade activity impact aspects of safeguarding Indonesian intangible cultural heritage (ICH). In this setting, there is a paradox between ICH as a world heritage value and

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which is the identity or feeling of belonging to a group.<sup>2</sup> 'It is part of a person's self-conception and self-perception and is related to nationality, ethnicity, religion, social class, generation, locality or any kind of social group that has its own distinct culture.'<sup>3</sup> As trade commodities, products of ICH need legal protection from exploitative international trade activities as a means of generating local and domestic

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Anholt states there are intertwining notions among IP, nation branding, and economic development,<sup>13</sup> seconding his argument that cultural capital is one of the intangible assets possessed by every country and, as an asset, this capital needs a capacity to interpret into 'consistent economic performances.'<sup>14</sup> Since the global economy is driven by 'services, intellectual assets, and "virtual" products,' the human capital of nations is an essential feature in economic progress.<sup>15</sup> Intellectual capital has an important role in the modern economy by adding value to the product.<sup>16</sup> The value to the product is performed by a distinctive and attractive brand, and a powerful and positive reputation of 'nation-b-6.6 (ulh(16)02 Tc -w)-0.7 ()-2.7 (m)-11.3 (r)-2.7¢ -0.07-2.7 (1.3 (r))el<f05 Tc 0.42 Tc -15 .

### **3. INDONESIA'S LEGAL FRAMEWORK ON ICH AND IP-RELATED ICH**

Efforts in safeguarding and protecting ICH in Indonesia are carried out from legal protection and preservation





with GI in terms of traditional skills and traditional cultural expression elements. Under Article 53(3)(a), ICH in the form of handicraft goods can be protected as registered GI.





businesspersons, legal entities, or MSMEs receive a license to use the co-branded trademark.<sup>39</sup> Local businesses utilise the trademark and receive benefits from it. Users may obtain a license to Yogyakarta products from the Regional Working Unit (RWU), the regional government agency of Yogyakarta's regional government, which manages the field of trade and industry.

Regarding the legal structure of IP ownership by a public legal entity, Indonesian IP laws do not specifically mention the private legal entity as the IP rights owner, meaning the public legal entity can own IP rights. There has been a precedent on the ownership of a trademark by a public higher education institution. The use of a trademark by a higher education institution is, philosophically, a trademark used by a non-commercial institution, as education is a non-profit business. In actuality, many higher education institutions currently have a business unit which conducts business to gain profit.

ICH in the Yogyakarta region. In cases where the ICH has not obtained a certified ICH status and does not have rights to use such co-branding, the office will assist with the process of obtaining ICH status, so long as the ICH fulfils the established criteria and requirements. Therefore, the registration of *JogjaTradition* co-branding trademark synergies with the program safeguarding ICH, as one of the utilisation programs, since the co-branding can only be used as a trademark for ICH that has been declared as Indonesian ICH by the Ministry of Culture and Education.

To utilise co-branding in the market, the Office for Industry and Trade will support co-branding initiatives with the concept of *Bela Beli Indonesia* movement, which aims at economic independence through a synergy between *to support* and *to buy* Indonesian products, especially those produced by MSMEs. Co-branding also becomes an assurance for consumers that the product is original or rooted in Yogyakarta tradition and culture. The Office for Industry and Trade collaborates with the Office for Culture to grant a license on *JogjaTradition* co-branding, thereby refining the procedure of granting license. The approval constitutes a set of certificates consisting of a certificate of

completeness of the requirement, especially academic review. The team has an obligation to assist the Office for Culture to aim already-certified ICH, as every ICH has to be protected continuously. The Office for Culture also makes a roadmap for each ICH; outlining steps to be taken to ensure a cer

be finished in a maximum of six working days after the documents detailed under Article 12(2) are complete.

The provisions as regional legal framework may be sufficient to guarantee a minimum level of effective ICH protection. However, it is suggested that IP enforcement capacities building are not in line with ICH protection challenges in Indonesia. There are still several challenges, namely, limited public awareness and insufficient knowledge on the significance of IP, including local or traditional communities of the respected ICH, government officials, judiciaries, and the general public; inadequacy of the legislation not being drafted effectively; lack of human resources, funding and practical experience in the enforcement of IP for protecting ICH; and systemic problems resulting from insufficient coordination among government departments.

## 5. BENEFITS AND CHALLENGES

### A. FOR THE LOCAL COMMUNITIES AND TRADITIONAL OWNERS

Local communities and traditional owners anticipate benefiting from co-branding initiatives by obtaining legal protection from trademarks licensing, increasing competitiveness, consumer loyalty or trust, enhancing local products reputation, and promoting local cultural industries. Benefits also include domestic and international recognition and support towards ICH protection strategy by the regional government, product acceleration, and prevention of unfair competition in the market. These benefits are expected to lead to economic development. From the perspective of consumer protection, there are also quality assurance and product standardisation. The initiative provides protection to MSMEs in the region.

Article 15 of Yogyakarta Governor Regulation on co-branding mandates society's role as taking part in dissemination, promotion and supervision activities over the use of a trademark as co-branding of the local product by way of conducting exhibition and filing a report of the breach of its use. The report shall be conducted under provisions where the complainant files the report form, complete with at least two pieces of evidence of the alleged

breach of co-branding use. Article 16 of the Governor Regulation includes sanctions under procedures of verbal notification, written notification, and license revocation. Furthermore, supervision and evaluation are conducted by the Regional Working Unit under Articles 16(1) and (2), which include written reports on the implementation of supervision and evaluation on the use of co-

There is also a problem regarding the Cultural Division's work target in the form of values. In terms of funding and administration, the target results in something quantifiable. However, the definition of culture is quite extensive depending on the individual subject and culture covers a wide scope. In a discussion forum in Yogyakarta Regional Representative Assembly, extensive definition and cultural coverage becomes a particular problem. Cultural Division often has different perspectives from the assembly. There are also other interests, such as political interest, which may influence the issue.

Within Yogyakarta's local communities and traditional owners, there needs to be a thorough and detailed discussion on ICH criteria and i.uohi>Tliaa'wawillbe( )TJ0.539 Tw 0 -1.733 Td[ aibl fca n1.7 (n l)-6.3 (C)-5.3 (H)-8.7 ( i)-2.7 (( )TJ-0.004 Tc 0.5 (o) protection (d) here (e) 0.34 (d) -1.11 (t) -6.7) -2.1e (p) 232.7 ((l)-2)TJ(585.13w-(4)228.67 ((1)-333 us)H4e a(n)esudtba(6)-7567 l(r)-1.7 wor (m)-5 (a)-5 (y)-4.3 ( b)1 (e)065 ( p)1 (r)-1.7 (o)-10.3 (t)-2.3 (e)0.6 (c)-7.6 (t)-2.4 (e)0.7 (d)1 udn(e)r)n.7 (e)0.7 girme(h)1 (o)-1043 (w) ohcas o tr(a)36 dht oa wok (o)82.4 ( li)-2.7 Cte(m)43 (i)-063 (s)1.3 (a)-4 plicatio

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of Industry and Trade, a technical service unit of the Ministry of Industry in the central government. As the IP centre, it does not have a specific program on IP, since its program follows those of the Office of Industry and Trade. Several regions in Indonesia have a kind of IP centre within different offices; however, this depends on the respective regional governments' will to create nomenclature, as well as having an IP centre within their structure.

Joining the Yogyakarta co-branding initiative, the regional government of Central Java has implied that it wants to follow Yogyakarta's step, while the Directorate General of Intellectual Property of Indonesia has also stated its support. The Temanggung and Surakarta/Solo regions of the Central Java province have taken preliminary steps to initiate the branding of ICH in *Temanggung Tradition* and *Solo the Spirit of Java*.

## 6. CONCLUSION AND FUTURE DIRECTIVES

Culture has a dynamic nature. The impacts of external access to Indonesian ICH is unavoidable in the digital era of the Internet, information technology, and social media. As a country which nurtures ICH, Indonesia has to give cultural access to the wider community. Creations and innovations arising out of ICH in the future should also be useful to society; however, ICH that generates income should also benefit the society it nurtures. The most important thing is to find a balance between the interests of the ICH owner and public access. This balance can be generated and accommodated under national and regional laws.

Indonesia's legal frameworks on IP regarding ICH provide  
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Business Dictionary

<[www.businessdictionary.com/definition/economic-development.html](http://www.businessdictionary.com/definition/economic-development.html)> accessed 5 November 2018.

Cleave E, Arku G, Sadler R and Gilliland J, 'The Role of Place Branding in Local Regional Economic Development: Bridging the Gap between Policy and Practicality' (2016) 3 Reg'l Studies, Reg'l Sci. 1.

Downes, DR, 'How Intellectual Property could be a Tool to Protect Traditional Knowledge' (2000) 25 Columbia J. of Env. L. 253.

Ennaji M, *Multilingualism, Cultural Identity, and Education in Morocco* (Springer Science & Business Media 2005).

Intangible Cultural Heritage Centre for Asia and Pacific, 'Safeguarding Intangible Cultural Heritage and Intellectual Property: Trends, Tasks, and Challenges' (Oct. 2010) 5 *ICH Courier* 1.

Interview with Pratiwi DL, Head of Division for Preservation and Cultural Value, Yogyakarta Regional Service Office for Culture (Yogyakarta, Indonesia, 31 Aug. 2017).

Johnsson DZ, 'The Branding of Traditional Cultural Expressions: To Whose Benefit?' in Peter Dragos and Susy Frankel (eds), *Indigenous People's Innovation: Intellectual Property Pathways to Development* (ANU Press 2012).

Ko E and Lee S, 'Cultural Heritage Fashion Branding in Asia' in Arch G. Woodside (ed), *Tourism Sensemaking: Strategies to Give Meaning to Experience (Advances in Culture, Tourism and Hospitality Research, Volume 5)* (Emerald Group Publishing Limited 2011).

Mapson L, 'Reog Ponorogo' (*Inside Indonesia*, 23 November 2010) <[www.insideindonesia.org/reog-ponorogo](http://www.insideindonesia.org/reog-ponorogo)> accessed 13 November 2018.

Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia (*Sandingan Data UMKM 2012-2017*).

O'Sullivan A and Sheffrin SM, *Economics: Principles in Action* (Pearson Prentice Hall, Upper Saddle River, New Jersey 2003).

Short R, 'Branding is the New Economic Development' (*Forbes.com*, 31 August 2018)

<[www.forbes.com/sites/forbesagencycouncil/2018/08/31/branding-is-the-new-economic-development/](http://www.forbes.com/sites/forbesagencycouncil/2018/08/31/branding-is-the-new-economic-development/)> accessed 5 November 2018.

The Place Brand Observer, '4 Place Branding Examples to Inspire Economic Development Professionals' <<https://placebrandobserver.com/place-branding-examples-economic-development-professionals>> accessed 5 November 2018.

The Place Brand Observer, 'Economic Development' <<https://placebrandobserver.com/category/economic-development>> accessed 5 November 2018.

Tourism Indonesia, 'Protest over Malaysia's Claim over Old Balinese Pendet Dance' (Aug. 2009) <[www.tourismindonesia.com/2009/08/protest-over-malaysia-claims-over-old.html?m=1](http://www.tourismindonesia.com/2009/08/protest-over-malaysia-claims-over-old.html?m=1)> accessed 13 November 2018.

Yang F, *Faked in China: Nation Branding, Counterfeit Culture, and Globalisation* (Indiana University Press 2015).

Zografos D, 'The Legal Protection of Traditional Cultural Expressions: The Tunisian Example' (Mar. 2004) 7 *J. of World Intell. Prop.*