



Adapting Indonesian Folklore into Moving Pictures: What to Consider?

Issue 13, September 2024

The Indonesian film industry is flourishing, with audiences eagerly anticipating new local movies and series. This trend is supported by the rise of over-the-top (OTT) streaming platforms, which provide a space where various genres – from romcoms to horror and action – thrive and attract a dedicated fanbase.

Indonesia's diverse cultures, filled with folk tales and legends, provide a wealth of stories waiting to be brought to life on screen. Beyond commercial aspects, these adaptations can help preserve cultural heritage and educate audiences worldwide. The potential market is vast, offering numerous opportunities for creators, filmmakers and investors.

However, putting Indonesia's cultural richness onto the screen requires careful attention to legal requirements, especially to avoid any accusations of cultural appropriation. In addition to verifying any existing copyrights, the following legal aspects must be considered to ensure compliance and respect for cultural heritage.

A. Understanding 'Traditional Cultural Expression'

When adapting folklore into moving pictures, it is necessary to determine whether the story or characters are classified as a Traditional Cultural Expression ("TCE") under Indonesian law. TCE is protected by the State under Law No. 28 of 2014 on Copyright ("**Copyright Law**"), which defines TCE as:

"any combination of the following expressions:

1. **Verbal textual**, both oral and written, in the form of prose or poetry, in various themes and content of the message, **which can be in the form of literary works** or informative narratives;

2. *Music, including, among others, vocal, instrumental, or a combination thereof;*
3. *Movement, including, among others, dance;*
4. *Theater, including, among others, wayang performances and folk plays;*
5. *Fine arts, both in two-dimensional and three-dimensional forms, made from various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, and others or a combination thereof; and*
6. *Traditional ceremonies.”*

Since folklore is a form of literary work, it generally falls under the category of TCE (item 1. above), which is protected by the State.

The Copyright Law further stipulates that the copyright of a TCE is held by the State and must be used in observance of the “living values of the relevant society”, which are defined as: “*customs, customary law norms, habitual norms, social norms, and other noble norms upheld by the community of origin, which maintains, develops, and preserves traditional cultural expressions*”. This means adaptations should respect the cultural norms and values of the community from which the folklore originates.

To check whether a specific folklore is recognized as a TCE, creators can refer to the following online database maintained by the Ministry of Law and Human Rights (“**MOLHR**”): <https://kikomunal-indonesia.dgip.go.id/home>. Further information can be obtained through consultation with the MOLHR, which is required under MOLHR Regulation No. 13 of 2017 on Communal Intellectual Property Data to maintain an inventory that lists each TCE and includes:

1. The name of the TCE;
2. The custodian;
3. The form of the TCE;
4. Classification;
5. The area or location of the TCE; and
6. The description of the TCE.

B. Understanding ‘Culture’

Law No. 5 of 2017 on the Advancement of Culture (“**Culture Law**”) defines ‘Culture’ as “*anything related to creativity, intention, and the work of a community*”

". Folklore, being the creative works of local communities, falls under this definition.

Under the Culture Law, cultural development can take various forms, including the utilization of culture. This utilization can be done by any party and is aimed at, among other objectives, increasing the welfare of the relevant community. It can include transforming a culture into a product (which implies that it may include adaptations into moving pictures), with observance to the noble values and wisdom of that culture.

A large-scale business and/or foreign party intending to commercialize a culture must obtain a Culture Utilization License from the Minister of Education, Culture, Research and Technology ("**MECRT**") and comply with the following requirements:

1. It has consent based on preliminary information.
2. Benefit sharing. The Culture Law also provides that the central government must use the proceeds of benefit sharing to maintain the community of the culture.
3. Inclusion of the origin of the culture.

While the MECRT is expected to issue further regulations on the Culture Utilization License and the benefit-sharing scheme, these have not yet been issued, adding some uncertainties in practice.

C. Non-compliance with the Law

For large-scale businesses, failing to obtain the necessary Culture Utilization License may result in the following administrative sanctions:

- (i) Verbal warning;
- (ii) Written warning;
- (iii) Administrative fines;
- (iv) Temporary suspension of activities; and/or
- (v) Revocation of license.

However, the procedures for imposing these sanctions are yet to be detailed by the MECRT, and enforcement remains uncertain.

Considering these complexities, it is prudent to conduct thorough due diligence before adapting folklore into moving pictures. Engaging with the MOLHR and MECRT to verify the folklore's origin and secure any necessary permissions is also recommended. This approach

helps creators mitigate risks and ensure their projects properly respect and honor Indonesia's rich cultural heritage.

Click the "download file" button to read the PDF version.

If you have any questions, please contact:

1. [Lia Alizia](mailto:lia.alizia@makarim.com), Partner – lia.alizia@makarim.com
2. Kaila Arinta Nazneen, Associate - kaila.nazneen@makarim.com

© 2024 by the author(s). All rights reserved. This document is intended for general use only and is not intended to provide legal advice. The author(s) disclaims any liability for any damages or losses resulting from the use of this document. For more information, please contact us at lia.alizia@makarim.com.