



## VAN GOGH IMMERSIVE EXHIBITION: LESSONS & OPPORTUNITIES FOR TRADITIONAL CULTURAL EXPRESSIONS DEVELOPMENT IN INDONESIA

Ranti Fauza Mayana\*, Tisni Santika\*\*

### ABSTRACT

Van Gogh's immersive exhibition is held in more than 90 cities around the world including Berlin, Beijing, Paris, London, Madrid, Rome, Sydney, and Jakarta. Until mid-2023, the exhibition has been attended by more than 8.5 million visitors and is an example of intellectual property development. Corresponding to business, IP Development is the capitalization of ideas, creativity, and innovation in producing products or services that contain creative content through systems of human activity related to the creation, production, distribution, and consumption of goods and services that have cultural, artistic, aesthetic, intellectual and emotional values for consumers. This paper employs a descriptive-analytical approach to describe the relevant legal rules and legal theories of copyright and their application in the IP development of artworks for businesses and the opportunities for Indonesia. The finding of the study indicates that immersive technology as a platform for the development of artworks based on Traditional Cultural Expressions (TCEs) potentially creates opportunities for intellectual property legal protection and business development of Indonesia's TCEs in the frame of Cultural Industries. The commercialization of TCEs using immersive technologies potentially helps in fulfilling two key objectives: capturing new audiences and contributing to economic profit. However, the involvement of legal and non-legal elements as the basis for the implementation conducted in a collaborative framework between state holders and relevant stakeholders is required.

**Keywords:** cultural business; immersive technology; traditional cultural expression.

### I. INTRODUCTION

*Have you ever dreamt of stepping into a painting?*

*Now you can!*

*Welcome to "Van Gogh: The Immersive Experience."<sup>1</sup>*

Van Gogh's immersive exhibitions as the multi-sited, branded multimedia environments inspired by Van Gogh's life and paintings are seemingly ubiquitous. The inspiration for the enormously popular show began in Western Europe in 2019 entitled *Vincent Van Gogh, la nuit étoilée (Vincent Van Gogh: The Starry Night)*. Although Van Gogh's name is the center and the big selling point for the exhibition held all over the world, this exhibition also creatively animated digital images inspired by Van Gogh's life and works projected onto the exhibition spaces.<sup>2</sup>

The exhibition with an immersive concept is organized by collecting and curating all of Vincent van Gogh's works made during his lifetime which are then processed using Artificial Intelligence and Generative Adversarial Network (GAN) algorithms. By combining data painting techniques and color palettes, Vincent van Gogh's works are brought back to life. More than 900 oil paintings and 1,100 sketches were collected, 518 of which were read and processed by Artificial Intelligence. The process

\* Faculty of Law Universitas Padjadjaran, Jalan Ir. Soekarno KM. 21 Jatinangor, Kab. Sumedang, Indonesia. email:ranti.fauza@unpad.ac.id.

\*\* Universitas Pasundan, Jl. Lengkong Besar No.68, Cikawao, Kec. Lengkong, Kota Bandung, Jawa Barat, Indonesia 40261.

<sup>1</sup> "Van Gogh the Immersive Experience Website," 2022, <https://vangoghexpo.com/>.

<sup>2</sup> (Mondloch, 2022).

takes up to 504 hours for data navigation to be completed. The immersive exhibition work is made with brush strokes produced by Artificial Intelligence which consists of 12 billion particles and aims to create the effect of entering and walking in the painting.<sup>3</sup>

The digital technology that creates the immersive art experiences allows visitors to feel transported into the art itself, for instance, the visitors might feel physically present in a field of Van Gogh's sunflower. The immersive exhibition is gaining popularity as a business model, HERE Institute's 2020 annual report releases the data that the immersive entertainment industry is estimated to be valued at over \$61.8 billion and highly profitable due to the fact that this business model eliminates the high costs associated with moving and insuring physical artwork of the famous artists.<sup>4</sup>

An immersive art exhibition is a form of intellectual property development (IP Development) in a business. IP Development is the capitalization of ideas and development in delivering the works or products that contain innovative substance through an arrangement of human creativities connected with the creation, innovation, trade, and utilization of works and products that have social, creative, cultural, and intellectual value to human senses.<sup>5</sup>

In relation to business, creativity, and innovation are the most effective ways to increase businesses profitability. The focus of business development in the creative economy and digital economy era strongly lies in creativity and innovation which mainly originate from intellectual activities. These intellectual creativities are then realized or fixated in a tangible form that can be monetized. The massive IP development in the form of immersive art exhibitions and the utilization of artworks raise numerous opportunities for IP development and at the same time raises several legal concerns, especially regarding the copyright law.

Seeing the aforementioned background and problem, this paper will first provide a brief story of Vincent Van Gogh's life and his artworks and analyze the concept and model of Intellectual Property Development for businesses based on his life and artworks (A). Further, this paper will analyze the Indonesian copyright perspectives of the intellectual property development of Van Gogh's artworks. (B) Ultimately, this paper will elaborate on the emerging immersive technology: lessons and opportunities for the development of artworks based on Traditional Cultural Expression in Indonesia. (C).

## II. DISCUSSION AND RESULTS

### **Van Gogh: Life and Artworks and How They Inspired Intellectual Property Development for Businesses.**

Vincent Willem van Gogh, born in Zundert, Netherlands 30 March 1853 was a Dutch post-impressionist painter who became quite possibly the most well-known and persuasive figure in craftsmanship history. From November 1883 to December 1884, Vincent van Gogh lived at his parents' house in Etten, Netherlands, where he made his first paintings. In the range of 10 years, van Gogh made in excess of 2,100 masterpieces, including around 860 oil artistic creations, a large portion of which were made throughout the span of his last 2 years of lifespan.<sup>6</sup>

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<sup>3</sup> Ouchhh TV, *AI Van Gogh/Artificial Data Painting Immersive Experience*, [https://ouchhh.tv/AI-VAN-GOGH\\_IMMERSIVE-DATA-PAINTING](https://ouchhh.tv/AI-VAN-GOGH_IMMERSIVE-DATA-PAINTING), accessed 31 Juli 2023.

<sup>4</sup> Laura Dowdy, "The Public Domain and Immersive Art: Copyright Law Impacts Interactive Art Experiences," Center for Art Law, 2023, <https://itsartlaw.org/2023/03/23/the-public-domain-and-immersive-art-how-copyright-law-impacts-interactive-art-experiences/>.

<sup>5</sup> Ranti Fauza Mayana and Tisni Santika, *Hak Cipta dalam Konteks Ekonomi Kreatif dan Transformasi Digital*, 1st editio (Bandung: Refika Aditama, 2022).

<sup>6</sup> (Baum, 2022).

During his lifetime, van Gogh was not a successful artist, van Gogh only managed to sell one painting throughout his life, namely the painting "The Red Vineyard" which he painted in 1888 in Arles, France. The painting sold for 400 francs in Belgium 7 (seven) months before his death. Van Gogh battled severe depression and poverty throughout his life which ultimately led to his suicide at the age of 37.<sup>7</sup>

His work's reputation began to grow in the early 20th century and achieved success in terms of popularity, commercial, and reputation in the eyes of art critics as one of the greatest painters of all time. The life story and works of Vincent van Gogh have become an inspiration for many artists and many works have emerged from this inspiration, one of which is an experimental animated biographical drama film made in 2017 with the title "Loving Vincent".<sup>8</sup> This animated film is directed by Dorota Kobiela and Hugh Welchman and involves more than 125 animators from 20 countries who produce oil paintings which then become a series of scenes in the film.<sup>9</sup>

The story of "*Loving Vincent*" begins inside "The Starry Night", Van Gogh's most instantly recognizable painting, 1 (one) year after the death of Vincent van Gogh, in the summer of 1891. "*Loving Vincent*" is narrated like a detective story where the protagonist of the film named Armand Roulin, a young man from Arles brings a letter written by Vincent shortly before his death which is intended for his brother, Theo. When Armand tried to deliver the letter, he found that Theo, Vincent's brother had also died. Armand then explored life and learned the stories of Vincent van Gogh. On his way, Armand met many people who shared their stories and memories about Vincent which made Armand admire him even more.<sup>10</sup>

"*Loving Vincent*" is the first animated film in which all animation is made with oil paint. The production process took 6 (six) years in which 125 of the best painters around the world published 65,000 oil paintings on canvas, adopting Vincent's painting style in his painting works. These works are then filmed together with the live action of the actors and actresses and then every scene/frame of the film is transformed into an animated work.<sup>11</sup> The production Budget of "*Loving Vincent*" is \$ 5,500,000; this movie gains \$44,071,728 in theatrical performance and \$1,605,265 in Home Market Performance.<sup>12</sup>

Another work that also takes Vincent van Gogh and his work as inspiration is Doctor Who, the popular British science fiction series produced and aired by the BBC since 1963. In one of the episodes, entitled "*Vincent and the Doctor*",<sup>13</sup> the character "Doctor" a time ruler from the planet Gallifrey explores the universe through his time machine shaped like the "Police Box" in London in 1963. "Doctor" goes back in time and picks up Vincent to take him to the museum of his paintings in 2010 where in the episode Vincent can see his paintings on display in the Museum and hear the art curators talking about his work and addressing him as the finest, greatest and most beloved painter.<sup>14</sup>

<sup>7</sup> (Baum, 2022).

<sup>8</sup> Myria Christophini, "' Loving Vincent ' and ' I ' m OK ' : Two Approaches to Documenting the Life of an Artist," 2020, [https://www.researchgate.net/publication/341130191\\_'Loving\\_Vincent'\\_and\\_'I'm\\_OK'\\_two\\_approaches\\_to\\_documenting\\_the\\_life\\_of\\_an\\_artist#fullTextFileContent](https://www.researchgate.net/publication/341130191_'Loving_Vincent'_and_'I'm_OK'_two_approaches_to_documenting_the_life_of_an_artist#fullTextFileContent).

<sup>9</sup> Nihal Nour, "Loving Vincent : Challenging Genre Conventions in the Digital Age," *Cairo Studies in English* 2 (2019), [https://www.academia.edu/44504762/Loving\\_Vincent\\_Challenging\\_Genre\\_Conventions\\_in\\_the\\_Digital\\_Age](https://www.academia.edu/44504762/Loving_Vincent_Challenging_Genre_Conventions_in_the_Digital_Age).

<sup>10</sup> (Nour, 2019).

<sup>11</sup> (O'Falt, 2017).

<sup>12</sup> (Numbers, 2017).

<sup>13</sup> British Broadcasting Corporation, "Doctor Who - Vincent Van Gogh," BBC, 2017, <https://www.bbc.co.uk/programmes/profiles/P4VjGRzKMcRD3lNQ14dLcn/vincent-van-gogh>.

<sup>14</sup> IMDb, "Doctor Who: Vincent and The Doctor," IMDb, 2017, [https://www.imdb.com/title/tt1591786/quotes/?ref\\_=tt\\_trv\\_qu](https://www.imdb.com/title/tt1591786/quotes/?ref_=tt_trv_qu).

Vincent van Gogh's much-admired works have become the main inspiration for organizing the Van Gogh Immersive Exhibition which until 2023 has been held in more than 90 cities around the world including Berlin, Beijing, Paris, London, Madrid, Rome, Sydney and Jakarta, and has been visited by more than 8.5 million visitors. In this exhibition, visitors are invited to trace the life and works created by Vincent Van Gogh throughout his life. The first immersive exhibitions of Van Gogh's artworks took place in Europe in the 2000s. Other artists like Picasso and Monet have also been featured in similar shows, although Van Gogh's popularity makes his shows the most successful. Some in the entertainment industry say the concept of the Van Gogh Immersive Experience got a big boost when the hit *Netflix series*, "Emily in Paris" featured a scene at the Van Gogh exhibition.<sup>15</sup>

The exhibition with an immersive concept is organized by collecting and curating all of Vincent van Gogh's works made during his lifetime which are then processed using Artificial Intelligence and Generative Adversarial Network (GAN) algorithms. By combining data painting techniques and color palettes, Vincent van Gogh's works are brought back to life. The immersive exhibition work is made with brush strokes produced by Artificial Intelligence which consists of 12 billion particles and aims to create the effect of entering and walking in the painting.<sup>16</sup>

In the exhibition, there is also a 3-dimensional and real-life size version of one of Vincent Van Gogh's most famous paintings, namely the painting of his room in Arles which was painted in 1888. The exhibition is also equipped with various kinds of music playing, some with sad tones, and some with happy tones. The music helps visitors to understand Vincent Van Gogh's feelings when painting his works. The exhibition is also equipped with the *Sunflower Room* which is a tribute to Vincent's love of sunflowers and visitors can enter the room which is equipped with glass so that it produces the effect of being surrounded by an endless of sunflowers.

'Lighthouse Immersive' as one of the entertainment company that presenting "The Immersive Van Gogh" show in around twelve cities across North America estimated that collectively they have sold about 4.5 million tickets, converting into generally \$250 million in income and \$30 million in subordinate gift-shop income. The exhibition's ability to be produced and organized at a relatively low cost contributed to the substantial revenue. Mario Lacampo, CEO of Presentation Center, an organization that is introducing Van Gogh shows across the globe uncovers the underlying speculation of the display is around \$250,000 in the computerized creation itself with the expense and cost of around \$50,000 to \$75,000 in every city. Plus, Van Gogh's works are in the public domain; therefore, there is no prerequisite and commitment concerning permits, license fees, and royalties.<sup>17</sup>

### **Indonesian Copyright Perspectives of the Intellectual Property Development of Van Gogh's Work**

"Work" or "Creation" in the provision of the Indonesian Copyright Law is defined as the work in the fields of science, art, and literature: produced based on inspiration, ability, thought, imagination, dexterity, creativity, or expertise and must be fixated in concrete form.<sup>18</sup> According to the Law of

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<sup>15</sup> Charles Passy, "Cheesy Entertainment or a Bold New Way to Experience Art? Either Way, Van Gogh 'Immersive' Shows Have Become a Money-Making Sensation," MarketWatch, 2022, <https://www.marketwatch.com/story/how-van-gogh-became-one-of-the-entertainment-worlds-biggest-stars-in-2021-11640638081>.

<sup>16</sup> Ouchhh TV, "AI Van Gogh / Artificial Data Painting \_ Immersive Experience," Ouchhh TV, accessed July 31, 2023, [https://ouchhh.tv/AI-VAN-GOGH\\_IMMERSIVE-DATA-PAINTING](https://ouchhh.tv/AI-VAN-GOGH_IMMERSIVE-DATA-PAINTING).

<sup>17</sup> Passy, "Cheesy Entertainment or a Bold New Way to Experience Art? Either Way, Van Gogh 'Immersive' Shows Have Become a Money-Making Sensation."

<sup>18</sup> Yoga Mahardita and Kholis Roisah, "Optimizing the Authority of Indonesia Customs in Legal Protection of Intellectual Property Rights," in *1st International Conference on Indonesian Legal Studies (ICILS 2018)* (Atlantis Press, 2018), <https://www.atlantis-press.com/proceedings/icils-18/25903155>.

Republic Indonesia Number 28 year 2014 on Copyright (Indonesia Copyright Law), the registration of copyright has substantive requirements, namely originality, creativity, and fixation. Work can be said to have an element of originality and is a form of creativity if it is the result of one's creation, even though it may be inspired by the work of other people. The fixation element implies that a work is entitled to a copyright if it has been stated in concrete form, not in the form of an idea.<sup>19</sup>

Article 40 verse (1) letter n Indonesian Copyright Law states that protected work includes Works in science, art, and literature which include interpretations, adaptations, anthologies, databases, modifications arrangements, and other works resulting from the transformation, which consist of:

- a. Books, pamphlets, published versions of written works, and all other written works;
- b. Lectures, speeches, and other similar creations;
- c. visual aids made for the benefit of education and science;
- d. Songs and/or music with or without subtitles;
- e. Drama, musical drama, dance, choreography, puppetry and pantomime;
- f. Fine art in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture or collages;
- g. applied art;
- h. architectural works;
- i. Map;
- j. Batik artwork or other motif art;
- k. Photographic work;
- l. Portrait;
- m. Cinematographic works;
- n. Translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications, and other works of transformation;
- o. Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- p. Compilation of Works or data, both in a format that can be read with a Computer Program or the media;
- q. Compilations of traditional cultural expressions as long as they are original works;
- r. video games;
- s. Computer program.

Of the various works created based on inspiration from the works and stories of Vincent van Gogh's life journey, development can be carried out to produce derivative works such as films and exhibitions that can be monetized and commercialized. In the context of copyright law protection, Vincent van Gogh's paintings are now not protected by the copyright law regime, considering that Vincent van Gogh died on July 29, 1890, having exceeded 70 years which is the basis for determining the period of copyright protection, namely as long as the creator lives plus 70 (seventy) years after his death. This means that now the status of Vincent van Gogh's paintings is public domain.

When a creative work such as a painting, sculpture, photograph, song, or book is in the public domain, anyone can freely use, share, or adapt it without license or permission from its author. Once a work enters the public domain, ownership of the copyright expires, for example, the reproduction/image of "*The Starry Night*" one of the most popular paintings from Van Gogh can be found everywhere, be it in the form of printing, postcard or even became part of numerous product design.

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<sup>19</sup> Ahmad M Ramli, *Hak Cipta Disrupsi Digital Ekonomi Kreatif*, 1st Editio (Bandung: Alumni, 2018).

Nevertheless, considering any form of reproduction or adaptation of the works that have largely based on works in the public domain can be classified as derivative works, then several certain aspects of the immersive exhibition may be protected under copyright law. This is based on the provision of Article 40 verse (1) letter n and letter p Indonesia Copyright Law which states that protected work includes translations, interpretations, adaptations, anthologies, databases, arrangements, modifications, and other works of transformations, compilation of Works or data, both in a format that can be read with a computer program or the media.

According to article 58 verse (1) Indonesia Copyright Law, the copyright protection for derivative works is persevered for a term comprising of the life of the Author and 70 (seventy) years after the Author's demise, beginning from the first January of the year following the occasion in the event that the derivative works are as books, flyers and any remaining composed works, talks, lectures, discourses, and other comparative works, props made for instructive and logical purposes, tunes or music regardless of verses, dramatic works, melodic dramatizations, dances, choreography, puppet shows, pantomimes, fine art works in all structures, for example, compositions, drawings, etchings, calligraphy, figures or montages, engineering works, guides and batik fine arts or other example expressions.

Further, article 58 verse (2) Indonesia Copyright Law regulates that in the event that the Works is claimed by 2 (two) or more people, the Copyright protection will persevere for a term comprising of the existence of the last enduring Creator and 70 (seventy) years after such last enduring creator's passing, starting from first January of the year following the occasion, and in case the derivative works owned or held by a legal entity, the copyright protection endures for 50 (fifty) years since its first Publication as regulated in the article 58 verse (3) Indonesia Copyright Law.

According to article 59 verse (1) Indonesia Copyright Law, the copyright protection for derivative works is endured for a term consisting of the life of the Author and 50 (fifty) years since the first Publication the event if the derivative works are in the form of photographic works, portrait, cinematographic works, video games, computer programs, typographical arrangement of composed works, translations, interpretations, alterations, anthologies, databases, adaptations, arrangements, modifications and other work resulting from transformation. Article 59 verse (2) Indonesia Copyright Law regulates copyright protection for works of applied art endures for 25 (twenty-five) years since the first Publication.

The immersive exhibition as an integrated unit can be classified as a "compilation of works" or "derivatives of the works" and eligible for copyright protection because copyright law protects not only the original artworks themselves but also derivative works that are created based on the original artworks. Derivative works include works that are based on or incorporate from the original artwork, such as reproductions, adaptations, and translations. For example, an immersive exhibition wherein the paintings of Van Gogh are displayed through virtual reality with the creation in placement and the addition of elements such as lighting, sounds, and music may be considered a derivative work that is protected by copyright law.

The U.S. Copyright Office defines derivative works as:<sup>20</sup>

*"A derivative work is a work based on or derived from one or more already existing works. Common derivative works include translations, musical arrangements, motion picture versions of literary material or plays, art reproductions, abridgments, and condensations of preexisting*

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<sup>20</sup>U.S. Copyright Office, "Circular 14 : Copyright in Derivative Works and Compilations" (n.d.), <https://www.copyright.gov/circs/circ14.pdf>.

*works. Another common type of derivative work is a "new edition" of a preexisting work in which the editorial revisions, annotations, elaborations, or other modifications represent, as a whole, an original work.*

Indonesia Copyright law does not strictly define and regulates what derivative work is. However, article 40 verse (1) letter m, letter n, letter o, and letter p provides copyright protection for the subject that is strongly linked with derivative works. The provision regulates that protected Works which incorporate scientific, literary, and artistic works, involve cinematographic works, interpretations, understandings, translation, anthologies, data sets, variation, adaptation, modification, adaption, and different works as the result of change, interpretation, transformation, translation, variation, modification and transformation of TCEs whether in a discernible configuration by a computer program or different media.

### **The Emerging Immersive Technology: Lessons and Opportunities for the Development of Traditional Cultural Expression in Indonesia**

The immersive entertainment industry is a new type of industry that reintegrates technology, art, entertainment, and commerce.<sup>21</sup> Although immersive art experiences are not new, they have become popular and growing exponentially in recent years. There are many venues in different parts of the worlds dedicated to showcasing the works of different artists through digital immersive art technology. This indicates that the entertainment model becomes more individualized, interactive, and immersive.<sup>22</sup> The global immersive technology market size is expected to hit around \$134.18 billion by 2030 poised to grow at a compound growth rate (CAGR) of 22, 46 from 2022 to 2030.<sup>23</sup>

Some companies have successfully registered for copyright protection for their immersive art exhibition. For example, *Dirty Monitor*, a Belgium-based company registered its immersive art project entitled *Van Gogh Immersive Exhibition* in *U.S. Copyright Office* in 2017 for the aspects of a reproduction that are independently copyrightable: all the cinematographic material, the additional new footage and the production as a motion picture. The immersive exhibition as an integrated unit involved many different elements such as lighting design, sound effects, musical scores, and video and virtual reality. The copyrightability of this unit lies in the form of expression as the way they express art that is in the public domain.<sup>24</sup>

M. Claudia Tom Dieck and Dai-in Danny Han contended that immersive technologies are reforming and redefining the model of customer experiences.<sup>25</sup> Looking back to the aforementioned examples, there's a preference for reproducing the artworks of famous artists that have fallen into the public domain such as Vincent Van Gogh, Salvador Dali, and Leonardo da Vinci where the immersive art companies attract a wide audience and therefore stand to profit from both the famous artists recognition and from the opportunity to create a new experience for the viewers and visitors, portraying the art on a larger scale and in an amplified way. In summary, immersive art experiences featuring

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<sup>21</sup>Yiwen Wang et al., "Investment Value Analysis of Immersive Entertainment Industry—Take Mango Supermedia Co., Ltd. as an Example," *Proceedings of the 2022 International Conference on Mathematical Statistics and Economic Analysis (MSEA 2022)*, 2023, 716–25, [https://doi.org/10.2991/978-94-6463-042-8\\_103](https://doi.org/10.2991/978-94-6463-042-8_103).

<sup>22</sup>(BytePlus, 2022).

<sup>23</sup>Precedence Research, "Immersive Technology Market Size, Trends, Growth, Report 2030," 2022, <https://www.precedenceresearch.com/privacy-policy>.

<sup>24</sup>(Dowdy, 2023).

<sup>25</sup>M. Claudia Tom Dieck and Dai in Danny Han, "The Role of Immersive Technology in Customer Experience Management," *Journal of Marketing Theory and Practice* 30, no. 1 (2022): 108–19, <https://doi.org/10.1080/10696679.2021.1891939>.

artwork from the public domain have become a highly lucrative and popular way in which people are consuming art, and *vice versa* immersive exhibitions became a preference model for art-based entertainment business that generate profit as well as promotes the art.

The important lessons from this immersive art exhibition are how sustainable the artworks can be and how the creative management of those artworks potentially generates greater profit, and economic benefits and at the same time fosters the range of promotion of the artworks. The hype of these immersive art exhibitions brought several prominent opportunities for Indonesia in both businesses aspect and cultural advancement through the utilization of cultural-based artworks known as Traditional Cultural Expressions (TCEs).

Article 38 verse (1) Indonesia Copyright Law regulates that the copyright of traditional cultural expression is held by the state. Further, the elucidation elaborates that:

*The term “traditional cultural expressions” means one or a combination of the following forms of expression:*

- a. *Textual verbal, both oral and in writing, in the form of prose or poetry, in various themes and content of the message, which may be a literary work or an informative narrative;*
- b. *Music, including, among others, vocal-instrumental, or any combination thereof;*
- c. *Motion, including, among others, dance;*
- d. *Theater, including, among others, puppet shows and folk plays;*
- e. *Fine art, either in two-dimensional or three-dimensional form made of various kinds of materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textile et cetera, or a combination thereof: and*
- f. *Traditional Ceremonies.*

TCEs are intangible assets with massive economic potential, especially when the development is entangled with the entertainment industries and creative economy. In recent times, there has been a rising spotlight on the assurance of customary social articulations to forestall unapproved use, inappropriate commercial exploitation, or disrespectful misrepresentation.<sup>26</sup> In the further context, Indonesia as an archipelagic country possesses a diverse range of potentials, particularly in the realm of TCEs. By effectively and strategically conducting heritage management, particularly concerning the protection and promotion of TCEs and the creation of TCEs-based derivative works, Indonesia can showcase its competitive advantages and distinctive cultural assets.

Historically, there are several examples of monetization and commercialization of Traditional Cultural Expressions by creating derivative works. The arguably phenomenal example is the story of “*I La Galigo*” also known as “*Sureq Galigo*”, which is a literary work from the *Bugis* which uses a certain *Bugis* vocabulary so that it is considered very beautiful with a high level of advancement. Laina Rafianti and Ahmad M Ramli elaborate on the massive potential of harmonizing the management and commercialization of TCEs and Cultural Diplomacy taking *I La Galigo* as a case study.<sup>27</sup> This literary work originates from the 14<sup>th</sup> century AD, and is rooted in oral stories passed down from generation to generation which are outlined in the form of high-quality literary works. The results are set forth in

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<sup>26</sup>Rindia Fanny Kusmaningtyas et al., “Traditional Cultural Expression as an Embodiment of Indigenous Communities and Regional Identity (Semarang Indonesia Case),” *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 45–92, <https://doi.org/10.15294/jils.v8i1.63191>.

<sup>27</sup>Laina Rafianti and Ahmad M. Ramli, “Harmonizing Cultural Diplomacy and Commercialization of Traditional Cultural Expressions: Case Study on *I La Galigo* Theatrical Performance,” *Humanities & Social Sciences Reviews* 8, no. 4 (2020): 1180–89, <https://doi.org/10.18510/hssr.2020.84112>.

written form which is estimated to reach 6,000 pages and is considered as one of the longest literary works in the world.<sup>28</sup> The manuscript of *I La Galigo* has been recognized by UNESCO as *a Memory of the World in 2010*,<sup>29</sup> with Indonesia and the Netherlands as the registering countries. The manuscript has been adapted into a world-class theatre performance with the title *I La Galigo*. This performance is the result of an in-depth study of *Sureq Galigo* for 3 (three) years since 2001, initiated by the *Bali Furnati Foundation*.<sup>30</sup>

Since its premiere at the *Esplanade Theaters on the Bay (Singapore)* in 2004, this theatrical performance has continued to garner praise,<sup>31</sup> when it is held in major cities of the world such as the *Lincoln Center Festival* in New York and called a "stunningly beautiful music-theater work" by *The New York Times*, *Het Muziektheater* in Amsterdam, *Fòrum Universal de les Cultures* in Barcelona, *Les Nuits de Fourvière* in France, *Ravenna Festival* in Italy, *Metropolitan Hall for Taipei Arts Festival* in Taipei, *Melbourne International Arts Festival* in Melbourne, *Teatro Arcimboldi* in Milan, before returning to Makassar to be performed at *Fort Rotterdam*. *I La Galigo* was also chosen as a world-class special performance at the 2018 *International Monetary Fund-World Bank Group Annual Meetings in Bali*.

After traveling to nine countries in 18 years, on July 2019 *I La Galigo* staged in Ciputra Artpreneur, Jakarta, Indonesia. The *I La Galigo* theatrical musical performance acknowledged as a world-class show, tells stories through dance, gestures, sounds, and musical arrangements composed by Rahayu Supanggah under the direction of Robert Wilson, one of the best contemporary theater directors. To create a more dramatic expression, as many as 70 musical instruments, ranging from traditional Sulawesi, Javanese, and Balinese instruments, will be played by 12 musicians to accompany this performance. According to the organizers, *I La Galigo* is difficult to bring to Jakarta due to the cost of transporting nearly 4 tones of stage production properties from Milan to Jakarta. With support from the Government, the props were taken from Milan to Bali and then transported by truck from Bali to Jakarta.<sup>32</sup>

The commercial production of *I La Galigo* shows us the massive potential of sustainable use and sustainable development of TCEs through performance art. The case study of *I La Galigo* also shows that producing high-quality of TCEs – based performance like exhibitions or performing arts is a complicated yet costly business. However, digital disruption provides a wide variety of options for promoting and expressing creative works, including TCEs. Laina Rafianti, *et al.* elaborate on the huge potential of *YouTube* as media to promote Indonesian traditional cultural expressions.<sup>33</sup> Ade Yustiana *et.al* analyze the positive effect of using *Webtoon* as learning media for *I La Galigo* as a classical *Bugis* literature on increasing interest in learning the language and culture of the *Bugis* regional junior high school students.<sup>34</sup>

<sup>28</sup>Ranti Fauza Mayana & Tisni Santika, *Hak Cipta dalam Konteks Ekonomi Kreatif dan Transformasi Digital*.

<sup>29</sup>Sharyn Graham Davies, "Performing Selves: The Trope of Authenticity and Robert Wilson's Stage Production of *I La Galigo*," *Journal of Southeast Asian Studies* 46, no. 3 (2015): 417–43, <https://www.cambridge.org/core/journals/journal-of-southeast-asian-studies/article/abs/performing-selves-the-trope-of-authenticity-and-robert-wilsons-stage-production-of-i-la-galigo/163A3EB8B60D346DA39E9505787BFC27>.

<sup>30</sup>Ranti Fauza Mayana & Tisni Santika, *Hak Cipta Dalam Konteks Ekonomi Kreatif Dan Transformasi Digital*.

<sup>31</sup>Davies, "Performing Selves: The Trope of Authenticity and Robert Wilson's Stage Production of *I La Galigo*."

<sup>32</sup>Santi Sophia, "Setelah Pentas di 9 Negara, *I La Galigo* Hadir di Jakarta," *Republika*, June 13, 2019, <https://ameera.republika.co.id/berita/pt14cg414/setelah-pentas-di-9-negara-i-la-galigo-hadir-di-jakarta>.

<sup>33</sup>Laina Rafianti, Ahmad M. Ramli, and Rika Ratna Permata, "Promoting Traditional Cultural Expressions via YouTube," *Jurnal Dinamika Hukum* 19, no. 1 (2019): 19, <https://doi.org/10.20884/1.jdh.2019.19.1.2419>.

<sup>34</sup>Ade Yustina, Nur Fitri Isneni, and Dedi Risaldi, "The Transition Of *I La Galigo* Epos Into A Webtoon Serial Form As A Learning Media Of Buginese Classical Literature," *ISLLAC: Journal of Intensive Studies on Language, Literature, Art, and Culture* 3, no. 2 (2019): 263–68, <http://journal2.um.ac.id/index.php/jisllac/article/view/11334/4912>.

Given recent technological developments, there has been a resurgence of tech-business interest in immersive media and immersive storytelling in such a context. Combines with the growing trend of how people consume and enjoy art, it's important to analyze deeper how the production of TCEs in the form of immersive experiences potentially creates opportunities for an intellectual property legal protection and business development of TCEs in the frame of Cultural Industries. A discussion paper published by Cardiff University in collaboration with The Creative Industries Policy and Evidence Centre (PEC) elaborates the immersive experiences as the emergent themes in museums, galleries, and heritage sites.<sup>35</sup>

Immersive technology approaches broaden the possibilities of digital storytelling for they are grounded in a physical and sensorial reality and have the potential to become more wholesome experiences. Interest in immersive experiences within the context of museums and heritage management has increased in recent years. Immersive experiences are expected to increase visibility and contribute to a culture of innovation, appeal to new audiences, allow for more meaningful participation and facilitate better engagement and provide additional revenue.<sup>36</sup> The commercialization of TCEs using immersive technologies potentially helps in fulfilling two key objectives: capturing new audiences and contributing to economic profit.

Apart from the promising benefits of the utilization of immersive technologies in the commercialization and development of TCEs, it should be understood that the diversity of TCEs apart from being the pride and identity of the region is also an invaluable asset and potential for each region. Therefore, to formulate the legal protection as well as the sustainable use and sustainable development of TCEs it's important to consider and involve legal and nonlegal perspectives as the basis for the implementation.

From the legal perspective, *The Berne Convention for the Protection of Literary and Artistic Works* (*The Berne Convention* – ratified by Indonesia through Presidential Decree Number 18 / 1997) introduced copyright protection for Traditional Cultural Expressions (also known as *Folklores*) at the international level since 1967 in Stockholm. *The Berne Convention* provides that on account of unpublished works where the identity of the creator is obscure, however where there is each ground to assume that he/she is a public of a country to assign the equipped power which will address the creator who will be qualified for protect and implement their right in the countries of the Union.

In the context of copyright and TCEs, Article 38 verse (1) of Indonesia Copyright Law regulates the Copyright on the traditional cultural expression held by the State. These provisions strongly emphasized the state sovereignty over Traditional Cultural Expressions. The right of the state embodied with the obligation as regulated in Article 38 verse (2): The state is obligated to take inventory, preserve and maintain Traditional Cultural Expressions, and further, Article 38 verse (3) regulates that the use of traditional cultural expressions considers the value that lives in the custodian that practices them. The state has sovereign rights to determine the rules, terms, conditions, measurements, and requirements of access and utilization of its resources.<sup>37</sup>

At the implementing level, based on the Provisions of Article 561 paragraph (2) Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 11 of 2015 concerning Organization and Work Procedures, The Ministry of Education and Culture stated that the task of management in the context of protecting TCEs which is the task of the Sub Directorate of Knowledge

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<sup>35</sup> (Kidd & McAvoy, 2019).

<sup>36</sup> (Close, 2022).

<sup>37</sup> (Santika, 2019).

and Traditional Cultural Expressions through the TCEs section has the task of preparing materials for the formulation, coordination, and implementation of policies, norms, standards, procedures, criteria, technical guidance and supervision, development and preservation, evaluation and reports in the field of TCEs.

Considering the unique characteristics of TCEs, the Copyright regime may not adequately protect TCEs due to the expansive dimension of TCEs not just as copyright objects but also the part of culture. Prof. Agus Sardjono splendidly portrays the significance (and urgency) of harmonizing two basic public guidelines: Intellectual Property Regulations (consistently this research will focus on Copyright Law) and Law Number 5 the year 2017 on the Advancement of Culture in creating the strategy and framework towards a viable and productive way for Indonesia to receive productive and beneficial results from the richness of TCEs.<sup>38</sup>

From the non-legal perspectives, there are at least two most considerable aspects, technology and business. **First**, the advancement of digital technology that serves the media for more effective cultural preservations. Currently, digitalization is broadly utilized by museums, libraries and galleries, and heritage sites to preserve and promote their collections.<sup>39</sup> Noticing that the advancement of data and computerized innovations possibly carried difficulties to social variety, UNESCO declared the Convention on the Protection and Promotion of the Diversity of Cultural Expressions in 2005. In particular, this convention promotes the utilization of recent technologies, the promotion of collaboration for the purpose of enhancing information exchange, cultural comprehension, and the diversity of cultural expression.

**Secondly**, from the business point of view, immersive technology creates ways to design and develop products faster and in a more cost-effective way and offers accessibility and inclusivity by making the exhibitions more accessible to a wider audience. Immersive platform potentially used as the media to enhance the protection of TCEs and simultaneously plays the role in sustainable use and sustainable development of TCEs into productive commercialization of TCEs in creative businesses framework. In addition, the investors were heavily taking notice of the huge popularity of the immersive exhibition business; in 2022 Goldman Sachs Asset Management drove a funding round that got \$227 million for *Fever Labs*, the organization behind “*Van Gogh: The Immersive Experience*”. The biggest at any point round of subsidizing for a live-diversion startup, *Fever Labs* guarantees this development its valuation to more than \$1 billion. The extensive development of this area has been reinforced by the minimal expense of using public domain artworks and/or the practicality of not having to transport the physical artworks or exhibit the art performance with the need to provide the stage, the props combine with the high ticket prices typically being charges.<sup>40</sup>

Therefore, the government as the right holder of TCEs should take advantage of digitalization as the instrument of TCEs preservation, education, socialization, protection, safeguarding, promotion, and productive utilization of TCEs through an immersive art exhibition model. Considering the main agenda of protecting, preserving, and promoting the TCEs, the sustainable development of TCEs is paramount important. Therefore, collective and integrated action by creating a system for collective management with a custodianship system of TCEs is needed. This formalized system of custodianship is critical since historically indigenous communities are at a particular disadvantage in negotiating with companies and

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<sup>38</sup>Agus Sardjono, “Symphonizing Intellectual Property Laws in the Advancement of Culture,” *Padjadjaran Jurnal Ilmu Hukum* 4, no. 3 (2017): 437–53, <http://jurnal.unpad.ac.id/pjih/article/view/13977/7206>.

<sup>39</sup>(Kidd & McAvoy, 2019).

<sup>40</sup>(Close, 2022).

require external support and assistance to gain adequate access to justice, thus sustainable development of TCEs requires both legal frameworks and implementing / practical framework.

From the legal framework, while there's no time limitation for the protection of TCEs, a compilation of TCEs may only be protected, according to Article 40 verse (1) letter q of Indonesia Copyright Law, a compilation of TCEs is protected by copyright for a maximum of 50 years from the date of communication to the public in accordance with the provision in Article 59 verse (1) letter j of Indonesia Copyright Law. The immersive platform can be used as the medium for the contemporary expressions of TCEs as pre-existing work. The contemporary expression, therefore classified as derivative works and it can be owned by one or more persons as individual legal subjects, legal entities, or even community.

Although Indonesia Copyright law currently does not strictly define and regulates what derivative work is, article 40 verse (1) letter m, letter n, letter o, and letter p provide copyright protection for the subject that is strongly linked with derivative works. The provision regulates that protected Works which include scientific, artistic, and literary works, comprise cinematographic works, translations, interpretations, alterations, anthologies, databases, adaptation, arrangement, modification, and other works resulting from transformation, translation, adaptation, arrangement, transformation or modification of traditional cultural expressions and compilation of Works or data, whether in a readable format by a computer program or other media. Nevertheless, Indonesia Copyright law needs to provide more comprehensive provisions concerning the copyright protection for derivative works, not only for the compilation of TCEs but also for other forms of expression including the expression of TCEs using digital technologies or even Artificial Intelligence like what has been used in the immersive platform.

From the implementing/practical framework, debates about authenticity, re-creation, modification, and irrelevant implementation of TCEs raises on the development of TCEs, therefore the participation of the state as TCEs right holder through the relevant stakeholders (such as regional government and indigenous communities) are critical to ensure that the use of TCEs considers the value lived by the custodian that practices them in accordance with Article 38 verse (3) Indonesia Copyright Law, in other words, guarantee that the production of immersive experiences utilizing the TCEs is fulfilling the requirements of the rules, terms, conditions, measurements determined by the state and the considerations of the ethical implications of immersive practices.

Given the ownership of TCEs which cannot be transferred, held by the state, and attached to certain communities and/or areas, collaboration, and synergy are needed to optimize the utilization, for example, in the form of a creative partnership. The protection, preservation, and promotion of TCEs are a series of processes that require collective action from the state holder action and relevant stakeholders' participation. The collective action can be started with the formulation of TCEs mainstreaming policies that are pro to the protection and productive growth of the TCEs supported by related facilities and infrastructure as part of a support system that can accommodate the development of TCEs and its custody so that their heritage can be protected, explored and monetized.

Legal protection for TCE is, however, very important and strategic for Indonesia to ensure the enhancement of the cultural, economic, social, and cultural aspects through the conservation of national culture.<sup>41</sup> The Indonesian government has attempted to accommodate TCEs protection as a basic capital for national development through Government Regulation of the Republic of Indonesia Number 56 of

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<sup>41</sup> Prasetyo Hadi Purwandoko, Adi Sulistiyono, and M. Hawin, "The Implementation of the Traditional Cultural Expression (Tce) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright," *Indonesian Journal of International Law* 18, no. 4 (2021): 543–70, <https://doi.org/10.17304/ijil.vol18.4.823>.

2022 concerning Communal Intellectual Property (CIP), one of which mandates the establishment of a CIP information system (including TCEs). The provisions of Article 33 stipulate that everyone can take advantage of CIP which is contained in the Indonesian CIP information system with the provision that it states the origin of the CIP community while maintaining the values, meaning, and identity of CIP and paying attention to the values that live in the carrying community. In the event that CIP has sacred, secret, and/or strictly held properties, the utilization of said KIK must obtain permission from the community of origin. Utilization of CIP for commercial purposes must obtain a permit in accordance with statutory provisions and be carried out with due regard to the distribution of benefits, both economic and non-economic in nature, which are agreed upon in accordance with statutory provisions.

The next determinant factor is the facilities and infrastructure that support the protection, management, and promotion of TCEs, for example, facilities and infrastructure that enable people to carry out creative activities and opportunities to develop ideas, creativities, and innovation in the form of real products on the market and creating programs that can support the production and innovation in the form of real products on the market and creating a collaboration platform with various associations to provide opportunities for creators to establish creative hubs with cross-sectoral reach as a forum for developing creativity supported by a creative support system that can be interpreted broadly starting from access to utilization of technology and digital media that can facilitate the creative process, training activities, and creativity development, business coaching including support in the form of incentives, funding for product design and product development.

Furthermore, the intellectual property development of TCEs does not only require government action in the form of regulatory products but also stakeholders' participation. This research identified at least six important elements in forming hexa-helix collaboration in the intellectual property development of TCEs involving the government, academic, indigenous community, business/industry, media, and financial institutions.

**The government** plays the role of forming supportive and strategic policies through regulation for a comprehensive, productive, and proactive protection system in accordance with the national interest by implementing the sovereignty to take inventory, protect and preserve TCEs for the greatest prosperity of the people. Article 38 verse (2) Indonesia Copyright Law obliged the state to take inventory, preserve and maintain Traditional Cultural Expressions. The TCEs inventory is not only about the documentation with the description of the name, area, or location. It's important for the inventory to include a field study of the feasibility, and administrative requirements that contain the classification based on the characteristics including the sacredness, the degree of secrecy, and the ethic of access and utilization. Concerning the utilization, the government and/or regional government can formulate the regulation concerning the utilization permit for example by foreign parties / by outside the supporting community/custodian.

**Academics** play an important role in providing an educational platform that provides dissemination knowledge of TCEs and stimulation the development of creativity through an integrated system of education, learning, and training. Educational institutions should be able to provide space for innovation to foster ideas and creativity that can be transformed into knowledge capital / intellectual assets in the form of creative, innovative, and economically visible work in the sense that its economic value can be exploited for the benefit of the people, the custodian community and the nation.

**Communities** hold multiple parts as TCEs custodians, the actors of TCEs development as well as consumers and/or users of TCE-based products play an important role as sources, initiators, creators, and innovators in the creation of TCEs-based products as well as consumers who have the power to influence trends and even culture trends and certain ethical values in product consumption. Creative

communities must be able to take advantage of the momentum of global change and economic disruption as well as digital disruption with a good response in the sense that they can take advantage of opportunities to contribute positively to the development of the national economy as custodians, producers, and consumers. It's important for the community to actively participate in a systematic and sustainable "people movement" to manage the issue of protecting intellectual property rights on TCEs. In each region or in each custodian community it is necessary to form a team or taskforce that specifically manages this.<sup>42</sup>

**The business / Industry** sector plays an important role in supporting the result of creativity and innovation based on TCEs into a real product that has economic value and can be traded on the market and provides product access to a wider market thereby expanding monetization opportunities for these products. Business entities also function as productions facilities and support the development and differentiation of creative products into products that have market value in the frame of cultural industries, the terminology that was first used around 1940 by Theodor W Adorno, a member of the Influential Frankfurt School, through the use of the term in the chapter entitled: *"The Culture Industry: Enlightenment as Mass Deception"* in a book entitled *"Dialectic of Enlightenment"* published in 1944 where Adorno described "Culture Industry" as "Commodification of the culture forms of artistic objects". The culture-based creative industry is defined as an industry that refers to an industry that combines creativity, production, and commercialization of creative content that can be in the form of goods or services and is cultural in nature.

**Media**, especially digital media plays an important role in the process of promoting and marketing the artworks based on TCEs with a wide reach. The era of digital disruption is the era of advances in information technology that presents a new media paradigm in the context of the product marketing industry which facilitates reciprocal communication between producers and consumers. Digital media is very effective as a means of education for the public to foster awareness and appreciation of TCEs and TCEs-based creation

Financial Institutions, as the resource of funding and capital to support TCEs-based creative businesses, one of which is through the provision of working capital loans. The role of financial institutions is very significant considering that capital is often the main obstacle for the development of cultural industries. For business actors, lending can be used as initial capital/business development capital.

### III. CONCLUSION

Given recent technological developments, there has been a resurgence of tech-business interest in immersive media and immersive storytelling in such a context. The production of Traditional Cultural Expressions (TCEs) in the form of immersive experiences potentially creates opportunities for intellectual property legal protection and business development of TCEs in the frame of Cultural Industries. The hype of these immersive art exhibitions brought several prominent opportunities for Indonesia in both businesses aspect and cultural advancement through the utilization of cultural-based artworks.

The commercialization of TCEs using immersive technologies potentially helps in fulfilling two key objectives: capturing new audiences and contributing to economic profit. The important lessons

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<sup>42</sup>Dwi Ratna Indri Hapsari et al., "Protection of Traditional Cultural Expressions as Intellectual Property in Indonesia: A Juridical-Sociological Review," in *Proceedings of the 2nd International Conference on Law Reform (INCLAR 2021)*, vol. 590, 2021, 84–88, <https://www.atlantis-press.com/proceedings/inclar-21/125962459>.

from this immersive art exhibition are how sustainable the artworks can be and how the creative management of those artworks potentially generates greater profit, and economic benefits and at the same time fosters the range of promotion of the artworks and cultures.

However, apart from the promising benefits of the utilization of immersive technologies in the commercialization and development of TCEs, it should be understood that the diversity of TCEs apart from being the pride and identity of the region is also an invaluable asset and potential for each region. Therefore, to formulate the legal protection as well as the sustainable use and sustainable development of TCEs should consider and involve legal and nonlegal perspectives as the basis for the implementation and shall be formulated in a collaborative framework involving state holders and relevant stakeholders.

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