

Representational Legal as an Effort to Increase The Value of Extralegal Assets of Creative Economy Business Actors in The Tourism Sector

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Abstract

The presence of creative economy entrepreneurs in the tourism sector as one of the people's economic units has made a significant contribution to the economic development process in Indonesia, particularly in poverty eradication efforts. The simple assets traditionally owned by creative economy entrepreneurs in the tourism sector surprisingly hold considerable economic value potential. However, this significant potential is often overlooked due to its status as an extralegal asset, not recognized within the existing legal protection system. Consequently, the existing system does not acknowledge the legitimacy of these assets, rendering them lacking a strategic economic basis since they cannot be used as collateral to secure capital. Given this scenario, there is a need for an approach in the form of a legal representational model, serving as an alternative policy or regulation to transform the potential of extralegal assets owned by creative economy entrepreneurs in the tourism sector into productive capital. This transformation aims to add value to production capacity (capitalization of assets) and ensure protection within the prevailing formal legal system. The legal representational model can serve as a solution to enhance the potential of resources held by creative economy entrepreneurs in the tourism sector, contributing to the economic capacity of the region to achieve the well-being and prosperity of the local communities.

Keywords: Legal Representation, Extralegal Assets, Creative Economy, Tourism.

Introduction

Experience has shown that micro-businesses in general, and creative economy practitioners in the tourism sector in particular, are among the business entities that have proven to possess strong resilience amidst economic crises that have affected Indonesia in the past, such as the crisis in 1997, and during the Covid-19 pandemic that has impacted the entire world. Therefore, Law Number 20 of 2008 concerning micro, Small, and Medium Enterprises mandates the need for efforts in empowering,

developing, financing, guaranteeing, and partnering with creative economy practitioners in the tourism sector. This is because they play a fairly strategic and significant role in the national economic development and the enhancement of community welfare, especially with the current widespread penetration of the digital economy in people's economic lives.

However, so far, many of these empowerment, development, financing, guarantee, and partnership efforts have not been maximally implemented because the policies in place have not been based on efforts to deeply explore the potential of the resources owned by creative economy practitioners in the tourism sector itself. A classic example that often occurs is the difficulty faced by creative economy practitioners in the tourism sector in accessing financing due to the fact that the assets owned by most micro-businesses do not have a clear ownership status, are not well-documented and registered, hence lacking legal legitimacy (extralegal assets). This results in the assets not being able to enter the existing legal protection system, thus unable to be utilized further to become productive capital, provide added value for production capacity development, and be protected within the applicable formal legal system.

This situation is due to a lack of awareness of how to recognize the potential of the extralegal assets and in what form this potential manifests. Potential is, of course, something very abstract but its existence can be felt. Therefore, to recognize this potential, it needs to be actualized into tangible forms, one of which is through legal representational efforts."

Methods

The research method chosen for this study is a legal research method using a conceptual approach as a framework to analyze predetermined issues. The conceptual approach emphasized here is on the theories, views, and doctrines that have developed, particularly in the field of law, regarding the existence of the legal representational concept when associated with property right concepts and assurance of an asset. In this case, we are examining how the legal status of extralegal assets owned by micro-enterprises can function within the formal legal system and how their status can be recognized as a property right that can be collateralized to increase capital.

The research materials used in this study will combine both legal and non-legal materials. Legal materials consist of primary legal materials, which are regulations arranged based on the hierarchy of legal regulations, and secondary legal materials, which include court decisions, legal books, legal dissertations or research results, legal journals, or legal articles published domestically and internationally.

Meanwhile, non-legal research materials are prepared to augment, compare, and enrich the analysis of the issues raised in this study. These non-legal research materials consist of books or literature, non-legal research results, articles, and

scientific journals from outside the legal field that are relevant, directly or indirectly, to the issues addressed in this study. They are collected through various means, including field observations, literature/library studies, and in-depth interviews. The analysis of the research materials is carried out descriptively and analytically, providing a systematic and comprehensive explanation and description of the results obtained from the research materials.

Discussion and Result

The Informality of Creative Economic Actors in the Tourism Sector

Creative economic actors in the tourism sector are often associated with informality-based businesses, known as the informal sector. The largest portion of the informal sector is comprised of micro (and/or small) businesses with all their specific characteristics and features. In relation to this, the informal sector is described as the workforce in the city that operates outside the organized labor market. In another perspective, micro-enterprises (as part of the informal sector) manifest due to the growth of job opportunities in developing countries, as they engage in small-scale activities primarily aimed at seeking employment and income, from which they derive profits. It is also stated that the informal sector consists of small-scale units engaged in the production and distribution of goods, entered into by urban residents primarily for the purpose of seeking job opportunities and income rather than making a profit. Their business activities are heavily constrained by factors such as capital and skills (Berry et al., 2001).

Furthermore, the informal sector is an activity within the shadow economy operating in small-scale units with a focus on the market of goods and services, offering efficient services. This sector is within the subsistence production subsystem. The shadow economy referred to here encompasses all economic activities that are not visible in official government statistics and therefore are beyond the reach of state regulations and taxes (Arinaitwe, 2006).

One of the most intriguing characteristics of informal sector enterprises is their presence in economic activities that strongly drive the creation of self-employment opportunities. If in Neoclassical economic theory the demand for commodities or services determines the labor force, then in the informal sector, job creation is driven by the supply of labor services itself (supply-induced employment creation) (Tambunan, 2000). In addition, the International Labour Organization (ILO) explains the typical characteristics of the informal sector as follows: the business activities are relatively inexpensive and easy to enter; the activities utilize local/nearby materials; the scale of operations is relatively small; businesses are family-owned; relatively labor-intensive and use appropriate technology; skills acquired from outside the formal education system; and the market is highly competitive and unorganized (Tambunan, 2000).

The Potential and Challenges of Creative Economy Entrepreneurs in the Tourism Sector in Indonesia

With the enactment of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, Indonesia has entered a new phase in empowering creative economy entrepreneurs in the tourism sector, many of whom exist in the form of micro-enterprises. Based on the provisions of Article 1 paragraph 1 of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, a micro-enterprise is defined as a productive business owned by individuals and/or individual business entities that meet the criteria as stipulated in Article 6 paragraph (1) of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, namely those with a net worth of up to Rp. 50,000,000 (fifty million rupiahs) excluding land and buildings for business purposes; or have annual sales of up to Rp. 300,000,000 (three hundred million rupiahs).

The existence of creative economy actors in the tourism sector as micro-entrepreneurs is also inseparable from their classification as operators in the informal sector. In general, the emergence of the informal sector in Indonesia is caused by two forces: demographic forces and strategic forces oriented towards large-scale development. It is also closely related to the size of the population and the workforce, as well as the imbalance in development between rural and urban areas that affects the imbalanced population distribution (Berry et al., 2001). This forms a logical consequence with the narrowing of land in urban areas coupled with the explosion of population/labor force. So that to revitalize and improve the standard of living of people who struggle in the informal sector (in this case creative economy business actors in the tourism sector) responsibility is needed from the government, both in terms of capital, marketing, location arrangement, and laws or regulations that can support their activities.

The effort to revitalize creative economy entrepreneurs in the tourism sector as a manifestation to improve the standard of living of individuals engaged in the informal sector is based on collective awareness that this business sector has a positive impact on society. This is evident in the fact that entrepreneurs in the creative economy within the tourism sector have:

1. Has a high capacity to absorb labor, making it one of the safety valves in addressing workforce explosions; capable of creating new job opportunities.
2. Facilitates the marketing of local production, especially household production; the scarcity of creative economic actors in the tourism sector selling local iconic goods and services at affordable prices.
3. Is flexible, meaning it can easily switch from one type of business to another; capable of enduring and growing without assistance or facilities.
4. Can be one of the local government's sources of revenue through taxes and levies; can subsidize the formal sector in various forms, such as providing

inexpensive labor and training facilities for the subsequent absorption of the formal sector workforce through internships.

5. Provides cheap daily necessities and industrial needs, allowing the formal sector to employ inexpensive labor; creative economic actors in the tourism sector can use appropriate technology efficiently by utilizing local resources.
6. Creative economic actors in the tourism sector play a vital role in recycling waste materials; on a macro scale, this can mitigate inflationary pressures; developing creative economic actors in the tourism sector will ensure the equitable distribution of development benefits to economically weak (poor) communities, as they are generally concentrated in this sector (Jinghan, 2000).

The presence of creative economy entrepreneurs in the tourism sector is one of the proven entities that possess high creativity to survive. This is based on the following analysis: 1) Most of them produce consumer goods needed in those tourist locations; 2) The majority rely more on non-banking financing (not connected to the banking system) in terms of business funding; 3) Generally, they specialize in specific products, meaning they only produce certain goods or services, some of which are seasonal; and 4) The emergence of creative economy entrepreneurs in the tourism sector is a result of many layoffs in the formal sector (Rahmana, 2009).

The creative economy has become one of the largest contributing sectors to the Gross Domestic Product (GDP). According to calculations by the Minister of Tourism and Creative Economy/Head of the Tourism and Creative Economy Agency (Menparekraf/Kabaparekraf), the creative economy contributes 7.8% to the GDP. This figure is supported by three main subsectors: culinary, fashion, and crafts. It places Indonesia in the top three globally in terms of contribution to the national GDP, following the United States with Hollywood and South Korea with K-Pop. Currently, 88.8% of Indonesian consumers express a dominant preference for using and consuming domestically branded products. The export value of Indonesia's creative economy in 2021 reached US\$ 23.9 billion. In the preceding year, 2020, Indonesia's creative economy exports amounted to US\$ 18.8 billion. The government aims to achieve a target export value of US\$ 25.14 billion for Indonesia's creative economy in 2022 (siti masitoh, 2022)

According to the publication by the Central Statistics Agency (BPS) in 2018, the creative economy subsector made a significant contribution to the national economy, accounting for 7.44% of the Gross Domestic Product (GDP), 14.28% of the workforce, and 13.77% of exports. The data also noted that there were approximately 8.2 million creative businesses in Indonesia, dominated by culinary, fashion, and crafts enterprises. These three subsectors also had the largest contributions to the GDP of the Creative Economy. Furthermore, there were four sub-sectors with the fastest growth: TV and radio; film, animation, and video; performing arts; and Visual Communication Design. As an example of a creative industry, the animation sector

has significant opportunities to create job openings and absorb the workforce, with competency demands that can be met by graduates of Vocational High Schools (SMK). This situation applies to animation companies with a scale of business based on the number of workforce exceeding 50 employees. Out of 120 Indonesian animation studios, it is recorded that they employ 5,771 creative workers, predominantly from the younger generation. An estimated approximately 24,000 individuals work in the animation industry. This signifies that animation is one of the labor-intensive and capital-intensive creative industries (PEREKONOMIAN & INDONESIA, 2021).

However, the significant potential generated by creative economic actors in the tourism sector still leaves several crucial problems in the field. Based on the results of a Bank Indonesia study in 2020, it was found that certain conditions of creative economic actors in the tourism sector need attention. The majority of them do not have legal status, lack business establishment documents and Taxpayer Identification Numbers (NPWP), cannot access government assistance, training, and market information. The most significant barrier to obtaining access to capital is the lack of bankable collateral (Indonesia, 2005). According to a study by the Asian Development Bank (ADB), concerns of micro-businesses in applying for bank credit are attributed to factors such as the perception of the company being deemed unworthy, insufficient information, lack of collateral, and absence of a Taxpayer Identification Number (NPWP) (Idris I, 2006).

The Scope of Extralegal Assets

The issue with the non-bankable collateral arises due to the existence of assets that will serve as collateral being extralegal. Extralegal assets are those situated outside or not covered by the formal legal protection system of a country. These assets are owned by individuals or informal communities (one of which is creative economy entrepreneurs in the tourism sector), intentionally or unintentionally not permitted to enter the existing formal legal protection system.

These extralegal assets exist based on extralegal agreements (contracts) that become explicit obligations among certain community members to provide protection and security for their assets and activities. These extralegal agreements (contracts) are a combination of regulations selectively borrowed from the formal legal system, temporary improvisations (*ad hoc*), and customs brought from their place of origin. These extralegal agreements (contracts) are also collectively organized through social contracts supported by the entire community and enforced by authorities selected by the respective community (K, 2006).

Furthermore, these extralegal assets are situated on land whose ownership permits are not yet obtained, not properly registered or documented, and are poorly organized. Consequently, taxes or fees are not detected, and they are located in areas where investors are not interested in investing their capital. As a result, these extralegal assets cannot be accumulated into productive capital that adds value. The

term capital itself originated from performing two tasks simultaneously, capturing the physical dimensions of the assets as the potential for generating additional value. To create added value, an accumulation process of these assets is required, thus from this accumulation process, it will eventually generate a new production activity (K, 2006).

The classical study of capital was previously expounded by Adam Smith, wherein for accumulated assets to become active capital and additional factors of production to function within them, these assets must be designated and embodied into a specific entity over a certain period. Adam Smith captured in this context that the intended capital is not merely the accumulation of the assets themselves but the potential they hold to generate new production activities. Capital also represents a value that does not grow actively. To make it useful, it is necessary to delve into the owned assets, estimating the potential that can be developed from them. A process is required to transform the economic potential of these assets into a form that can be used to undertake additional production (K, 2006).

If the assets have an extralegal status, as previously explained, these assets cannot be included in the guarantee system. In the legal guarantee system, a fundamental requirement that must be fulfilled is the validity of the asset's status, i.e., whether the ownership of the asset is based on a valid legal title or not. If the asset does not have a valid legal title, it cannot be used as collateral for banking institutions. This, of course, will have the logical consequence that microbusiness owners with extralegal asset status will not receive additional capital from banking institutions. Consequently, microbusiness owners will be unable to elevate their business capacity to a higher level.

To break the extralegal condition of microbusiness assets, there needs to be a design of policies and legal regulations capable of elevating the status of these extralegal assets to legal assets with valid legal titles, making them compatible with the existing legal system. An alternative process is needed to transform extralegal assets into legal assets, allowing them to be further capitalized and utilized for productive purposes, which can then be used for business development through accessing capital loans through the banking system.

Conceptualization of the Legal Representational Model

One policy design that can transform the extralegal status of an asset into a legal one is through the choice of a model to process and convert the economic potential of the asset into a usable form for additional production. This process is accomplished through the legal representational model. The legal representational model is based on the ability to represent the asset in legal documents, enabling the asset to function as visible signs of an unseen larger process, connecting all these assets with other sectors of the economy to be interconnected and generate added value.

As a result of this legal representational process, an asset can create an unseen parallel life alongside their material existence, functioning to provide assurance to other parties and create accountability by offering the necessary information, references, regulations, and strengthening mechanisms. The transformation of extralegal assets into assets protected by the formal legal system through the legal representational process allows the asset to be easily used as collateral to obtain loans; make investments; pay debts, bills, and taxes; identify individuals for trade, legal, or other public interests; or serve as a responsible entity to receive assistance (subsidies) from both the government and private entities (Soto, 1991).

In broad terms, there are three (3) key policies needed to empower creative economy entrepreneurs in the tourism sector, namely: First, creating a conducive business climate and providing an enabling environment to encourage the systematic, independent, and sustainable development of businesses. Second, establishing a financial guarantee system for the operationalization of productive economic activities undertaken by creative economy entrepreneurs in the tourism sector. Third, providing managerial technical assistance and facilitation to enhance the status of creative economy entrepreneurs in the tourism sector to be feasible and bankable in the long term. These key policies essentially translate the government's function as a regulator in economic activities within society. Therefore, the government must be able to develop economic regulations that provide a level of business certainty and appropriate support to all creative economy entrepreneurs in the tourism sector in running and developing their businesses (Agustianto, 2008).

One form of these economic regulations is through the application of a legal representational model, which can later be used as a model for breakthrough solutions to address the 'gap' between creative economic actors in the tourism sector and non-bank financial institutions in terms of funding that has been hindered due to collateral issues. The existence of hidden potential behind extralegal-status assets in the micro-business sector is quite intriguing for further investigation because the essence of empowerment lies in utilizing and activating all potential that is possessed. The assets owned by creative economic actors in the tourism sector, as it turns out, have capital potential that can be accumulated (capitalized) into a larger capital than their original status.

Extralegal assets are assets that are outside or not accessible by the formal legal protection system of a country. These extralegal assets are situated on land for which ownership permits have not yet been obtained, not well recorded and documented, not well organized, so taxes or fees are not detected, and they are located in places where investors are not interested in investing their capital. Many of the assets owned by creative economy business players in the tourism sector cannot be reached through legal processes or regulations that would add value to these micro-business assets. These assets have been controlled and mishandled, both by the creative economy

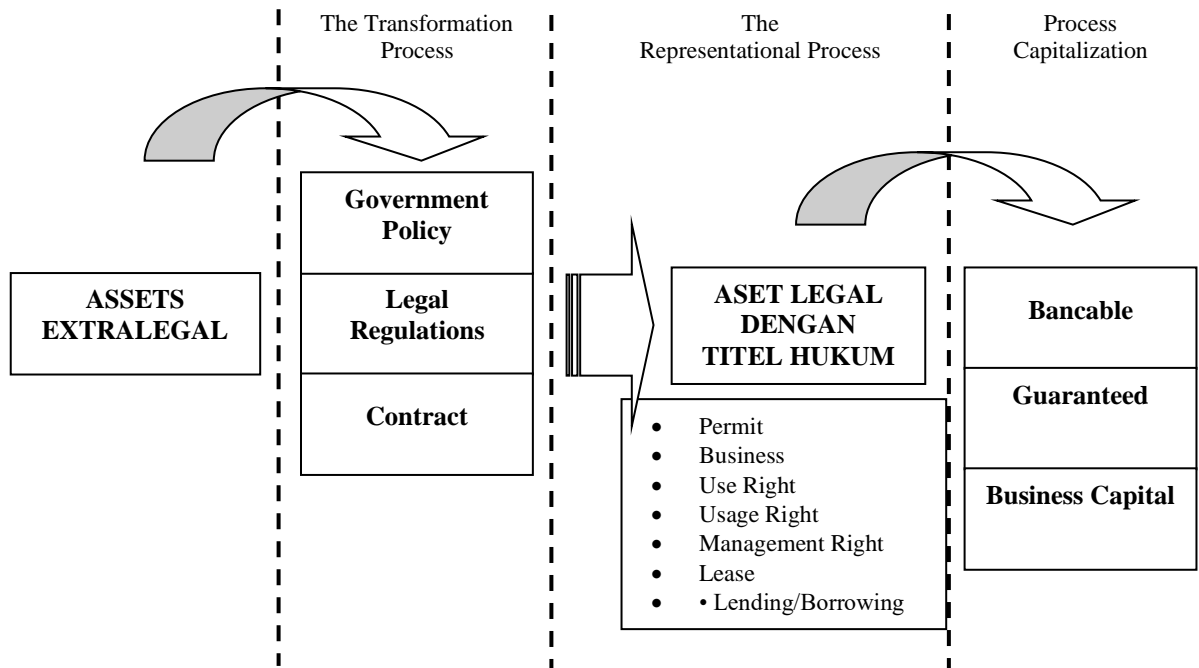
players in the tourism sector themselves and by government policies and regulations (Whittington et al., 2021).

Therefore, this research aims to uncover that there is essentially great potential behind the existence of extralegal assets owned by creative economic entrepreneurs in the tourism sector, where these extralegal assets can be capitalized into assets with economic value that can provide added value. What needs to be understood is that the primary quality of an asset is essentially a legal expression of the asset stemming from a consensus that holds economic significance. In this regard, the law is an instrument that establishes and realizes capital; law is not heavily related to the physical embodiment of an asset, but rather deals more with providing a process or rules that will encourage the community to tap into the potential added value of these assets. Through this process or rules, the community will also understand how these assets should be owned, used, and exchanged (Priowidodo, 2022).

The process that will be used to harness this potential is focused on the context of a legal system capable of representing assets in legal documents, known as the legal representational process. This enables the assets to function as visible indicators of the unseen larger process, then connecting all these assets with other economic sectors to be interlinked and generate added value. The legal representational process will later identify ownership status (title), verify the existence of assets, undertake transactions that transform their form and productivity, and provide comprehensive documentation regarding the economic relevance of these extralegal assets.

Based on these aspects, several primacies of the legal representational process can be identified, namely: 1) Through the legal representational process, it enables the occurrence of processes, forms, and regulations that transform extralegal assets under certain conditions into active capital; 2) The legal representational process will function to separate and establish the economic potential of an extralegal asset into a value distinct from those material assets, allowing individuals to discover and realize their potential; 3) The legal representational process will connect these extralegal assets into the modern financial and investment institutional system; and 4) Through the legal representational process, only the representation of assets contained in legal documents is protected in the formal legal system, giving it the strength to create added value (Hazmi & SH, 2023).

The representation of the legal process can be seen simply in the following diagram:



Conclusion

However, creative economy entrepreneurs in the tourism sector should be viewed as an economic entity that can provide value added for economic development. Their informal characteristics, fundamentally, conceptually do not hinder their growth and development. The informal constraints that make their legal status unrecognized by the system prevent their tangible assets from entering the existing legal protection system. In the future, an alternative process must be created that can accommodate the nature and characteristics of micro-enterprises to be compatible with the existing system. One of these alternative processes is through the implementation of a legal representational model, which should be encouraged by the government through policy packaging and legislation.

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