



LEGAL POSITION AND PROTECTION OF COPYRIGHT IN THE DIGITALIZATION OF ANCIENT MANUSCRIPTS

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ABSTRACT

Ancient manuscripts constitute valuable cultural heritage that preserves historical, scientific, religious, and cultural knowledge; however, their fragile physical condition necessitates digitalization as a preservation and dissemination strategy. This study aims to examine the legal position of digitized ancient manuscripts and analyze the protection of copyright and related rights under Indonesian law. The research employs normative juridical methods using statutory and conceptual approaches. Legal materials consist of primary, secondary, and tertiary sources, analyzed through qualitative juridical interpretation and legal construction. The findings indicate that most ancient manuscripts have entered the public domain because their copyright protection period has expired. Nevertheless, manuscripts classified as Traditional Cultural Expressions remain subject to state and communal protection. Digitalization therefore does not automatically create new copyright over mere reproductions, while moral rights, attribution, cultural integrity, and communal interests must remain protected. The study concludes that copyright protection for digitized ancient manuscripts requires a balance between preservation, legal protection, commercialization, and public access. Clear licensing policies, open-access mechanisms, and recognition of communal cultural rights are necessary to ensure sustainable preservation and lawful utilization.

A. INTRODUCTION

The process of cultural assimilation and the convergence of local and foreign cultures in Indonesia have contributed to the nation's diverse cultural landscape. The emergence of new cultures resulting from the interaction and blending of two distinct cultures exemplifies assimilation.¹ Furthermore, the meeting of local and foreign cultures has significantly enriched Indonesia's diversity in aspects such as language, ethnicity, race, and religion.

Since the 7th century, the Indonesian archipelago has served as a crucial trade hub, particularly when the Sriwijaya kingdom established religious and trade relations with China and India. Hindu and Buddhist kingdoms flourished in the early centuries CE, followed by traders introducing Islam and various European powers fiercely competing to monopolize the Maluku spice trade during the Age of Exploration. All these interactions have profoundly impacted the formation of Indonesian culture. Concurrently, the growth and spread of major religions in Indonesia have further diversified and supported the development of existing cultures. Observing this cultural diversity and the historical evolution of Indonesian culture from ancient times reveals Indonesia as a nation rich in cultural heritage from the past, among which ancient manuscripts stand out.² Ancient manuscripts are records of events meticulously handwritten on paper.³ These handwritten works by the nation's ancestors are widely dispersed across various regions in substantial numbers and diverse forms.

Ancient manuscripts represent a vital asset for specific communities, as they encompass a rich variety of texts, are hundreds of years old, and contain knowledge on religious philosophy, norms and guidelines for life, national history, literature, linguistics, customs, and laws. They serve as a means of transferring information and knowledge across generations, simultaneously marking the civilization of a bygone era. Consequently, ancient manuscripts can unveil the thought patterns and life activities of ancient Nusantara societies. The societal thought patterns depicted in these manuscripts illustrate how a civilized nation was forged. Therefore, the information contained within

¹ Irfan Ardiansyah, "Perlindungan hukum hak kekayaan intelektual terhadap budaya tradisional di Indonesia," *Jurnal Trias Politika* 6, no. 1 (2022): 124. See too, Made Aditya Pramana Putra, "Pengaturan Hak Cipta Perlindungan Hukum Karya Seni Transformasi," *Jurnal Sutasoma* 3, no. 2 (2025): 37.

² Tuty Hendrawati, "Digitalisasi Manuskrip Nusantara Sebagai Pelestari Intelektual Leluhur Bangsa," *Media Pustakawan* 25, no. 4 (2018): 23.

³ Intan Prastiani and Slamet Subekti, "Digitalisasi Manuskrip Sebagai Upaya Pelestarian Dan Penyelamatan Informasi (Studi Kasus Pada Museum Radya Pustaka Surakarta)," *Jurnal Ilmu Perpustakaan* 6, no. 3 (2019): 141.

them is exceptionally important to uncover and disseminate to the public, underscoring the critical need to preserve these ancestral manuscripts.⁴

Historically, ancient manuscripts are crucial documents marking the civilization of societies centuries ago. In Indonesia, these manuscripts were often inscribed on media such as palm leaves, *Daluang* paper, bamboo, or tree bark. Compared to other cultural heritage objects made of terracotta, stone, wood, or metal, the majority of materials commonly used for ancient manuscripts are inherently more susceptible to damage.⁵

Ancient manuscripts written on paper from antiquity to the present-day face deterioration threats due to factors like poor storage temperatures and sticky pages caused by damp and humid conditions, which can lead to their extinction. This threat extends beyond the physical loss of the manuscripts to the potential disappearance of the historical evidence and civilization they contain. Beyond physical degradation, the peril of extinction also stems from the public's unawareness of the high historical value of ancient manuscripts. As Tuty Hendrawati noted, many classical Islamic manuscripts in rural Banten are sold to junk dealers. Furthermore, natural disasters, whose timing is unpredictable, can also contribute to manuscript damage. Therefore, to prevent the loss of information contained within ancient manuscripts, it is imperative to implement both physical preservation and information preservation efforts.⁶

Amidst current technological advancements, various methods utilizing technology-based tools can be employed, necessitating the media conversion of ancient manuscripts into digital form. In the context of digitizing ancient manuscripts, both central and local governments are authorized to preserve and utilize them through media conversion, as mandated by Article 9 and Article 10 of Law Number 43 of 2007 concerning Libraries (Library Law).

Ancient manuscripts, as written documents or literary works, fall under the definition of copyright in Article 1, Paragraph 1 of Law Number 28 of 2014 concerning Copyright (Copyright Law).⁷ Copyright can be understood as the

⁴ Si Ngurah Ardhyia, I. Wayan Pardi, and Komang Febrinayanti Dantes, "Keabsahan Transformasi Ciptaan Pada Karya Cipta Lontar Sebagai Hak Kekayaan Intelektual," *Jurnal Pacta Sunt Servanda* 3, no. 2 (2022): 118.

⁵ Andry Prasetyo, Agus Heru Setiawan, and M. Ali Nurhasan Islamy, "Digitalisasi Sebagai Upaya Penyelamatan Dan Kemudahan Akses Naskah Kuno," in *Seminar Nasional: Seni, Teknologi, Dan Masyarakat*, (2019), 44. See too, Yudhi Setiawan, "Perlindungan hukum terhadap hak cipta lontar (takepan) sasak di Indonesia," *Journal Kompilasi Hukum* 8, no. 1 (2023): 35.

⁶ Tuty Hendrawati, "Digitalisasi Manuskrip Nusantara Sebagai Pelestari Intelektual Leluhur Bangsa," *Media Pustakawan* 25, no. 4 (2018): 24. See too, Saskia Dwi Indriani, Agus Rusmana, and Tine Silvana Rachmawati, "Pelestarian warisan budaya naskah kuno melalui penerapan digitalisasi: Studi literatur," *Information Science and Library* 6, no. 2 (2025): 8.

⁷ Hafizah Novianti, Hayun Halimatul Umah, Hurun Sajidah Al Mumtazah, Lilih Ilah Solihah, and Linda Solihat, "Perlindungan Hukum Terhadap Ciri Khas Ekspresi Budaya Tradisional Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Al-Zayn: Jurnal Ilmu Sosial &*

exclusive right of the creator once a creation is materialized, meaning it is automatically granted to the creator upon the tangible realization of their work. Furthermore, copyright protection extends to creative works in the fields of science, art, and literature, encompassing, among others, books, choreographic dances, paintings, songs and musical compositions, lectures/speeches, films/movies (cinematography), photographic works, architectural works, portraits, and others as specified in Article 40 of the Copyright Law. Given this explanation, ancient manuscripts, which exist in the form of written works containing elements such as history, culture, religious teachings from ancestors, and scientific knowledge, can be categorized as objects protected by copyright, falling under works in the fields of science, art, and literature that meet the criteria for copyright protection.⁸

Ancient manuscripts are categorized as copyright-protected objects, implying that they have a creator as their legal subject, and copyright protection extends to this creator. For ancient manuscripts that are hundreds of years old, it's essential to identify the creator and/or their heirs to determine the standing and protection of their copyright.⁹ It is possible to identify the author and subsequently their heirs for some ancient manuscripts. Thus, copyright can be granted to the author as the creator or transferred to the heirs if the protection period has expired. Alternatively, if an ancient manuscript is very old and its author is difficult to identify due to the manuscript's condition, but its heirs can still be traced, then the copyright holder may be granted to the heirs.¹⁰ However, if an ancient manuscript dating back hundreds of years can still identify its author, but the heirs are unknown and the protection period has already lapsed, or if an ancient manuscript's author and heirs cannot be identified at all, the status and protection of its copyright are questionable. Furthermore, as technology advances, it offers

Hukum 3, no. 3 (2025): 241. See too, Jati Restuningsih, Kholis Roisah, and Adya Paramita Prabandari, "Perlindungan hukum ilustrasi digital berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang hak cipta," *Notarius* 14, no. 2 (2021): 957; Dorvinando Bonanta Simarmata, and Albertus Sentot Sudarwanto, "Perlindungan Hukum Karakteristik Ekspresi Budaya Tradisional Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Jurnal Privat Law* 9, no. 2 (2021): 310.

⁸ Budi Agus Riswandi, and Karimatul Ummah, "Regulation of Copyright Translation of Literature on Digital Platforms: A Comparative Study," *International Journal of Law and Politics Studies* 5, no. 1 (2023): 22.

⁹ Si Ngurah Ardhyia, I. Wayan Pardi, and Komang Febrinayanti Dantes, "Keabsahan Transformasi Ciptaan Pada Karya Cipta Lontar Sebagai Hak Kekayaan Intelektual," *Jurnal Pacta Sunt Servanda* 3, no. 2 (2022): 119. See too, Made Aditya Pramana Putra, "Pengaturan Hak Cipta Perlindungan Hukum Karya Seni Transformasi," *Jurnal Sutasoma* 3, no. 2 (2025): 39.

¹⁰ Siti Deviyanti, "Pengatalogan Naskah Kuno: Dari Kajian Filologi Hingga Bentuk Metadata," *Majalah Biola Pustaka* 1, no. 1 (2022): 322.

viable options for preserving ancient manuscripts by creating digital forms.¹¹ Therefore, it is crucial to understand the legal standing and copyright protection for such digitized works.

Dewa Ayu Dian Sawitri, and Ni Ketut Supasti Dharmawan¹² in their research on the transformation of *lontar* (palm-leaf manuscript) works, state that a broad interpretation of copyright law (*Undang-Undang Hak Cipta/UUHC*) regarding *lontar* transformation encompasses Traditional Cultural Expressions (TCE). They also argue that the legal safeguarding of *lontar* by central and regional governments is based on Law Number 5 of 2017 concerning Cultural Advancement (Cultural Advancement Law). Furthermore, Azwar's¹³ research explores two perspectives on the digitalization of manuscripts as a source for creative economy development: one supports an industry that might degrade high cultural values into economic ones, while the other emphasizes utilizing the high values of manuscripts connected to industry to perpetuate those cultural values. Rhomayda Alfa Aimah's research emphasizes that comprehensive manuscript digitalization is paramount for current ancient manuscript preservation, considering that ancient manuscripts exist not only in Indonesia but also abroad in unknown and constantly changing numbers as institutions continue to catalog them.¹⁴

Nkholezeni Sidney Netshakhuma's research indicates that the digitalization of ancient manuscripts or archives is a reasonable step amidst technological advancements, but it must adhere to each country's copyright laws.¹⁵ Moreover, the implementation of digitalization requires partnerships with technology company owners to ensure a well-executed process that yields high-quality digital ancient manuscripts. Sara R. Benson's research suggests that libraries digitizing manuscripts, in addition to compiling metadata for their digitized collections, must also exercise caution and provide guidelines

¹¹ Muhaemin, "Potensi dan Tantangan Naskah Kuno di Indonesia Sebagai Warisan Budaya Digital: Narrative Literature Review," *Pustabiblia: Journal of Library and Information Science* 8, no. 1 (2024): 11.

¹² Dewa Ayu Dian Sawitri and Ni Ketut Supasti Dharmawan, "Perlindungan Transformasi Karya Cipta Lontar Dalam Bentuk Digitalisasi," *Acta Comitas* 5, no. 2 (2020): 299. See too, Yudhi Setiawan, "Perlindungan hukum terhadap hak cipta lontar (takepan) sasak di Indonesia," *Journal Kompilasi Hukum* 8, no. 1 (2023): 36.

¹³ Azwar, "Alih Media Manuskrip Kuno Sebagai Pengembangan Ekonomi Kreatif," *Wacana Etnik: Jurnal Ilmu Sosial Dan Humaniora* 5, no. 1 (2015): 5.

¹⁴ Rhomayda Alfa Aimah, "Koleksi Manuskrip Indonesia Dalam Katalog Online Eropa Dan Urgensi Digitalisasi," *Jurnal Dinamika Penelitian: Media Komunikasi Sosial Keagamaan* 21, no. 02 (2021): 220.

¹⁵ Nkholezeni Sidney Netshakhuma, "The International Copyright Laws and South Africa Copyright Act: Implications on the African National Congress Liberation Archives Digitization (1960–1990)," *Collection Management* 46, no. 1 (2021): 59.

regarding the copyright of digitized manuscripts.¹⁶ The aforementioned research on ancient manuscript digitalization primarily focuses on literacy and cultural perspectives, which significantly differs from the author's upcoming research on the legal perspective of ancient manuscript digitalization, an area with minimal existing studies in Indonesia. While there is legal research by Dewa Ayu Dian Sawitri and Ni Ketut Supasti Dharmawan¹⁷, its focus on interpreting lontar transformation under the Copyright Law (*Undang-Undang Hak Cipta/UUHC*) differs from this study.

This research will analyze manuscript digitalization not only based on the Copyright Law but also on the Library Law, the Cultural Heritage Law, and the Cultural Advancement Law. Furthermore, it will discuss who holds the copyright for digitized ancient manuscripts and how that copyright is protected. Therefore, it becomes essential for parties undertaking the media conversion of ancient manuscripts into digital form to disseminate information and preserve these manuscripts while still adhering to copyright law. This makes the present writing distinctly different from previous research.

To address these issues systematically, this study formulates the following research questions:

1. How is the legal framework for the digitization of ancient manuscripts regulated under Indonesian law?
2. Who holds copyright over digitized ancient manuscripts, particularly when the original authors or their heirs cannot be identified?
3. How can copyright protection be implemented to support the preservation and dissemination of digitized ancient manuscripts?

B. RESEARCH METHODS

This research method uses juridical-normative research methods with conceptual and statutory approaches. The conceptual approach is carried out by examining and compiling the concept of copyright in ancient manuscripts that are translated into digital form. Furthermore, the statutory approach is carried out by examining copyright law, library law, cultural heritage law, and cultural promotion law as a tool to analyze the object of research.¹⁸

The data needed in this research is secondary data both in the form of primary legal materials including Law Number 28 of 2014 concerning Copyright, Law Number 43 of 2007 concerning Libraries, Law Number 11 of 2010 concerning Cultural Heritage, and Law Number 5 of 2017 concerning the

¹⁶ Sara R Benson, "Copyright Conundrums: Rights Issues in the Digitization of Library Collections," in *Digital Preservation in Libraries: Preparing for a Sustainable Future*, ed. Jeremy Myntti and Jessalyn Zoom (Chicago: American Library Association, 2019), 305.

¹⁷ Dewa Ayu Dian Sawitri and Ni Ketut Supasti Dharmawan, "Perlindungan Transformasi Karya Cipta Lontar Dalam Bentuk Digitalisasi," *Acta Comitas* 5, no. 2 (2020): 300.

¹⁸ Soetandyo Wignjosoebroto, *Hukum: Konsep Dan Metode* (Malang: Setara Press, 2013), 12.

Promotion of Culture, then secondary legal materials including legal textbooks, legal journal articles, legal scientific works and relevant legal expert opinions, and then tertiary legal materials in the form of legal dictionaries, legal encyclopedias, and internet. The legal materials were obtained through a literature study. The research analysis method uses a qualitative juridical method, namely, legal material is not analyzed with statistical formulas but with a legal interpretation and legal construction approach, so that an overview of the research study can be obtained to help the author draw the right conclusions.¹⁹

C. DISCUSSION

1. Legal Framework for the Preservation and Copyright Protection of Ancient Manuscripts through Digitalization

Ancient manuscripts are handwritten documents containing vital information about national culture, history, and scientific knowledge. According to Article 1, paragraph 4 of the Library Law:

“Ancient manuscripts are all written documents that are not printed or reproduced by other means, whether located domestically or abroad”.

Given that ancient manuscripts contain crucial information and boast a rich historical presence, they can be categorized as “collections” and are material cultural artifacts possessing significant value for history, science, education, religion, culture, technology, and/or tourism. This is in line with the elucidation of Article 18, paragraph (3) of Law Number 11 of 2010 concerning Cultural Heritage (Cultural Heritage Law), which states:

“What is meant by ‘collections’ are material cultural artifacts, including ancient manuscripts, as well as natural materials and their environment, that hold significant value for history, science, education, religion, culture, technology, and/or tourism”

Furthermore, Chapter III, Article 5 of the Cultural Heritage Law outlines several criteria for ancient manuscripts to be classified as cultural heritage: a) being 50 (fifty) years old or more, b) representing a stylistic period of at least 50 (fifty) years, c) possessing special significance for history, science, education, religion, and/or culture, and d) holding cultural value for strengthening national identity. Therefore, to be considered cultural heritage, an ancient manuscript must meet these specific criteria beyond merely being handwritten on paper and being old.

¹⁹ Tim Visi Yustisia, *Panduan Resmi Hak Cipta: Mulai Mendatar, Melindungi, Dan Menyelesaikan Sengketa* (Jakarta: Visimedia, 2015), 23.

The preservation of ancient manuscripts necessitates the active involvement of various roles.²⁰ As stipulated in the Library Law, libraries play a crucial role in this endeavor. Beyond preserving diverse national cultural treasures, libraries are also tasked with fostering and nurturing public appreciation for local cultures and the works of Indonesian creators, ensuring that this cultural heritage is passed down to every generation through various media.²¹

The National Library of the Republic of Indonesia, as a non-ministerial institution, is mandated by the government to store and preserve national cultural works, as outlined in Article 21, paragraph (3) of the Library Law. Since 2007, the National Library has been actively preserving ancient manuscripts through its preservation center dedicated to library materials. This includes converting these manuscripts into digital formats, particularly within its Digital Transformation and Reprography divisions.²² This effort aims to safeguard the physical integrity of ancient manuscripts and their information, preventing any break in the flow of ancestral knowledge through digitalization. As a result, one digital copy of the digitized Nusantara manuscripts will be stored at the National Library of the Republic of Indonesia, while another copy will be kept by the manuscript owner.²³

The digitization of ancient manuscripts functions as an important preservation strategy by safeguarding their textual content through the creation of digital copies.²⁴ Such digital preservation ensures that the information contained in manuscripts remains accessible even when the original physical materials are damaged or lost due to deterioration or disasters. Moreover, because ancient manuscripts constitute valuable primary sources for scholarly research, digitization also plays a significant role in expanding public and academic access to their historical and intellectual knowledge. The process of digitizing ancient manuscripts involves special consideration in selecting which manuscripts warrant digital conversion.

²⁰ Saskia Dwi Indriani, Agus Rusmana, and Tine Silvana Rachmawati, "Pelestarian warisan budaya naskah kuno melalui penerapan digitalisasi: Studi literatur," *Information Science and Library* 6, no. 2 (2025): 9.

²¹ Irfan Ardiansyah, "Perlindungan hukum hak kekayaan intelektual terhadap budaya tradisional di Indonesia," *Jurnal Trias Politika* 6, no. 1 (2022): 125.

²² Si Ngurah Ardhya, I. Wayan Pardi, and Komang Febrinayanti Dantes, "Keabsahan Transformasi Ciptaan Pada Karya Cipta Lontar Sebagai Hak Kekayaan Intelektual," *Jurnal Pacta Sunt Servanda* 3, no. 2 (2022): 121. See too, P. D. Awatari, and I. W. Purwanto, "Perlindungan Hukum Terhadap Hasil Karya Seni Transformasi Berdasarkan Undang-Undang Hak Cipta," *Jurnal Kertha Semaya, IX* (2020): 165.

²³ Tuty Hendrawati, "Digitalisasi Manuskrip Nusantara Sebagai Pelestari Intelektual Leluhur Bangsa," *Media Pustakawan* 25, no. 4 (2018): 26. See too, Irfan Ardiansyah, "Perlindungan hukum hak kekayaan intelektual terhadap budaya tradisional di Indonesia," *Jurnal Trias Politika* 6, no. 1 (2022): 127.

²⁴ Yudhi Setiawan, "Perlindungan hukum terhadap hak cipta lontar (takepan) sasak di Indonesia," *Journal Kompilasi Hukum* 8, no. 1 (2023): 38.

Factors influencing this selection include their inherent value historical significance, aesthetic value, and rarity the type of manuscript material (e.g., materials prone to faster deterioration), and the demand for the manuscript's use. Rare or unique ancient manuscripts are prioritized for digitalization, and their physical forms are meticulously stored, making these specific manuscripts special and limiting their physical access, as well as access to the important information they contain. Therefore, the digitalization of ancient manuscripts broadens access to anyone, eliminating limitations to specific groups.²⁵

Digitalization, as part of preservation, aims to safeguard ancient manuscripts by leveraging digital technology, such as soft files, photographs, digital copies, and microfilms, ensuring that both original and copied manuscripts can endure for a relatively long period.²⁶ The digitalization of ancient manuscripts involves converting their original physical form into a digital format, either by scanning or photographing them with a digital camera. This process is undertaken to preserve the content of ancient manuscripts in case their physical form can no longer be salvaged. The benefits of ancient manuscript digitalization include: a) Securing manuscript content from extinction so that future generations can continue to access the knowledge contained within them; b) Facilitating multiple reproductions for backup data; c) Enabling researchers to easily extract information if uploaded to a platform; d) Serving as an object for promoting national heritage.

The objectives of preserving ancient manuscripts, as cited by Fitri Handayani from the "Guidelines for Nusantara Manuscript Management," include: safeguarding the informational value of documents, preserving the physical document, overcoming space constraints, and accelerating information retrieval. This preservation also functions to protect and conserve for health, education, social, economic, and aesthetic purposes. Furthermore, attention must also be paid to the methods and techniques of manuscript storage, management, and human resources in this preservation effort.²⁷ To safeguard ancient manuscripts made from fragile materials and to preserve their inherent value, including historical significance and rarity, high-quality digitalization of these easily damaged manuscripts into digital form is crucial.

²⁵ Ute Lies Siti Khadjah, Fitri Perdana, Desak Gde Delonix Regia Kirana Sarasvathi, and Yunus Winoto, "Proses Digitalisasi Naskah Kuno Sebagai Pelestarian Informasi Di Museum Bandar Cimanuk Indramayu," *Pustaka Karya: Jurnal Ilmiah Ilmu Perpustakaan Dan Informasi* 9, no. 1 (2021): 49.

²⁶ Saskia Dwi Indriani, Agus Rusmana, and Tine Silvana Rachmawati, "Pelestarian warisan budaya naskah kuno melalui penerapan digitalisasi: Studi literatur," *Information Science and Library* 6, no. 2 (2025): 10. See too, Salisu Bala, "The Preservation of Ancient Arabic Manuscripts: A Reflection on Some Selected Public Repositories in Northern Nigeria," *Islamic Africa* 2, no. 1 (2011): 8.

²⁷ Fitri Handayani, "Local Wisdom Dalam Hakikat Preservasi Naskah Kuno Sebagai Pelestarian Warisan Budaya Bangsa," *Proceedings IAIN Kerinci* 1, no. 1 (2023): 133.

Thus, the digitalization of ancient manuscripts can be considered a means of maintaining and preserving them, thereby strengthening national culture.

Manuscript preservation can be achieved through both physical and textual measures by implementing conservation, restoration, digitization, and cataloging.²⁸ This approach aligns with technological advancements and increases access to manuscripts through digitization. Safeguarding the physical condition of ancient manuscripts is essential, as they hold valuable information and represent cultural heritage. If the information is preserved, the physical manuscript serves as evidence of the information's veracity.²⁹ Therefore, it can be seen that digitalization can enhance the effectiveness of information use by purifying reach, adding feedback and flexibility, and multiplying dissemination channels. The digitalization of ancient manuscripts is further expected to help the public understand and comprehend the content of media-converted ancient manuscripts, ensuring their continued existence amidst the pervasive and sophisticated technology of today and the future, thereby serving as a pillar for strengthening national identity.³⁰

The digitization of ancient manuscripts represents an important effort to preserve and disseminate cultural heritage. However, it also raises complex copyright issues, particularly concerning public access to and use of digitized materials.³¹ With regard to copyright protection, most physical ancient manuscripts have surpassed the 70-year protection period following the creator's death, while their heirs are often no longer identifiable. Thus, these ancient manuscripts enter the public domain. This means the original manuscripts are free to be used, reproduced, and disseminated without requiring permission or paying royalties to the original creator. However, in the digitalization of ancient manuscripts, the resulting product is a digital format, which can be image files or text files.³²

Copyright policies concerning the digitalization of ancient manuscripts need to balance the protection of preserving institutions with ensuring broad public access.³³ Libraries, archives, and museums, as preserving institutions

²⁸ Salisu Bala, "The Preservation of Ancient Arabic Manuscripts: A Reflection on Some Selected Public Repositories in Northern Nigeria," *Islamic Africa* 2, no. 1 (2011): 10.

²⁹ Fitri Handayani, "Local Wisdom Dalam Hakikat Preservasi Naskah Kuno Sebagai Pelestarian Warisan Budaya Bangsa," *Proceedings IAIN Kerinci* 1, no. 1 (2023): 135.

³⁰ Suci Nurrahma Kuswati, "Kegiatan Digitalisasi Naskah Kuno Sebagai Upaya Diseminasi Informasi (Sebuah Studi Pustaka Di Museum Radya Pustaka Surakarta, BPAD Provinsi Sulawesi Selatan Dan Yayasan Sastra Lestari)," *LIBRIA* 13, no. 1 (2021): 7.

³¹ Made Aditya Pramana Putra, "Pengaturan Hak Cipta Perlindungan Hukum Karya Seni Transformasi," *Jurnal Sutasoma* 3, no. 2 (2025): 39.

³² Katherine Fisher, "Copyright and Preservation of Born-Digital Materials: Persistent Challenges and Selected Strategies," *American Archivist* 83, no. 2 (2020): 238.

³³ Budi Agus Riswandi, and Karimatul Ummah, "Regulation of Copyright Translation of Literature on Digital Platforms: A Comparative Study," *International Journal of Law and Politics Studies* 5, no. 1 (2023): 23.

actively involved in safeguarding ancient manuscripts, implement various approaches to the digitalization of ancient manuscripts, including: Usage Licenses. They often set usage licenses for their digitized outputs. These can range from non-commercial licenses, such as Creative Commons Attribution-Non Commercial-Share Alike (CC BY-NC-SA),³⁴ which allow free use for non-commercial purposes with attribution, to more restrictive licenses for commercial use; Attribution and Links, Policies requiring clear attribution to the digitizing institution and providing links back to the original source, this is vital for maintaining information integrity and acknowledging preservation efforts; Digital Rights Management (DRM), Some institutions may implement DRM to control access or use of digitized outputs, especially for newly digitized works or those with specific commercial value. However, the application of DRM to public domain ancient manuscripts must be handled cautiously to avoid impeding access and the dissemination of knowledge. Open Access, Increasingly, institutions are adopting the principle of open access for digitized ancient manuscripts, recognizing that this cultural heritage should be as widely accessible as possible. This is often materialized through more permissive Creative Commons licenses, such as CC BY or CC0 Public Domain Dedication.³⁵

The legal basis for copyright in Indonesia is found in Law Number 28 of 2014 concerning Copyright, serving as the primary reference for understanding how “works” and “originality” are interpreted in the context of copyright for digitized ancient manuscripts.³⁶ Furthermore, considering the age of these ancient manuscripts in relation to Indonesia’s copyright protection period, they may enter and remain in the public domain regardless of digitalization efforts. However, this situation differs if heirs are still identifiable. While the public can freely access public domain materials, the principle of Fair Use/Fair Dealing, or legitimate interest, under the Copyright Law permits the use of copyrighted works for specific purposes (education, research, criticism, review) without

³⁴ Fitri Murfianti, “Hak Cipta Dan Karya Seni Di Era Digital,” *Acintya Jurnal Penelitian Seni Budaya* 12, no. 1 (2020): 44.

³⁵ Fitri Murfianti, “Hak Cipta Dan Karya Seni Di Era Digital,” *Acintya Jurnal Penelitian Seni Budaya* 12, no. 1 (2020): 47.

³⁶ Hafizah Novianti, Hayun Halimatul Umah, Hurun Sajidah Al Mumtazah, Lilih Ilah Solihah, and Linda Solihat, “Perlindungan Hukum Terhadap Ciri Khas Ekspresi Budaya Tradisional Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta,” *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 243. See too, Jati Restuningsih, Kholis Roisah, and Adya Paramita Prabandari, “Perlindungan hukum ilustrasi digital berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang hak cipta,” *Notarius* 14, no. 2 (2021): 957; Dorvinando Bonanta Simarmata, and Albertus Sentot Sudarwanto, “Perlindungan Hukum Karakteristik Ekspresi Budaya Tradisional Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta,” *Jurnal Privat Law* 9, no. 2 (2021): 311.

permission. In the context of ancient manuscript digitalization, this is relevant for researchers or educators who wish to use digitized ancient manuscripts.³⁷

The implementation of digital source copyright policies within the context of ancient manuscripts faces several challenges, including: Overlapping copyright claims between digitizing institutions and users. Institutions might feel entitled to "database copyright," while the public argues that the original manuscript is in the public domain. The tension between monetization and open access arises when institutions, especially those with limited resources, might be tempted to monetize access to digitized outputs to cover operational costs. This can conflict with the principles of open access and knowledge dissemination. Standardization of licenses is lacking, with inconsistent licensing standards among various institutions causing confusion for users and hindering interoperability; however, the widespread adoption of Creative Commons licenses could be a solution. Recognition of digitalization efforts is also an issue; even though the original manuscripts are in the public domain, the substantial efforts and investments (restoration, high-quality scanning, transcription, metadata) put into digitalization should be acknowledged by policies without unduly restricting access, protection against misuse concerns how to prevent the use of digitized outputs for harmful purposes (e.g., forgery, disinformation) without hindering legitimate use; policies must seek a balance. Lastly, jurisdictional issues arise because ancient manuscripts and their digitized results can be accessed globally, but differences in copyright laws between countries can create complex legal problems.³⁸

Therefore, given the existence of both physical original manuscripts and their digital counterparts, efforts are needed to balance protection and access. These include: The digitalization of ancient manuscripts means their physical form is digital, yet they have an original form as a handwritten text on paper or other media. Therefore, a digitized ancient manuscript can be considered a valid digital copy, whether as an image or text file of its original physical form on paper or another medium. In line with the moral rights of copyright, which are perpetually attached to the creator, obtaining permission from the author or their heirs is necessary when converting the manuscript.³⁹ If the manuscript has entered the public domain, permission from the state is required, or if it falls under a Traditional Cultural Expression (TCE), permission from the

³⁷ Fenny Wulandari, "Problematika Pelanggaran Hak Cipta Di Era Digital," *Journal of Contemporary Law Studies* 2, no. 2 (2024): 114.

³⁸ Khwarizmi Maulana Simatupang, "Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 67.

³⁹ Budi Agus Riswandi, and Karimatul Ummah, "Regulation of Copyright Translation of Literature on Digital Platforms: A Comparative Study," *International Journal of Law and Politics Studies* 5, no. 1 (2023): 24.

community is needed. This applies to both the conversion process and any subsequent modifications, such as transliteration, where attribution to the creator must be maintained. Thus, copyright remains with the creator in perpetuity. The preserving institution, as the body responsible for preservation, can apply an appropriate license to allow the public to access the work.⁴⁰ Prioritizing the principle of open access is essential. Institutions or organizations digitizing ancient manuscripts should ideally adopt an open access model by default, using permissive Creative Commons licenses (e.g., CC BY or CC0) for digitized outputs that do not involve substantial original creation. This will maximize the value of cultural heritage.⁴¹

Developing innovative business models allows institutions to explore alternative models for sustainability without freely modifying ancient texts, such as consultation services or training. Clear guidelines for determining originality are needed, establishing what constitutes a digitized manuscript that results in an original work (e.g., through additional editing), justifying a copyright claim on the digitized output, which requires permission, permission, thereby reducing ambiguity and disputes. International collaboration is crucial given the global nature of digital access; cooperation among institutions and countries to agree on best practices and licensing standards would be highly beneficial. Public education and awareness are vital to inform the public and researchers about the copyright status of digitized ancient manuscripts and their rights and obligations in using these resources. Finally, the role of technology in protection and access involves leveraging legitimate digital watermarking or blockchain technology to track usage and attribution without fundamentally restricting access to public domain materials.⁴²

The digitization of ancient manuscripts represents an essential effort to connect historical heritage with future generations. Accordingly, copyright policies governing digital versions should be carefully formulated to recognize the public domain status of original manuscripts while also protecting the legitimate investment, expertise, and creative contributions involved in the digitization process.⁴³ By prioritizing open access as a means of knowledge expansion, establishing clear guidelines, and fostering collaboration, we can

⁴⁰ Evelyn Angelita Pinondang Manurung, "Karya digital dan perlindungan hak kekayaan intelektual di era digital," *Verdict: Journal of Law Science* 1, no. 1 (2022): 32.

⁴¹ Salsabilla Deniesa, Dela Rinanda Putri, and Arqam Amrullah, "Copyright Protection for Creators of Digital Artwork," *Indonesian Comparative Law Review* 4, no. 1 (2021): 51. See too, Ni Made Rai Dwikayanti, and Made Gde Subha Karma Resen, "Legal Protection of Copyright on Digital Creative Works in Indonesia Based on Law Number 28 of 2024 concerning Copyright," *Int'l J. Jurid. L.* 4 (2025): 12.

⁴² Salisu Bala, "The Preservation of Ancient Arabic Manuscripts: A Reflection on Some Selected Public Repositories in Northern Nigeria," *Islamic Africa* 2, no. 1 (2011): 8.

⁴³ Evelyn Angelita Pinondang Manurung, "Karya digital dan perlindungan hak kekayaan intelektual di era digital," *Verdict: Journal of Law Science* 1, no. 1 (2022): 33.

ensure that this invaluable cultural heritage remains accessible, studied, and enjoyed by future generations, free from copyright disputes that hinder the dissemination of knowledge.

2. Legal Position of Digital Ancient Manuscript Copyright on Creators and Copyright Holders

Discussing the legal subject of copyright, namely the creator, in the context of ancient manuscripts, it can be stated that most original creators of ancient manuscripts died long ago, far exceeding the copyright protection period of 70 years after the creator's death, and their heirs are unknown. This means that, as previously discussed, original ancient manuscripts have generally entered the public domain. Therefore, legally, the original author of the ancient manuscript is no longer the copyright owner of the manuscript whose permission needs to be sought for its digitalization; rather, the rights then fall to the state.

While libraries, archives, or museums may possess a physical ancient manuscript, this physical ownership does not automatically grant them copyright over the manuscript, especially if it is already in the public domain.⁴⁴ However, these institutions have ownership rights over the physical object itself and are responsible for its preservation. In the context of digitalization, the owning institution is the party with the authority to grant permission for the digitalization of the ancient manuscripts in its collection. This permission is not based on copyright ownership of the manuscript's content but rather on physical ownership and the management of their collection assets. They have the right to determine how their collections are accessed and reproduced.⁴⁵

Ancient manuscripts are often not merely documents but significant manifestations of Traditional Cultural Expressions (TCEs). TCEs refer to all forms of expression originating from a traditional community and reflecting their cultural identity, such as folklore, music, dances, rituals, and including traditional manuscripts.⁴⁶ Traditional Cultural Expressions (TCEs) are objects of cultural advancement as stipulated in Article 5(d) of the Cultural Advancement Law. These include oral traditions, manuscripts, rituals, traditional knowledge, traditional technologies, arts, languages, folk games, and traditional sports. Furthermore, in the Indonesian copyright legal system,

⁴⁴ Made Aditya Pramana Putra, "Pengaturan Hak Cipta Perlindungan Hukum Karya Seni Transformasi," *Jurnal Sutasoma* 3, no. 2 (2025): 41.

⁴⁵ Loso Judijanto, Gingga Prananda, Amir Machmud, and Muhammad Sukron Fauzi, "Perlindungan Hukum Hak Cipta Di Era Digital: Analisis Karya Yang Dipublikasikan Di E-Media Dan Implikasinya," *Universitas Nahdlatul Ulama Sumatera Barat* 4, no. 2 (2024): 679.

⁴⁶ Purnama Hadi Kusuma and Kholis Roisah, "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 107.

TCEs are protected by the state as stated in Article 38 of the Copyright Law.⁴⁷ Consequently, the state is obligated to inventory, safeguard, and preserve traditional cultural expressions while upholding the values cherished by the communities that uphold them. When contextualized, TCEs are interpreted as a form of expression whether tangible, intangible, or a combination of both that represents the culture of a collective community. Given that Article 5 of the Cultural Advancement Law identifies manuscripts as an object of cultural advancement, a manuscript can be considered a TCE if it can be identified as representing a traditional culture held communally and passed down through generations.⁴⁸ This is distinct from a creation that falls under individual copyright, which is tied to a specific individual creator.⁴⁹ Often, because manuscripts are very old, their creators are unknown. In such cases, as per Article 39 of the Copyright Law, their copyright is protected by the state for the benefit of the creator.

The implications for copyright and the digitalization of ancient manuscripts categorized as TCEs are significant. Even if an ancient manuscript, as a physical object, may have entered the public domain from an individual copyright perspective, TCEs possess a dimension of communal or collective ownership.⁵⁰ This means that, regardless of the individual creator's copyright status, the original community still holds moral and cultural rights over that TCE.⁵¹ These rights are perpetual and do not diminish over time. In many countries, including Indonesia (Articles 38-40 of the Copyright Law), sui generis protection (special protection outside conventional copyright systems) has been introduced for TCEs. This protection aims to: protect the moral rights of the community, ensuring that the originating community is recognized as the owner of the TCE and that the cultural integrity of the TCE is respected; and regulate the commercial use of TCEs, often requiring permission from the indigenous community or authorized institutions (e.g., government or traditional institutions).

⁴⁷ P. D. Awatari, and I. W. Purwanto, "Perlindungan Hukum Terhadap Hasil Karya Seni Transformasi Berdasarkan Undang-Undang Hak Cipta," *Jurnal Kertha Semaya*, IX (2020): 164.

⁴⁸ Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM R.I., *Modul Kekayaan Intelektual Bidang Kekayaan Intelektual Komunal*, Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum Dan HAM RI, 2019.

⁴⁹ Dewi Enggriyeni, and Dayu Medina, "Peran Negara dalam Perlindungan Hak Komunal atas Ekspresi Budaya Tradisional ditinjau dari Hukum Internasional Dan Nasional," *Nagari Law Review* 8, no. 2 (2024): 249. See too, Irfan Ardiansyah, "Perlindungan hukum hak kekayaan intelektual terhadap budaya tradisional di Indonesia," *Jurnal Trias Politika* 6, no. 1 (2022): 128.

⁵⁰ Evelyn Angelita Pinondang Manurung, "Karya digital dan perlindungan hak kekayaan intelektual di era digital," *Verdict: Journal of Law Science* 1, no. 1 (2022): 37.

⁵¹ Anak Agung Sinta Paramisuari and Sagung Putri M.E. Purwani, "Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 1 (2019): 1.

When digitizing ancient manuscripts categorized as TCEs, institutions or researchers are strongly encouraged to consult with and obtain permission from the relevant indigenous communities or traditional leaders. This is not merely legal compliance but also an ethical practice for participatory research and cultural preservation.⁵² The digitized output of TCE ancient manuscripts may require more specific terms of use to respect communal rights. This could include prohibiting use for purposes that insult or demean the community, or an obligation to share profits if commercialization occurs. Furthermore, accurate metadata is crucial; it is essential to include rich and accurate metadata for digitized TCE ancient manuscripts, encompassing the community of origin, cultural context, and information about communal rights.⁵³

When the heirs of the creator of an ancient manuscript are still identifiable, the legal standing of copyright over that manuscript becomes more complex than for manuscripts that are definitively in the public domain.⁵⁴ Even if the heirs are known, the first thing to verify is whether the copyright protection period for that manuscript is still valid. Based on Indonesia's Copyright Law, copyright lasts for the lifetime of the creator and continues for 70 years after the creator's death. If the ancient manuscript is hundreds of years old and its creator died long before 70 years ago, then legally, as per Article 19 of the Copyright Law, if the creator dies, copyright is owned by the heirs or legatees.

However, in the very rare case of an ancient manuscript where the copyright protection period is still valid (for example, if the manuscript is relatively "new" and its creator died less than 70 years ago), then after the creator's death, moral rights can be transferred by will or other means in accordance with statutory provisions as stipulated in Article 5, paragraph (2) of the Copyright Law. The same applies to economic rights. Therefore, the consent of the heirs is required for any use, reproduction, or digitalization of that manuscript.

Even if the copyright protection period has expired and the manuscript has entered the public domain, moral rights have different characteristics.⁵⁵ In

⁵² Hadira Latiar, "Preservasi naskah kuno sebagai upaya pelestarian budaya bangsa," *Al-Kuttab: Jurnal Perpustakaan dan Informasi* 5, no. 1 (2018): 68.

⁵³ Andhika Putra Herzani, "Peran Pemerintah Dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia," *Jurnal Hukum & Pembangunan* 50, no. 4 (2021): 956.

⁵⁴ Siti Deviyanti, "Pengatalogan Naskah Kuno: Dari Kajian Filologi Hingga Bentuk Metadata," *Majalah Biola Pustaka* 1, no. 1 (2022): 323.

⁵⁵ Salsabilla Deniesa, Dela Rinanda Putri, and Arqam Amrullah, "Copyright Protection for Creators of Digital Artwork," *Indonesian Comparative Law Review* 4, no. 1 (2021): 49. See too, Ni Made Rai Dwikayanti, and Made Gde Subha Karma Resen, "Legal Protection of Copyright on Digital Creative Works in Indonesia Based on Law Number 28 of 2024 concerning Copyright," *Int'l J. Jurid. L.* 4 (2025): 23.

many jurisdictions, including Indonesia, moral rights are considered perpetually attached to the creator and can be passed on to heirs through the transfer of rights by will or other means in accordance with statutory provisions. Therefore, the right of attribution (to always mention the original creator's name when the manuscript is used or published in digital form) must be honored. This is a form of respect and recognition for their ancestors' work. Furthermore, the right of integrity ensures that the manuscript is not altered, modified, or used in a way that demeans the good name or reputation of its original creator, or that damages the integrity of the work.

Copyright, in essence, remains with the creator indefinitely due to the perpetual nature of moral rights. This means the creator is also the copyright holder during the protection period, and if heirs are known, the copyright holder can be transferred to them. Subsequently, when an ancient manuscript exceeds the copyright protection period and its heirs are unknown, the copyright ownership falls to the state and enters the public domain.⁵⁶

Article 38, Paragraph 2 of the Indonesian Copyright Law mandates the state to safeguard and preserve Traditional Cultural Expressions (TCEs). As previously mentioned, the objects of cultural advancement fundamentally intersect with the scope of TCEs, creating two laws with different terms but regulating similar subject matter: culture and tradition. This demonstrates the state's commitment to protecting and preserving these expressions. According to Ari Juliano Gema during an online seminar held by Dreamsea Manuscript,⁵⁷ it is also important to note that if a foreign party or a large industry utilizes an object of cultural advancement for commercial activities, it is obligatory to obtain permission from the Minister of Culture for such use. A large industry is defined as having 100 or more employees, and this regulation is in place to prevent the exploitation of cultural heritage.⁵⁸ This licensing regime requires the fulfillment of specific administrative requirements.

2. Copyright Protection of Digital Ancient Manuscripts

The copyright protection of digitized ancient manuscripts, especially those involving commercialization, requires careful attention to fulfilling both moral and economic rights.⁵⁹ Moral rights, being perpetually attached to

⁵⁶ Made Aditya Pramana Putra, "Pengaturan Hak Cipta Perlindungan Hukum Karya Seni Transformasi," *Jurnal Sutasoma* 3, no. 2 (2025): 44.

⁵⁷ Ari Juliano Gema, "Hak Cipta Dan Digitalisasi Manuskrip," *DREAMSEA Manuscript*, 2022. <https://www.youtube.com/watch?v=oT6Z-IMuybY>. Accessed on July 21, 2026.

⁵⁸ Irfan Ardiansyah, "Perlindungan hukum hak kekayaan intelektual terhadap budaya tradisional di Indonesia," *Jurnal Trias Politika* 6, no. 1 (2022): 129.

⁵⁹ Salsabilla Deniesa, Dela Rinanda Putri, and Arqam Amrullah, "Copyright Protection for Creators of Digital Artwork," *Indonesian Comparative Law Review* 4, no. 1 (2021): 47. See too, Ni Made Rai Dwikayanti, and Made Gde Subha Karma Resen, "Legal Protection of Copyright on Digital

the creator or to the community if the work is a Traditional Cultural Expression (TCE), cannot be eliminated or transferred after the creator's death except through a will and valid provisions. These rights persist even if economic rights have been transferred. In the context of digitized ancient manuscripts, even if the original creator has passed away, the principle of moral rights demands continued appreciation for their original work. In digitalization, this is actualized by including the creator's name (if known) whenever a digitized ancient manuscript is published or used. Furthermore, the digitalization process must adhere to the integrity of the manuscript by producing digital representations that accurately reflect the original, without being altered or modified in a way that disparages or harms the original creator's reputation, as such changes could also distort the information contained within.⁶⁰

When an ancient manuscript is categorized as a TCE, the moral rights of the community become paramount.⁶¹ This moral rights protection encompasses communal attribution through the inclusion of the originating community's identity as the source of the TCE in every use of the digitized manuscript. It also involves respecting the cultural context by ensuring that the digitalization and its use do not damage or misinterpret the manuscript's cultural context. Moreover, it includes the prevention of distortion, where the community has the right to prevent modifications or misuse of the digital manuscript that could degrade it or render it inconsistent with their cultural values.

Economic rights are the rights to derive financial benefits from a work. In the context of digitized ancient manuscripts, the fulfillment of economic rights heavily depends on whether commercialization occurs. For digitized ancient manuscripts in the public domain, legally, no new economic rights are attached to the digitized output. Anyone is free to use, reproduce, and even commercialize the scanned results without needing to pay royalties to the digitizing institution. However, a commercialization challenge for institutions arises because significant funds may have been expended on digitalization, yet they cannot claim exclusive economic rights if the result is merely a reproduction. This situation can create a loophole for commercial activities.

When a digitized ancient manuscript is categorized as a TCE and commercialization occurs, for instance, if it is used in a film, fashion design, or tourist product the TCE's originating community has the right to receive a share of the economic benefits. Therefore, an agreement is needed to

Creative Works in Indonesia Based on Law Number 28 of 2024 concerning Copyright," *Int'l J. Jurid. L.* 4 (2025): 1.

⁶⁰ Andhika Putra Herzani, "Peran Pemerintah Dalam Menginventarisasi Ekspresi Budaya Tradisional Indonesia," *Jurnal Hukum & Pembangunan* 50, no. 4 (2021): 958.

⁶¹ P. D. Awatari, and I. W. Purwanto, "Perlindungan Hukum Terhadap Hasil Karya Seni Transformasi Berdasarkan Undang-Undang Hak Cipta," *Jurnal Kertha Semaya, IX* (2020): 165.

establish a fair and transparent benefit-sharing mechanism with the community. This could involve trust funds, direct royalties, or reinvestment into community projects. Furthermore, the commercial use of TCEs must be based on clear permission from the indigenous community or the institution representing them, not solely from the digitizing institution.⁶²

Through these various approaches, the primary goal is to achieve a balance between adequate protection and maximizing public access to cultural heritage. Transparent policies regarding licensing (especially through Creative Commons) and a clear legal framework for TCEs are crucial to achieving this balance and minimizing potential conflicts.⁶³

The copyright protection of ancient manuscripts with identifiable heirs requires a careful approach, particularly in fulfilling their moral and economic rights. The moral rights of heirs to an identifiable ancient manuscript, even if the manuscript is in the public domain, cannot be overlooked. Clear attribution on every digital reproduction, publication, or use of the ancient manuscript in digital format is mandatory, including the name of the original creator (if known) and, if relevant, acknowledging the heirs as copyright holders and guardians of the heritage. This can be done by adding metadata to the digital file or explicit notes on digital platforms.⁶⁴ Heirs have the right to demand that the digital version of the manuscript not be substantially altered or manipulated in a way that could damage its original meaning, context, or aesthetics. For example, excessive colorization, irrelevant cropping, or the addition of distorting foreign content must be avoided. For ancient manuscripts that hold significant spiritual, customary, or historical value for the family or community of the heirs, consultation and dialogue with the heirs are best practices.⁶⁵ This ensures that digitalization and its use are conducted with full respect for the values embedded in the manuscript.

The exercise of economic rights is primarily determined by the copyright status of the manuscript. Where copyright protection remains in force which is uncommon for ancient manuscripts the heirs retain the exclusive economic

⁶² Anak Agung Sinta Paramisuari and Sagung Putri M.E. Purwani, "Perlindungan Hukum Ekspresi Budaya Tradisional Dalam Bingkai Rezim Hak Cipta," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 1 (2019): 3.

⁶³ Peter S Menell, "Governance of Intellectual Resources and Disintegration of Intellectual Property in the Digital Age," *Berkeley Technology Law Journal* 26, no. 4 (2011): 1523. See too, Sylvana Murni D. Hutabarat, "Perkembangan Dan Perlindungan Pengetahuan Tradisional Dan Ekspresi Budaya Tradisional Ditinjau Dari Perspektif Hak Kekayaan Intelektual," *Jurnal Yuridis* 2, no. 2 (2015): 204.

⁶⁴ Stephen J. Davis, "Manuscript, Monk, and Mufattishin: Digital Access and Concerns of Cultural Heritage in the Yale Monastic Archaeology Project," in *Ancient Manuscripts in Digital Culture*, 2019, 72.

⁶⁵ Muhaemin, "Potensi dan Tantangan Naskah Kuno di Indonesia Sebagai Warisan Budaya Digital: Narrative Literature Review," *Pustabiblia: Journal of Library and Information Science* 8, no. 1 (2024): 11.

rights. Accordingly, they are entitled to authorize or control the reproduction, publication, distribution, and commercial exploitation of the manuscript.⁶⁶ The digitalization, publication, or commercialization of the manuscript must obtain written permission from the heirs. Licensing agreements, including royalty payments or other compensation, must be established and adhered to. Without this permission, such actions may be considered copyright infringement. Conversely, if the copyright protection period has expired, the heirs no longer possess exclusive economic rights over the ancient manuscript. Anyone is free to digitize, reproduce, and even commercialize the content of the original manuscript without needing to pay royalties to the heirs. Although legally the heirs do not have economic rights over public domain manuscripts, institutions or researchers may consider voluntary mechanisms as a form of respect and appreciation for the family's heritage. This could include collaboration that involves the heirs in the digitalization project, providing them with an opportunity to contribute or gain recognition. If significant commercialization of the digital manuscript occurs, institutions may consider making voluntary donations to the heirs or for the preservation of their family heritage, as an ethical best practice.⁶⁷

Treatment of ancient manuscript digitalization when heirs are identifiable must also consider non-legal aspects, including: an Ethical and Cultural Approach, where initiating dialogue with heirs from the beginning of the digitalization process is a best practice. Their involvement can enrich the project with valuable contextual information and build trust. This also aligns with the principles of participatory research and preservation.⁶⁸ Cultural sensitivity involves understanding and respecting the cultural, spiritual, or familial values that may be attached to the manuscript; ancient manuscripts are often not just texts but artifacts with profound meaning.⁶⁹ Information Transparency dictates that digital files or online platforms should include complete metadata about the manuscript, including information about the creator (if known), period, and, if possible, notes about the existence of heirs or families who are guardians of the manuscript.

Clear usage policies entail transparent policies for the use of digitized results, including copyright status, licenses (e.g., Creative Commons), and

⁶⁶ P. D. Awatari, and I. W. Purwanto, "Perlindungan Hukum Terhadap Hasil Karya Seni Transformasi Berdasarkan Undang-Undang Hak Cipta," *Jurnal Kertha Semaya*, IX (2020): 168.

⁶⁷ Ujang Badru Jaman, Galuh Ratna Putri, and Tiara Azzahra Anzani, "Urgensi Perlindungan Hukum Terhadap Hak Cipta Karya Digital," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 3, no. 1 (2021): 11.

⁶⁸ Saskia Dwi Indriani, Agus Rusmana, and Tine Silvana Rachmawati, "Pelestarian warisan budaya naskah kuno melalui penerapan digitalisasi: Studi literatur," *Information Science and Library* 6, no. 2 (2025): 12.

⁶⁹ Siti Deviyanti, "Pengatalogan Naskah Kuno: Dari Kajian Filologi Hingga Bentuk Metadata," *Majalah Biola Pustaka* 1, no. 1 (2022): 327.

usage guidelines that respect the moral rights of the creator and heirs.⁷⁰ Finally, Long-term Preservation and Access recognizes digitalization as an effort that provides mutual benefit for institutions, researchers, and also the families of the heirs, as it ensures the continued existence of their ancestral heritage for future generations. This includes considering providing special access or high-quality digital copies to the heirs as a form of appreciation and assurance that they remain connected to their family heritage.

In summary, the presence of identifiable heirs to ancient manuscripts necessitates a cautious and ethical approach. While the original manuscript may legally be in the public domain, the moral rights of the creator, which are inherited by the heirs, must be respected. Dialogue, clear attribution, and sensitivity to cultural values are essential for ensuring that the digitization of ancient manuscripts proceeds smoothly, beneficially, and with respect for all parties involved.

D. Conclusion

The digitalization of ancient manuscripts is a crucial initiative for preserving and disseminating cultural heritage. However, this process involves legal complexities, particularly regarding copyright issues. Fundamentally, most original ancient manuscripts have entered the public domain because their copyright protection period has expired and their heirs are unknown. This means the original content of these manuscripts can be freely used by anyone. While institutions that hold these manuscripts such as libraries, archives, and museums do not own the copyright to public domain manuscripts, they have the authority to grant permission for their digitalization based on their ownership and collection management rights. The internal policies of these institutions, ranging from usage licenses to the implementation of open access, are vital in determining how the digitized results can be accessed and used. Even if the original manuscript is in the public domain from a conventional copyright perspective, ancient manuscripts categorized as Traditional Cultural Expressions (TCEs) have *sui generis* protection that recognizes their perpetual communal moral and cultural rights. Therefore, the digitalization of TCE ancient manuscripts requires consultation with and permission from the originating community, as well as terms of use that respect the cultural context and prevent misuse.

The copyright protection of digitized ancient manuscripts, especially in the context of commercialization, involves fulfilling both moral and economic rights. Moral rights demand attribution to the original creator (if known) and the integrity of the work. As for economic rights, if the digitized result is merely

⁷⁰ Salsabilla Deniesa, Dela Rinanda Putri, and Arqam Amrullah, "Copyright Protection for Creators of Digital Artwork," *Indonesian Comparative Law Review* 4, no. 1 (2021): 45.

a simple reproduction of public domain material, there are no economic rights to dispute. In the case of TCEs, commercialization must involve a fair benefit-sharing mechanism with the originating community and be based on permission from that community. Ultimately, the biggest challenge is to achieve an optimal balance between protecting and preserving institutions and maximizing public access to cultural heritage. Transparent policies regarding licensing, such as adopting an open access model with permissive Creative Commons licenses, clear guidelines for determining originality in digitalization, and strong recognition and protection of TCE communal rights, are crucial to ensure that digitized ancient manuscripts can be widely utilized for education, research, and cultural preservation. Ancient manuscripts are categorized as copyright-protected objects, and copyright includes protection for their creators. For ancient manuscripts that are hundreds of years old, it is necessary to identify the creator and their heirs to establish the standing and protection of their copyright. Some ancient manuscripts have identifiable authors, in which case the copyright belongs to the author as the creator. However, when an ancient manuscript is very old but its heirs are known, copyright ownership can be granted to the heirs. Conversely, for ancient manuscripts that are centuries old and have an identifiable author but unknown heirs, they are protected by the state and classified as TCEs. The same applies to ancient manuscripts whose authors and heirs are completely unidentifiable. Furthermore, the legal status and conversion of ancient manuscripts into digital form require identifying which specific manuscripts are being digitized. If the copyright holder is an heir, then permission is needed to digitize the manuscript. Manuscripts with unidentifiable authors and heirs become part of the public domain and remain protected by the state. However, if such manuscripts are commercialized by an industry with at least 100 employees, permission must be obtained from the state.

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