

**Lessons Learned from National and Regional Legislative Initiatives
on Intellectual Property and Traditional Cultural Expressions**

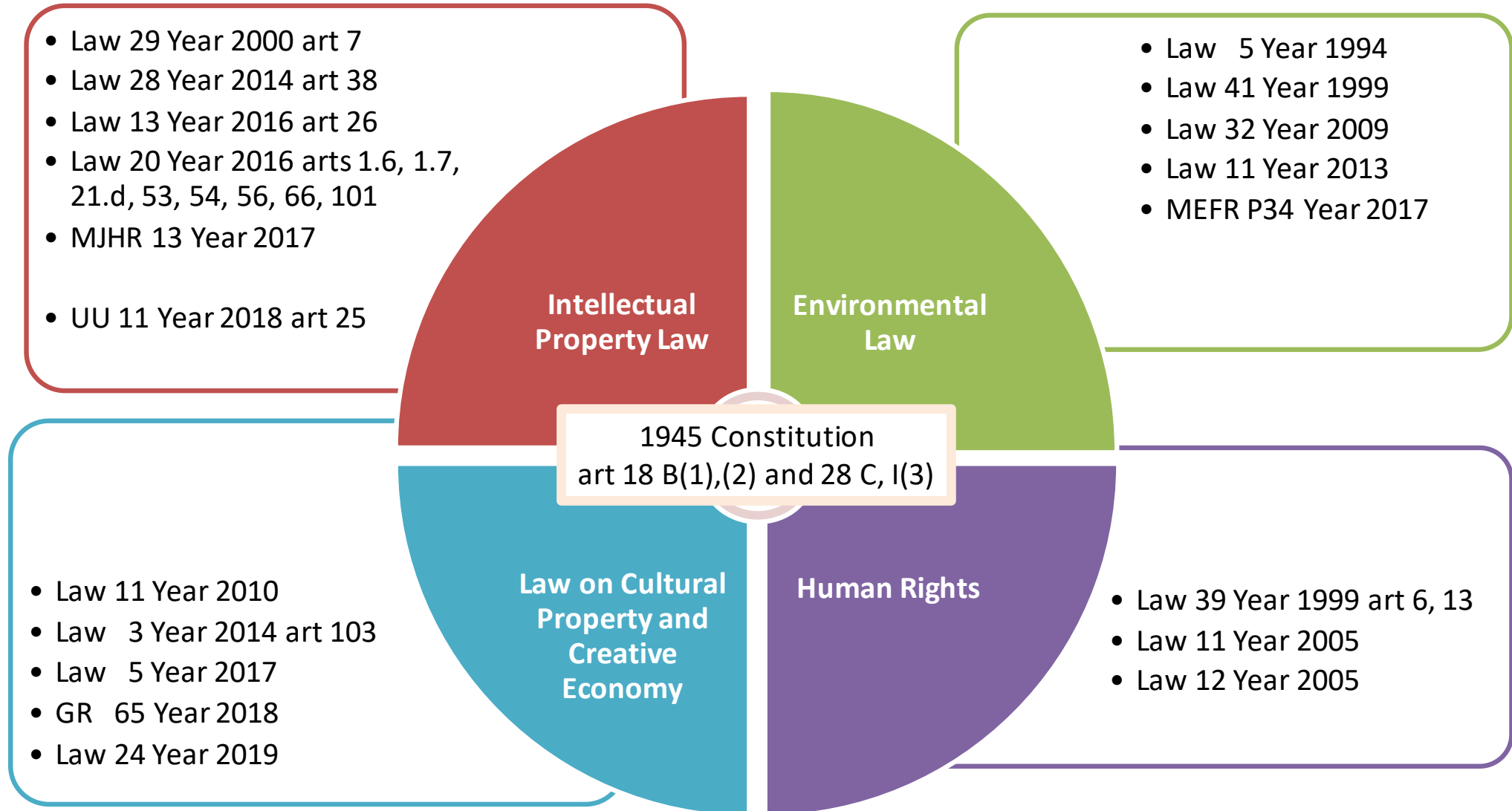
**Indonesian Model on Communal Intellectual Property Rights,
including Traditional Cultural Expressions**

Virtual Regional Seminar on Copyright and Traditional Cultural Expressions
organized by the World Intellectual Property Organization (WIPO)
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Indonesian Sui Generis Legal Provisions regarding Communal Intellectual Property



Legal Bases for Traditional Cultural Expressions in Indonesia

- Copyrights Law No. 28 Year 2014 art 38 and 40 (e),(j),(q)
- Presidential Regulation No. 2 Year 2020 about the Ratification of Beijing Treaty on Audiovisual Performances
- Presidential Decree No. 18 Year 1997 about the Ratification of Berne Convention for the protection of Literary and Artistic Works
- Presidential Decree No. 19 Year 1997 about the Ratification of WIPO Copyright Treaty
- Presidential Decree No. 74 Year 2004 about the Ratification of WIPO Performances and Phonograms Treaty
- Ministry of Justice and Human Rights' Decree No. 13 Year 2017 about Data of Communal Intellectual Property
- Local Government Regulations in the Indonesian provinces, cities and regencies

The Objects of Communal Intellectual Property Rights

Genetic Resources

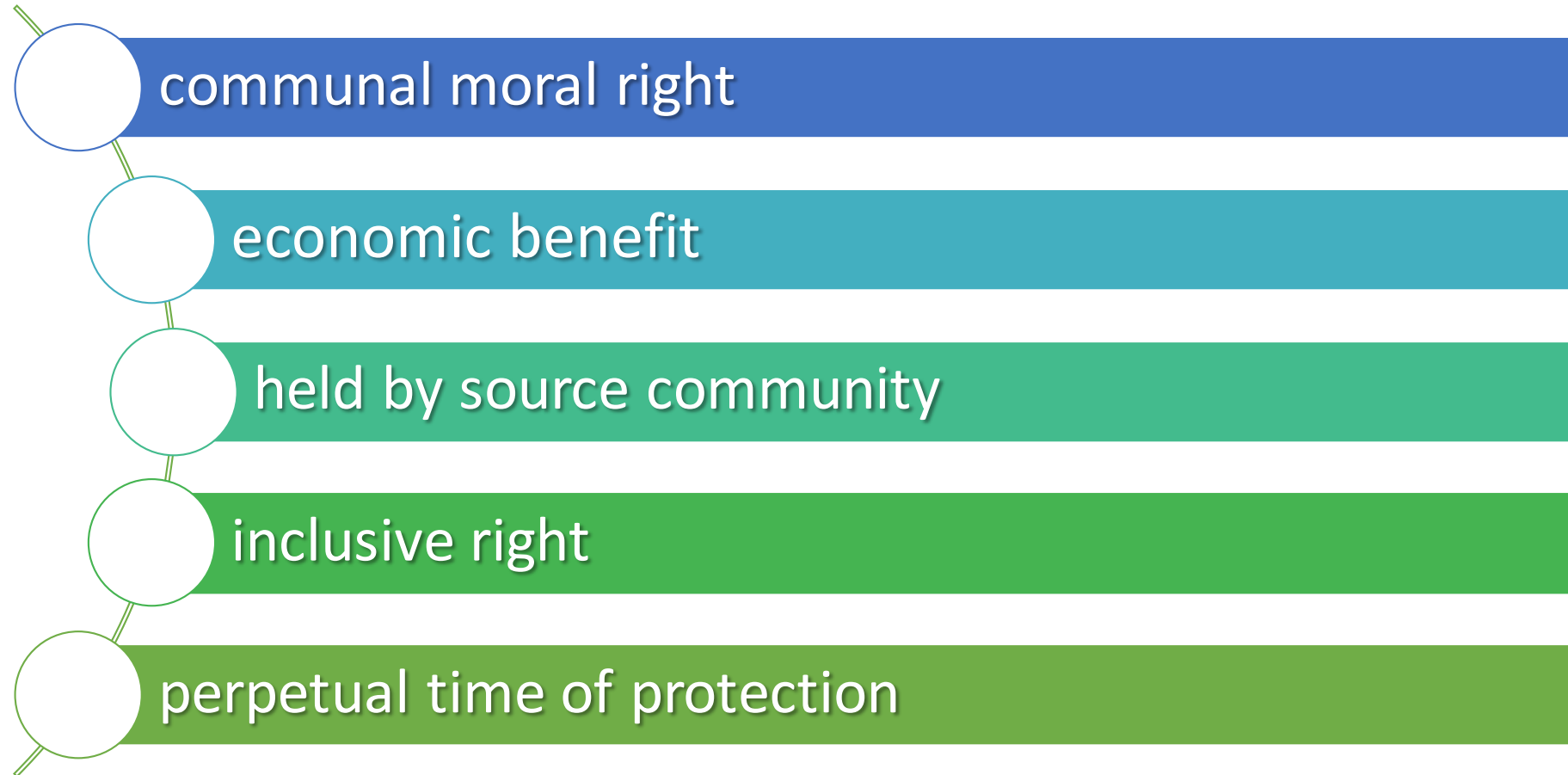
Traditional Knowledge

Traditional Cultural Expressions

Geographical
Indication Potentials

Indication of Sources

Communal Intellectual Property Rights



Definition of the Right Holders of Communal Intellectual Property Rights

- **Custodian** is a community or a traditional society who maintains and develops Traditional Knowledge and/or Traditional Cultural Expressions in communal and traditional ways. (MJHR 13/2017)
- **Source Community** is an indigenous community and/or a local community, who produces, protects, maintains, and/or develops the Communal Intellectual Property in intergenerational context, including **supporting societies**

(Working Draft of GR CIP)

Nature of Traditional Cultural Expressions

- Expressions of artistic works:
 - material and immaterial forms
 - fixed and unfixed forms
- Indicating the viability of traditional cultural expressions
- Held by communal holders
- Being transmitted in intergenerational context

Forms of Traditional Cultural Expressions

- Verbal as well as textual expressions
- Traditional songs and music
- Movements, including traditional dances
- Traditional theaters
- Traditional visual arts
- Traditional ceremonies
- Rituals
- Traditional architectures
- Traditional landscapes
- Digitization of traditional cultural expressions
- Traditional cultural expressions associated with genetic resources

Extended Scope of Protection of Traditional Cultural Expressions

- Sacred and non sacred expressions
- Manuscripts
- Traditional languages
- Traditional games
- Traditional sports
- Traditional culinary expressions
- Unfixed oral expressions
- Local wisdom, except expressions against human rights

Inclusive Right of Traditional Cultural Expressions

- Right of a source community to include other people who have commitments to co-maintain, co-safeguard, and co-develop the objects together without written licensing agreement
- Right of a source community to be involved in a prior informed consent arrangement when their Traditional Cultural Expression is going to be exploited by outsiders:
 - oral consent or silent consent for general Traditional Cultural Expressions
 - written consent in the form of mutually agreed term for Traditional Cultural Expression associated with Genetic Resource embodying a fair and equitable benefit sharing

Inclusive Rights of Traditional Cultural Expressions

Indonesian National Laws and Customary Laws (combined)

- Right of stewardship, safeguarding, conservation, protection, defense, development, maintenance, and co-stewardship
- Right to control
- Right to use, right to exchange, right to mortgage, right to rent
- Right of reproduction, right of publication, right of communication to the public, right to make available to the public
- Transformation right, including digitization right
- Right of benefit sharing, including monetary and non-monetary benefit sharing
- Right to conduct indirect commercialization, in forms of tourism programs
- Individual right based on customary law authorization of the custodians
- Moral right that can be measured by economic valuation

Protection of Geographical Indication Potential available for Traditional Cultural Expressions

Protection of Geographical Indication Potential is available for good or service (product) of which the **environmental factors**, including natural factor, human factor or the combination of the factors, is/are attributable to certain **reputation** of the good or service, and make/s the good or service potential to be registered as a Geographical Indication (if the prospected quality and characteristic allows it)

Forms of Geographical Indication Potential

- Natural resources
- Handicrafts
- Industrial products

Protection of Indication of Source available for Traditional Cultural Expressions

Indication of source of a good or service that is not necessarily associated with the environmental factors, that is protected in so far it indicates the true place origin of the good or service, and being used in trade

(Law on Trademark and Geographical Indication 20/2016 arts 63, 64)

Forms of Indication of Source

- Natural resources
- Agricultural products
- Processed products
- Artworks and handicrafts
- Service products

Mode of Protection

- Defensive protection mechanism through a centralized Official Database
- Open database for Traditional Cultural Expressions, and restricted database for Traditional Cultural Expressions associated with Genetic Resources
- Re-declaration of the right through the Letter of Inscription from the Directorate General of Intellectual Property
- Interactive Official Database, the content of the database can be officially revised or renewed
- Share Traditional Cultural Expressions held by conflicting source communities can be obtained through mediation, facilitated by the government

Term of Protection

- Perpetual protection as long as a Traditional Cultural Expression remains a living culture
- Maintenance of the living Traditional Cultural Expression is a responsibility of the government in cooperation with the source community

Inventory

- Indonesian Ministry of Justice and Human Rights shall conduct inventory programs of Communal Intellectual Property
- Indonesian Ministry of Justice and Human Rights can work together with other ministries, universities and research institutions, non government organizations, and local governments to conduct the inventory of Traditional Cultural Expressions

- **Steps of Inventory**
 1. Field study
 2. Administrative arrangement
 3. Application for the Letter of Inscription of Communal Intellectual Property that makes the data official, and/or
 4. Exchanging and integrating data