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Rethinking Cultural Property Protection: Between Communal Intellectual Property and Cultural Heritage

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Abstract

Studi ini bertujuan untuk merumuskan rekomendasi bagi model perlindungan hukum oleh negara yang memadai bagi kekayaan budaya Indonesia. Melalui penelitian hukum empiris dengan data primer dan sekunder, studi ini mengeksplorasi kerangka hukum yang mengatur kekayaan budaya Indonesia. Temuan menunjukkan bahwa hukum kekayaan budaya di Indonesia masih terfragmentasi, sering kali tumpang tindih, bertentangan, dan menciptakan ambiguitas dalam prosedur perlindungan, sehingga menimbulkan kebingungan bagi komunitas budaya. Selain itu, ditemukan adanya dualisme dalam perlindungan defensif melalui sistem registrasi terpisah yang dikelola oleh Kementerian Pendidikan dan Kebudayaan untuk warisan budaya serta Direktorat Jenderal Kekayaan Intelektual di bawah Kementerian Hukum dan Hak Asasi Manusia untuk kekayaan intelektual komunal. Perlindungan hukum positif masih kurang memadai, khususnya terkait penegakan hukum terhadap penyalahgunaan dan misapropriasi kekayaan budaya. Studi ini menyoroti kebutuhan mendesak akan harmonisasi dan interpretasi komprehensif hukum kekayaan budaya untuk memastikan keadilan, kepastian hukum, dan kemanfaatan yang lebih besar bagi masyarakat sebagai pengemban kekayaan budaya. Perlu dibentuk mekanisme perlindungan defensif melalui sistem registrasi satu pintu dengan kewenangan yang jelas yang berdampak bagi komunitas budaya yang ingin mencatatkan kekayaan komunalnya.

***Kata kunci** : kekayaan budaya; warisan budaya; kekayaan intelektual komunal; perlindungan hukum*

1. Introduction

In the cultural context, legal protection is manifested in positive and defensive protection.[1] In addition to preventing others from gaining unauthorized access to traditional knowledge and cultural expressions or using them for commercial gain without fairly sharing the benefits, positive legal protection is implemented by the community of origin itself to prevent unauthorized use and active exploitation of cultural expressions. It can also be used by holders of traditional knowledge and cultural expressions to establish their own businesses based on their traditional knowledge and traditional culture.

Defensive protection refers to a series of strategies to ensure that third parties do not obtain illegitimate or unfounded intellectual property rights over traditional cultural expressions, subject matter of traditional knowledge, and related genetic resources. Included in defensive protection are actions to invalidate patent claims that illegitimately claim pre-existing traditional knowledge as an invention. The term defensive protection is also used in Government Regulation (GR) No. 56/2022 concerning Communal Intellectual Property (CIP), specifically Article 27 (2) defensive protection is protection used to defend the existing rights of origin communities from misuse, deception, fraud, or misrepresentation and misappropriation.

Legal protection is the protection of rights. Cultural rights are part of human rights. As a human right, cultural rights are recognized in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which was ratified through Law Number 12 of 2005 concerning the Ratification of the International Covenant on Economic, Social, and Cultural Rights. At the national level, this right is recognized in the 1945 Constitution[2] and Law Number 5 of 2017 concerning the Advancement of Culture.[3]

Understanding cultural property requires understanding the concept of culture as property. The concept of "property" in law refers to anything that can become the object of rights. Therefore, referring to Kuntjaraningrat's concept of cultural forms above, cultural property is the forms of culture—value systems, social systems, and physical forms of culture—that can become the object of rights.[4]

The law acknowledges the distinction between tangible and immaterial objects when it comes to cultural property. The first and second forms of culture (value systems and social systems) are intangible objects if "culture" is classified under this definition of objects, while the third form of culture (artifacts, physical culture) is a tangible item. These

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[1] WIPO, "Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions," 2013.

[2] Diah Imaningrum Susanti, "Eksplorasi Perlindungan Kekayaan Intelektual Komunal Berbasis Hak Asasi Manusia," *Media Iuris* 5, no. 3 (2022): 401–28, https://doi.org/10.20473/mi.v5i3.40174.

[3] Undang-Undang Republik Indonesia Nomor 5 Tahun 2017 Tentang Pemajuan Kebudayaan.

[4] Andrew Gardner, Mark Lake, and Ulrike Sommer, *The Oxford Handbook of Archaeological Theory*, *The Oxford Handbook of Archaeological Theory*, Oxford University Press, London,2013, https://doi.org/10.1093/oxfordhb/9780199681532.001.0001. Lih. Koentjaraningrat, *Kebudayaan, Mentaliteit, dan Pembangunan* (Jakarta: Gramedia, 1974, p. 15-17); Lih. Koentjaraningrat, *Pengantar Ilmu Antropologi* Rineka Cipta, Jakarta, 2009, p. 150-153).

can all turn become "objects of rights." The idea of intellectual property law appears to embrace this understanding, as demonstrated by the presence of traditional cultural expressions and knowledge that fall under the category of "communal intellectual property." According to GR 56/2002, CIP is collectively owned intellectual property. This indicates that it is owned by someone, and that ownership is shared.[5]

In the meantime, the idea of "cultural heritage"—which is separated into physical and intangible cultural heritage—is also recognized by Indonesian law. Cultural heritage is defined as Cultural Heritage Objects, Cultural Heritage Buildings, Cultural Heritage Structures, Cultural Heritage Sites, and Cultural Heritage Areas on land and/or in water that must be preserved due to their significant historical, scientific, educational, religious, and/or cultural significance through a process of determination.[6]

In its 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO defines intangible cultural heritage as "the practices, representations, expressions, knowledge, skills," along with the tools, artifacts, and cultural spaces that are connected to them and that communities, groups, and sometimes even individuals recognize as belonging to their cultural heritage. Respect for cultural diversity and human creativity is fostered by this intangible cultural heritage, which is passed down from generation to generation and continuously recreated by communities and groups in response to their surroundings, interactions with nature, and history. The Convention also states that "intangible cultural heritage" manifests itself in, among others, the following areas: a) oral traditions and expressions, including language as a vehicle for intangible cultural heritage; b) performing arts; c) social practices, rituals, festivals; knowledge and practices related to the natural world; e) traditional crafts. All these concepts can be summarized in one phrase: "cultural property."

This study intends to investigate how Indonesia safeguards this cultural treasure through its positive laws using the ideas of "Intellectual Property" and "Cultural Heritage."

2. Research Methods.

This is a qualitative legal research with the perspective of hermeneutic circle-a process of understanding and interpreting law through linguistic and phenomenology (philosophy, history, and comparison). The research data was obtained from the Directorate of Intellectual Property Rights and the Ministry of Education and Culture. The data collected from the Directorate focuses on to what extent the IP Law and the State have facilitated CIP protection, while the data collected from the Ministry focuses on the inventory and documentation processes of CIP as national heritage.

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[5] Pemerintah Pusat, "Peraturan Pemerintah (PP) Nomor 56 Tahun 2022" (2022). Bdk. Miranda Risang Ayu Palar, Laina Rafianti & Helitha Novianty Muchtar, "Inclusive rights to protect communal intellectual property: Indonesian perspective on its new government regulation," *Cogent Social Sciences* 9, no. 2 (2023), https://doi.org/10.1080/23311886.2023.2274431.

[6] "Undang-Undang Republik Indonesia Nomor 11 Tahun 2010 Tentang Cagar BUdaya," Undang-Undang Republik Indonesia Nomor 12 Tahun 2010 Tentang Cagar Budaya § (2010).

This perspective of hermeneutic circle-a process is used to interpret texts in a comprehensive way, where the parts of a text cannot be separated from the text as a whole and vice versa; therefore, a comprehensive understanding could be obtained. The main object (material object) is the norms in Communal Intellectual Property and Cultural Heritage Law becoming standards and guides in understanding the role of the State as the copyright holder of Communal Intellectual Property. The linguistic analysis is used to find the meaning of law from the linguistic point of view. The philosophical analysis is used in order to find the nature of the State as the copyright holder of Communal Intellectual Property. The historical analysis is used to trace the background and consideration of the legislators in formulating the norms dealing with the role of the State as well as its consequences. The comparison approach is used to analyze Communal Intellectual Property in local culture and national policy.

3. Findings and Discussions

3.1 Cultural Rights

As stated by Koentjaraningrat, culture manifests in three forms: ideological values, behavioral systems, and physical objects that can be objects of rights.[7] Currently, this idealized culture is widely preserved in archives, microfilm collections, disks, computers, and so on. This idealized culture can be called customs. It usually functions as a code of conduct that regulates, controls, and directs human actions.

The second form, culture as a system of patterned behavior/social system, is a series of human activities in society, concrete and can be observed, photographed, etc. Meanwhile, the third form, culture as a physical object, is the most concrete form of culture and can be seen/touched.

The concept of "Rights" is based on Hohfeld's analytical framework [8] contains the meaning of "rights as opposed to obligations (claim right), "rights as privileges," "rights as power," and "rights in the sense of immunity." Therefore, the concept of "cultural rights" is always related to acquired claims, privileges, power, immunity, values, patterned behavioral systems, and physical cultural artifacts/products. And all of this is guaranteed in international and national conventions.

3.2 Concept of "Authorship" in Communal Intellectual Property

The concept of authorship is an important concept in intellectual property, especially in copyright law, and copyright law is the first law to regulate cultural property

[7] Andrew Gardner, Mark Lake, and Ulrike Sommer, *The Oxford Handbook of Archaeological Theory*, *The Oxford Handbook of Archaeological Theory*, Oxford University Press, London,2013, https://doi.org/10.1093/oxfordhb/9780199681532.001.0001. Lih. Koentjaraningrat, *Kebudayaan, Mentaliteit, dan Pembangunan* (Jakarta: Gramedia, 1974, p. 15-17); Lih. Koentjaraningrat, *Pengantar Ilmu Antropologi* Rineka Cipta, Jakarta, 2009, p. 150-153).

[8] Raymond Wacks, *Philosophy of Law, A Very Short Introduction*, Oxford University Press, Oxford, 2006, p.53-55.

in its various laws. Five copyright laws since independence, namely Law No. 6/1982, Law No. 7/1987, Law 12/1997, Law 19/2002, and most recently Law 28/2014, all regulate that Traditional Cultural Expressions (TCE) are copyrighted, with the state as the copyright holder for TCE. In this case, copyright law protects creative products in the form of folklore.[9] In other words, Indonesian law categorizes cultural property, in this case TCE, within the realm of copyright law.[10]

The problem is, cultural wealth often cannot be identified as its creator, it is a heritage that is preserved from generation to generation.[11] Apart from that, culture cannot be reduced to mere products (creations) because there are virtues and values which are the essence and characteristics of culture.[12] Intellectual property legal system that relies on the exclusive right of individual right holders and unable to protect cultural properties and tradition-based objects those are viewed as lacking originality, inventiveness, and individual proprietors.[13] "Communitarian theory provides a more appropriate philosophical foundation for communal intellectual property protection because TCE embody collective identity, intergenerational continuity, and shared cultural dignity rather than individual economic entitlement."[14]

The concept of CIP has been introduced by the World Intellectual Property Organization (WIPO) since 2013 with the introduction of the concept of defensive and positive protection.[15] In the WIPO Glossary, defensive protection is a strategy to ensure that there are no unauthorized claims to traditional cultural expressions. Positive legal protection, meanwhile, involves enacting laws that ensure there is no unauthorized exploitation or use of traditional cultural expressions.

The term "Communal Intellectual Property" (CIP) was officially introduced in 2017 in Ministerial Regulation No. 13 of 2017 concerning Communal Intellectual Property Data. The addition of the word "communal" in intellectual property can be identified in the Regulation[16], which without defining what CIP means, directly lists the categories of CIP, namely Traditional Cultural Expressions, Traditional Knowledge, Genetic Resources, and Potential Geographical Indications.

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[9] "Undang-Undang Hak Cipta," Pub. L. No. 28/2014, 1 (2014), www.hukumonline.com.
[10] Diah Imaningrum Susanti, *Perlindungan Negara Atas Warisan Budaya Bangsa*, *Setara Press* (Malang: Setara Press, 2018)., Setara Pres, Malang, 2018, p.43.
[11] Id.
[12] Susanti, "Eksplorasi Perlindungan Kekayaan Intelektual Komunal Berbasis Hak Asasi Manusia."
[13] Miranda Risang et al., "Inclusive Rights to Protect Communal Intellectual Property : Indonesian Perspective on Its New Government Regulation Inclusive Rights to Protect Communal Intellectual Property : Indonesian Perspective on Its New Government Regulation," *Cogent Social Sciences* 9, no. 2 (2023), https://doi.org/10.1080/23311886.2023.2274431.
[14] Kamrul Hossain and Rosa Maria Ballardini, "Protecting Indigenous Traditional Knowledge Through a Holistic Principle-Based Approach," *Nordic Journal of HUman RIghts* 8131 (2021), https://doi.org/10.1080/18918131.2021.1947449.
[15] WIPO, "Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions."
[16] Indonesia, "Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 13 Tahun 2017 Tentang Data Kekayaan Intelektual Komunal," 2017.

In 2020, the Directorate General of Communal Intellectual Property also launched the Intellectual Property Rights (CIP) program as a flagship program. The goal of this initiative was to increase the inventory of CIP in the DJKI National Intellectual Property Data database and raise public awareness of the importance of protecting CIP.

Two years later, GR No. 56 of 2022 further clarified the regulation of CIP. [17] The regulation states that CIP is intellectual property with communal ownership. This means that, within the legal concept of the PP, cultural property categorized as CIP has an owner, and that ownership is communal. However, it should be noted that, within the concept of intellectual property, ownership arises from creations, discoveries, or inventions, which are the result of human intellectual activity or human intellectual intervention.[18] This means that further examination is still needed to determine whether it is appropriate to categorize Genetic Resources and Potential Geographical Indications – which have not experienced human intellectual intervention – as "intellectual property".

3.3 The State as the Holder of Communal Intellectual Property Rights

The state's role as copyright holder for traditional cultural expressions, originally enshrined in copyright law, has been expanded with the concept of "the state as holder of communal intellectual property rights," as outlined in GR No. 56/2022. This expanded role of the state as holder of communal intellectual property rights (CIP) requires criticism in three respects.

First, CIP must contain an element of human intellectual property, while the categorization of CIP—in this case, potential geographical indications and genetic resources—does not yet incorporate any element of human intellectual intervention.

Second, PP 56/2022 requires the state to maintain CIP (through education, literacy, outreach, promotion, and application of CIP that benefits the community of origin); safeguard CIP (by prevention of exploitation, mediation, and diplomacy); and record and integrate IP data. This challenges the state's authority to uphold rights. The Directorate General of Indonesian Intellectual Property is responsible for cataloging, safeguarding, and maintaining the Intangible Cultural Heritage under the Ministry of Law and Human Rights. The same responsibility falls to the Directorate of Cultural Heritage and Diplomacy of the Ministry of Education and Culture, which publishes the Guidelines for the Registration, Determination, and Proposal of Intangible Cultural Heritage of Indonesia.[19]

Third, the idea of rights in "The State as Rights Holder over Traditional Cultural Expressions" is combined with the community of origin's rights, specifically the right to Traditional Cultural Expressions, which is an all-encompassing moral right that is held and/or exercised by the community of origin, offers financial advantages, and is

[17] Pemerintah Pusat, Peraturan Pemerintah (PP) Nomor 56 Tahun 2022.
[18] DIah Imaningrum Susanti, *Hak Cipta: Kajian Filosofis Dan Historis*, Setara Press, Malang, 2017, p. 29.
[19] Diah Imaningrum Susanti, supra no.11, p.155-159.

perpetually valid. The GR's definition of moral rights is not made clear by this explanation.

The considerations of GR No. 56/2022 state that this regulation embodies the mandate of Article 38 paragraph (4) of Law Number 28 of 2014 concerning Copyright, which states that the State is the copyright holder for Traditional Cultural Expressions. It is worth remembering that since 2002, the Copyright Law mandated government regulations, then again in 2014, and only eight years since 2014, did the government regulations emerge.

From these two regulations (Law 28 of 2014 concerning Copyright and PP 56/2022 concerning CIP), it is clear that the government is expanding the role of the state: from previously being the copyright holder for Traditional Cultural Expressions, to being the rights holder for CIP. Therefore, it is necessary to clarify, if the right to CIP is said to be a "moral right," to what extent the identity of the "creator" of the cultural property should be recognized and to what extent the integrity of the work in the cultural property should be maintained.

3.4 Moral Right in Communal Intellectual Property

Historically, moral rights in the concept of copyright law consist of two rights: the right of maternity (the right to be identified as the creator) and the right of integrity (the right to the integrity of the work). This concept of moral rights is reaffirmed in the CIP in this GR, specifically in Article 33 (1), which states that anyone who uses CIP contained in the Indonesian CIP information system must (a) identify the community of origin of the CIP, (b) maintain the value, meaning, and identity of the CIP, and (c) respect the values entrenched in the community of origin of the CIP.

Respecting moral rights for CIP presents a unique challenge in today's global era. This challenge arises for several reasons.

First, the concept of the individual human being is unknown in a communal society.[20] Traditional Indonesian culture has been based on the idea that humans and nature are one for thousands of years. People exist because of other people and the universe. Creative works (or "works" under copyright law) should be committed to nature because it is abundant. Individual rights are not understood by the communities that create traditional cultural manifestations. This perspective rejects the existence of private individual wealth in the economy, disregards personal interests, demands total submission to the authority of tribal chiefs or traditional elders, and advocates for laws that are focused on duties. This perspective upholds the notion that fulfilling duties is crucial and that it is a person's "right" in society when it comes to the legal relationship between rights and obligations.

Second, small-scale agriculture and the patriarchal family serve as the fundamental social unit in communities that are generating TCE. Indigenous thought now

[20] Diah Imaningrum Susanti, Raymundus I Made Sudhiarsa, and Rini Susrijani, *Ekspresi Budaya Tradisional Dan Hak Kekayaan Intelektual*, Widya Sasana Publication, Malang, 2019, p.169.

revolves around this cultural orientation, particularly when this heritage is incorporated into religion (as in Bali, for instance). As a result, the fundamental unit of indigenous society is the family rather than the individual. In this sense, people have to take the family's interests into consideration.[21]

Local customary law supports these ideas of customary rules. Customary leaders are "secured" by these customs. In this instance, when indigenous people embrace TCE, a collective orientation grows quickly and becomes more ingrained, while individual interests are minimized and given no opportunity to flourish. In fact, the consideration of individual interests and the protection of collective orientation through the regulation of individual rights is the primary feature of traditional legal culture in several research areas. Indonesian society and public ideals are still influenced by this communal perspective.

Third, the perspectives of intellectual property culture and traditional culture vary. Traditional culture holds that a person's worth should be assessed based on their influence and contribution to society. According to indigenous tribes, a person is most appreciated and respected when they are needed by the community, acknowledged, and helpful to others. According to customary ideas, the community's opinions and endeavors are influenced by conventional wisdom. This perspective holds that creating intellectual goods is only a process of self-improvement. Meanwhile, Indonesian law incorporates an exploitative, materialistic, and individualistic intellectual property culture.[22]

The bearers of traditional cultural expressions routinely disregard their individual rights against this cultural backdrop. They don't make art for financial benefit. The public's recognition and dissemination of their work are more important to them. For example, *Mak Yam*, a craftsman of the Malangan Mask Traditional Cultural Expression, thinks and acts within this framework. Likewise, Balinese pendet dancers, Ponorogo Reog artisans, and songke weavers in Manggarai, Flores, NTT. They never profit from their work, because good people never do anything for money. Therefore, it's understandable why the traditional cultural expression community is so tolerant of behavior that leads to imitation or piracy,[23] and that means in this case, they are very tolerant of violations of moral rights to communal intellectual property.

Fourth, from a social perspective, most people do not consider piracy to be stealing. The idea of private intellectual property rights has never existed in traditional societies. The general public seldom thinks that stealing someone else's property equates to copying. However, the public is ignorant of intellectual property, the offenders never

[21] In Manggarai, for example, someone who has migrated and dies in their homeland must be buried there, even if their immediate family does not live there. Diah Imaningrum Susanti, Raymundus I Made Sudhiarsa, and Rini Susrijani, *Id.*

[22] Candra Irawan, "Protection of Traditional Knowledge: A Perspective on Intellectual Property Law in Indonesia," *Journal of World Intellectual Property* 20, no. 1–2 (2017): 57–67, https://doi.org/10.1111/jwip.12073.

[23] Id.

see their actions as grave legal crimes, and victims of piracy and copying have a tolerant attitude toward piracy. As a result, the violations never stop.[24]

Traditional Cultural Expression practitioners acknowledge that if their individual rights are violated, they will not resort to legal means to protect them. This is due to a deeply rooted mindset out of harmony. In indigenous communities, harmonious interpersonal relationships are a prerequisite for survival. No one wants to violate this harmony by threatening lawsuits or taking legal action, as legal action would disrupt their social relationships.

Empirical research across Indonesia challenges the discourse on intellectual property, as local musicians, playwrights, weavers, and other indigenous artists consistently deny that they are the individual creators of the objects and performances they produce, while simultaneously denying their unique innovative contributions and authority. They even consider themselves merely "continuers," of ancestral traditions. These artists also assert that the changes or innovations they add to make their works appealing to younger generations do not replace the essence of their group's ancestral traditions. The statement denies individual ownership, but on the other hand supports the integrity of traditional heritage, such as the UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage, which Indonesia ratified in 2007. This document, and the concept of common cultural property developed by UNESCO and WIPO, promotes a metaphorical vision of cultural ownership. [25]

3.5 Exclusive versus Collective Rights

Indonesia remains unprepared in terms of theory, practice, and even public recognition of the values espoused in IPR. This is why issues persist in practice. The intellectual property law transplanted into Indonesian law is not yet supported by Indonesian legal culture.

First, the philosophy of "gotong royong" and "harmony" in traditional culture supports the shared use of works, rather than exclusive use. The creation of TCE has a strong collective image. Community members own intellectual creations jointly with other community members for free. This image of TCE aligns with the nature of traditional Indonesian culture. No one demands individual rights for their contributions because they believe that TCE belongs to the community as a whole, based on their customs and traditional culture. However, the intellectual property system emphasizes individual rights and exclusive use, which contradicts community customs and traditional values, posing a significant challenge to advancing the protection of TCE.

Second, due to a lack of awareness of intellectual property rights, even if the intellectual property sector were to protect TCE, it would be difficult for communities to accept that TCE, as a freely used cultural expression, suddenly becomes a valuable commodity. For some communities, adherence to tradition makes them view TCE as an

[24] Id.

[25] Lorraine V Aragon, "Law versus Lore: Copyright and Conflicting Claims about Culture and Property in Indonesia," *Anthropology Today* 30, no. 5 (2014): 15–19.

ancient artifact. The TCE has never embraced intellectual property, which is why most of them lack the strong desire to seek intellectual property protection, as, for example, Western Aboriginal communities do.

Third, many ethnic communities still live in remote areas. Some people outside the community have also lived there for long periods. They maintain close ties with one another within small communities. Some become good neighbors. Many members are willing to take legal action against violators with whom they typically have good interpersonal relationships.

Furthermore, these community members are often vulnerable groups in society. Even if they resist violations, it is difficult for them to protect themselves from litigation if the violators are powerful companies or individuals in the local area where there are strong local protections.[26] If they seek protection through administrative approaches, they will face executive behavior from officials, such as lesser penalties due to the violators' interpersonal relationships with the officers. The importance of protecting communal IP is due to the large potential related to the economic rights obtained, considering that Indonesia consists of various tribes, customs and cultures, each of which has its own TCE.[27] In short, traditional culture still strongly influences communities and their views on intellectual property, which raises certain issues when discussing intellectual property protection for TCE.

Furthermore, the administrative requirements for CIP registration applications include at least an application form, description, and supporting data in the form of video links, documentation, process/techniques, skills, or manufacturing techniques, and a written statement supporting protection, preservation, development, and utilization efforts signed by the local government, indigenous community associations, or community associations.

3. 6 The Concept of Cultural Heritage

Cultural heritage can be traced back to UNESCO conventions, namely the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and the 2007 UN Declaration on the Rights of Indigenous Peoples. These international conventions have been ratified in Indonesia through Presidential Decree No. 78 of 2007 concerning the Ratification of the Convention for the Safeguarding of the Intangible Cultural Heritage and Ministerial Regulation No. 106 of 2013 concerning the Intangible Cultural Heritage of Indonesia.

The concept of cultural wealth as heritage necessarily presupposes the existence of heirs and beneficiaries. As with most traditional cultural expressions and knowledge,

[26] Case of PT Karya Tangan Indah, See: I Nyoman Lodra, *Hak Kekayaan Intelektual dalam Peradaban Masyarakat Bali*, Unesa University Press, Surabaya, 2017, p. 40.
[27] Bagus Gede et al., "Communal Intellectual Property in the Perspective of Copyright Law," *Supremasi* XVIII, no. 56 (2023): 1–12.

this is reinforced by several studies in Bali, Ponorogo, Malang, and Flores.[28] The heirs are often unrecognized. The living successors who safeguard and conserve the cultural legacy are acknowledged. GR No. 56 of 2022 concerning Communal Intellectual Property likewise refers to this community as the custodians. The notion of cultural heritage emphasizes the preservation of the values and virtues that make up cultural heritage, particularly intangible cultural assets, in contrast to the CIP concept, which incorporates the idea of defensive and positive protection.

3. 7 The Protection of Cultural Property: for Whose Interests?

In GR No. 56 of 2022, Indonesia appears to incorporate both ideas—Communal Intellectual Property and Cultural Heritage. The DJKI website, which offers information on communal intellectual property in Indonesia, makes this clear. The Ministry of Education and Culture, the Indonesian Institute of Sciences (LIPI), and Biogen (for genetic resources) provide some of the data, which details the kinds and amounts of communal intellectual property in Indonesia. The following table displays all of the information:

Table 1: Types of Communal Intellectual Property

NO	TYPE	AMOUNT
1	Traditional Cultural Expression	1491 (DIKBUD : 695; DJKI : 796)
2	Traditional Knowledge	574 (DIKBUD: 422; DJKI: 152)
3	Genetic Resources	11951 (LIPI : 7429; Biogen : 4469; DJKI : 53)
4	Geographical Indications Potential	26 (DJKI)
5	Indikasi Asal	No data

Notes: Data processed from source: DJKI, updated as of January 1, 2024

In an official publication dated March 10, 2026, the DJKI presented national data indicating the documentation of 2,199 expressions of traditional culture, 555 instances of traditional knowledge, 249 genetic resources, 133 potential geographical indications, and 101 indications of source as part of efforts to protect the nation's cultural identity; however, the specific origins of the data—whether from the Ministry of Education and Culture (DIKBUD) or the DJKI—were not detailed, as the data was inaccessible at the time of writing.

Community-level problems may result from this data integration: where will people go if they wish to register their cultural heritage? To the Directorate General of Intellectual Property (DJKI), which is also governed by GR No. 56 of 2022 concerning

[28] Susanti, Sudhiarsa, and Susrijani, supra no. 19

Communal Intellectual Property, or to the Directorate of Intangible Cultural Heritage, as specified in the Guidelines for the Registration, Determination, and Proposal of Indonesian Intangible Cultural Heritage?

Additionally, the idea that the State is the owner of the rights to Traditional Cultural Expressions (as stated in the Copyright Law) and Communal Intellectual Property (as stated in GR No. 56/2022) requires the State to maintain (education, literacy, outreach and promotion, and utilization of CIP that benefits the community of origin), safeguard (prevent exploitation, mediation, and diplomacy), and inventory (by recording and integrating CIP data). If the state is required to identify, maintain, and safeguard cultural assets, it must do so actively and with presence. Formally speaking, however, the public is required to register by submitting an application, which may be denied. When the state is obligated to inventory (by recording and inventorying CIP data), this needs to be investigated: who files the application?

As the holder of communal intellectual property rights, the state is obligated to proactively inventory, preserve, and protect cultural assets through registration and documentation. Administrative burdens should not be imposed on communities, whose primary needs are protection and preservation rather than registration procedures. Therefore, the state must take the initiative in recording and inventorying cultural property, as mandated by Article 3 paragraph (1) of GR No. 56 of 2022.

DJKI data reveals gaps in defining custodians as the communities responsible for maintaining cultural property. This issue must be addressed to strengthen both positive and defensive protection. Current databases managed by the DJKI and the Directorate General of Intangible Cultural Heritage mainly function as defensive protection by preventing baseless claims over cultural property, while positive protection enables indigenous communities to enforce their ownership rights and legal claims.[29]

Because GR No. 56 of 2022 concerning CIP explicitly states three (three) things that the community of origin must protect—misuse, deception, fraud or misrepresentation, and theft or piracy (misappropriation)—the state should be more interested in inventorying, maintaining, and safeguarding.

3.8 Expanding the State's Position as the Rights Holder of Communal Intellectual Property

Referring to GR No. 56 of 2022 concerning Traditional Cultural Expressions (CIP), the state holds the rights to CIP. This concept can be traced historically to five Indonesian Copyright Laws, which stipulate that "The State holds the copyright for Traditional Cultural Expressions." This is stated in Article 10 of Law No. 6 of 1982 concerning Copyright, Article 10 (1) of Law No. 7 of 1987 concerning Copyright, Law No. 12 of 1997 concerning Copyright, Article 19 of 2002 concerning Copyright, and Law No. 28 of 2014 concerning Copyright. This means that one aspect of culture, now part of

[29] Samuel Lim, "An Equitable Approach To Traditional Knowledge Protection," *International Law and Politics* 53, no. 135 (2020): 135–88.

CIP, namely Traditional Cultural Expressions, is accommodated and regulated as copyright. Meanwhile, within the concept of culture, its unique characteristic is inheritance.

Furthermore, applying the concept of "rights" within Hohfeld's analytical framework, the notion of the state as a rights-holder regarding CIP has implications for determining which parties bear the obligation to fulfill those rights, as well as the specific authority, power, and privileges the state possesses in that capacity. None of these aspects are yet regulated in detail under Government Regulation No. 56 of 2022.

Traditional cultural expressions such as hand-drawn batik are inherited cultural legacies with no identifiable creator and are passed down across generations. Unlike copyright, which is based on originality and individual authorship, TCE is rooted in cultural values, meaning, and collective excellence. Cultural heritage, therefore, belongs to the community rather than an individual creator, requiring the state to empower local communities in preserving and protecting its cultural value.

The development of Copyright Law since 1982 shows the expanding role of the state as the holder of rights over traditional cultural expressions. This role was strengthened through Ministerial Regulation No. 13/2017 and GR No. 56/2022, which broadened state authority from protecting TCE alone to encompassing CIP, including traditional knowledge, indications of origin, genetic resources, and potential geographical indications.

Conceptual confusion once again arises in the regulation concerning CIP. *First,* the rationale for categorizing genetic resources as CIP requires further scrutiny. SDGs are genetic material derived from plants, animals, and microorganisms, containing units with real or potential functional value,[30] consisting of: a) plants or parts of plants with real or potential value; b) animals or parts of animals with real or potential value; c) microorganisms or parts of microorganisms with real or potential value,[31] is the "raw material". There is no element of human intellectual intervention as defined by the definition of "intellectual property," therefore, it is inappropriate to classify the genetic resources as CIP.

In conventional intellectual property systems, there is a relationship between the protected subject matter and human intellectual activity. Patents relate to inventions, copyright to creative works, and industrial designs to creations concerning the shape or configuration of products. Genetic resources present a different set of issues because genetic traits can exist before humans identify, study, or utilize them.

Three stages must be distinguished: 1) Biological existence: the plant and its genetic traits already exist in nature; 2) Human knowledge: an individual or community is aware of its characteristics, properties, or methods of use; 3) Human innovation: an individual develops an extraction, formulation, breeding method, or new technical process. The first stage does not, in itself, constitute an intellectual creation. The second

[30] Art. 1 (4) PP 56/2022 tentang Kekayaan Intelektual
[31] Art. 9 PP 56/2022 tentang Kekayaan Intelektual

stage may qualify as traditional knowledge if it meets the relevant criteria. The third stage may result in an invention eligible for protection under an appropriate IP regime. Therefore, equating these three stages risks a "category error"—the mistake of assigning an object to an inappropriate conceptual category.

Second, when the state is designated as the rights holder of CIP, the consequence is: who is responsible for fulfilling cultural rights? Referring to GR 56 of 2022 concerning CIP, the state's role as the rights holder also means it is obligated to protect cultural rights. Therefore, the state has two positions regarding culture, particularly CIP: as the rights holder and as the obligation bearer.

In relation to the rights to CIP held by the state, the state is obligated to inventory, safeguard, and maintain CIP. CIP inventory is carried out through CIP recording and data integration. [32] Meanwhile, CIP recording is carried out based on an application or assessment. [33] What needs to be considered is the urgency of registration based on a request. While registration is a state obligation, it is the public who is obligated to request it. The need for registration is a state necessity, so that there is an inventory of CIP and the state has CIP data.

The public's needs are preservation and protection. If cultural wealth is a cultural heritage, protection means preservation.[34] As the holder of rights over cultural property, particularly cultural heritage, the state must proactively register and inventory cultural assets. This obligation arises from Article 3 paragraph (1) of GR No. 56/2022, which designates the state as the rights holder responsible for recording and integrating cultural heritage data.

The state must also actively recognize and document cultural property through written, audio, visual, and community-based documentation. Under Article 3 paragraph (3) of GR No. No. 56/2022, this responsibility is carried out by ministers and regional governments. However, incomplete and disconnected CIP data at the DJKI reflects weak coordination with cultural communities. Therefore, state efforts to prevent cultural appropriation must be supported by a genuine commitment to transparent, accountable, and community-oriented registration of cultural assets.

The government can also consider developing specific laws to protect cultural assets. This may include prohibitions or restrictions on the use or commercialization of cultural assets without the permission of the groups possessing the knowledge. Several countries have created alternative intellectual property rights frameworks that recognize traditional knowledge. An example is the Convention on Biological Diversity which recognizes the importance of protecting and supporting traditional knowledge related to natural resources.

[32] Art. 12 PP 56/2022 tentang Kekayaan Intelektual
[33] Art. 13 (6) PP 56/2022 tentang Kekayaan Intelektual
[34] Zainul Daulay, "Legal Politics of Protection and Ownership of Communal Intellectual Property : A Study of Traditional Medicine Knowledge," *Journal Equity of Law and Governance* 2, no. 2 (2022): 123–31.

In the global era, cultural property protection requires international cooperation to address misuse, fraud, misrepresentation, and misappropriation through shared guidelines and legal frameworks. Governments must also strengthen public awareness and involve knowledgeable community organizations in protecting cultural property. Active community participation is essential to ensure that protection measures reflect the needs and interests of cultural bearers.

Educating communities about culture, traditional knowledge, and their rights is essential for protecting cultural assets. Such education helps communities understand the cultural and economic value of their heritage, while Indonesia's rich cultural expressions serve as important capital for national development.[35] Establishing licensing procedures for the use of communal intellectual property in GR on CIP is essential to protect originating communities. Any commercialization of cultural property must involve agreements with the relevant communities and ensure fair benefit-sharing.

Fair and effective dispute resolution mechanisms should be established in cases of disputes related to traditional knowledge. This can help prevent misuse and protect community rights. This, coupled with community economic empowerment through Adat law,[36] needs to be implemented so that cultural communities benefit economically from their cultural heritage. This can be achieved through training programs, product development based on traditional knowledge, or cultural tourism, which can help raise awareness of the value of this knowledge.

These practices integrate cultural, social, economic, and legal aspects in protecting cultural heritage. Such strategies help preserve cultural heritage while safeguarding community interests and commercial benefits, reflecting respect for communal rights and the environment,[37] access to benefit sharing, and promotion of equality between the beneficiary state and local communities, [38] because the outcome of protecting cultural property is material and spiritual well-being for the community, especially the host community.

4. Conclusion

The concepts of communal intellectual property and cultural heritage have created dualism in the nomenclature, registration, and authority over cultural property in Indonesia. This dualism results in inefficient bureaucracy and unclear registration procedures at the local level. Therefore, legal harmonization is needed to ensure effective

[35] Anang Pratama and Hanita Mayasari, "Enhancing Community Economies through Legal Protection Models of Traditional Knowledge and Cultural Expressions : A Study on Indonesia ' s Communal Intellectual Property Framework," *Gelar: Jurnal Seni Budaya* 22, no. 2 (2024): 239–57.
[36] Nadia Carolina Weley, Viona Puspita, and Gustina Aryani, "Peran Hukum Adat Dan Hukum Nasional Dalam Melindungi Pengetahuan Tradisional Sebagai Kekayaan Intelektual Komunal," *Barelang Journal of Legal Studies* 2, no. 1 (2024): 17–56.
[37] Adam Dunstan, "Toxic Desecration: Indigenous Knowledge and 'Western' Science in Defense of Sacred Land," *Journal for the Study of Religion, Nature and Culture* 15, no. 4 (2022): 462–86, https://doi.org/10.1558/jsrnc.18954.
[38] P A Padmavathi and P Boomiraja, "The Sacred Secrets of Indigenous People in Traditional India," *Turkish Online Journal of Qualitative Inquiry* 12, no. 10 (2021): 5288–94.

cultural property protection. This is not merely a matter of consolidating data, but rather an effort to harmonize legal concepts, institutional mandates, inventory systems, and mechanisms for protecting the rights of indigenous peoples and local communities.The state's protection model should expand its role in safeguarding communal intellectual property and traditional cultural expressions while involving communities as cultural bearers through comprehensive positive and defensive legal protection.

REFERENCES

BOOKS

Gardner, Andrew, Mark Lake, and Ulrike Sommer. *The Oxford Handbook of Archaeological Theory*. *The Oxford Handbook of Archaeological Theory*. London: Oxford University Press, 2013. https://doi.org/10.1093/oxfordhb/9780199681532.001.0001.

Koentjaraningrat. *Kebudayaan, Mentaliteit, dan Pembangunan*. Jakarta: Gramedia, 1974.

Koentjaraningrat. *Pengantar Ilmu Antropologi*. Jakarta: Rineka Cipta, 2009.

———. *Perlindungan Negara Atas Warisan Budaya Bangsa*. Malang, Setara Press, 2018.

Susanti, Diah Imaningrum. *Hak Cipta: Kajian Filosofis Dan Historis*. Malang: Setara Press, 2017.

Susanti, Diah Imaningrum, Raymundus I Made Sudhiarsa, and Rini Susrijani. *Ekspresi Budaya Tradisional Dan Hak Kekayaan Intelektual*. Malang: Widya Sasana Publication, 2019.

Wacks, Raymond. *Philosophy of Law, A Very Short Introduction*. Oxford: Oxford University Press, 2006.

JOURNALS

Aragon, Lorraine V. "Law versus Lore: Copyright and Conflicting Claims about Culture and Property in Indonesia." *Anthropology Today* 30, no. 5 (2014): 15–19.

Daulay, Zainul. "Legal Politics of Protection and Ownership of Communal Intellectual Property : A Study of Traditional Medicine Knowledge." *Journal Equity of Law and Governance* 2, no. 2 (2022): 123–31.

Dunstan, Adam. "Toxic Desecration: Indigenous Knowledge and 'Western' Science in Defense of Sacred Land." *Journal for the Study of Religion, Nature and Culture* 15, no. 4 (2022): 462–86. https://doi.org/10.1558/jsrnc.18954.

Gadamer, Hans-Georg. *Truth and Method*. 2nd ed. London: Continuum, 2004.

Gardner, Andrew, Mark Lake, and Ulrike Sommer. *The Oxford Handbook of Archaeological Theory*. *The Oxford Handbook of Archaeological Theory*. London: Oxford University Press, 2013. https://doi.org/10.1093/oxfordhb/9780199681532.001.0001.

Gede, Bagus, Ari Rama, Dewa Krisna Prasada, and Kadek Julia Mahadewi. "Communal Intellectual Property in the Perspective of Copyright Law." *Supremasi* XVIII, no. 56 (2023): 1–12.

Hossain, Kamrul, and Rosa Maria Ballardini. "Protecting Indigenous Traditional Knowledge Through a Holistic Principle-Based Approach." *Nordic Journal of HUman RIghts* 8131 (2021). https://doi.org/10.1080/18918131.2021.1947449.

Irawan, Candra. "Protection of Traditional Knowledge: A Perspective on Intellectual Property Law in Indonesia." *Journal of World Intellectual Property* 20, no. 1–2 (2017): 57–67. https://doi.org/10.1111/jwip.12073.

Indonesia. "Undang-Undang Republik Indonesia Nomor 5 Tahun 2017 Tentang Pemajuan Kebudayaan."

Lim, Samuel. "An Equitable Approach To Traditional Knowledge Protection." *International Law and Politics* 53, no. 135 (2020): 135–88.

Nugroho, Reyhan Cahyo, Afifah Kusumadara, and Yenny Eta Widyanti. "Formulasi Pengaturan Tata Cara Perizinan Pemanfaatan Kekayaan Intelektual Komunal Sebagai Bentuk Perlindungan Terhadap Komunitas Asal." *RechtJiva* 1, no. 3 (2024): 456–76.

Padmavathi, P A, and P Boomiraja. "The Sacred Secrets of Indigenous People in Traditional India." *Turkish Online Journal of Qualitative Inquiry* 12, no. 10 (2021): 5288–94.

Pemerintah Pusat. Peraturan Pemerintah (PP) Nomor 56 Tahun 2022 (2022).

Pratama, Anang, and Hanita Mayasari. "Enhancing Community Economies through Legal Protection Models of Traditional Knowledge and Cultural Expressions : A Study on Indonesia ' s Communal Intellectual Property Framework." *Gelar: Jurnal Seni Budaya* 22, no. 2 (2024): 239–57.

Risang, Miranda, Ayu Palar, Laina Rafianti, Helitha Novianty Muchtar, Miranda Risang, Ayu Palar, Laina Rafianti, and Helitha Novianty. "Inclusive Rights to Protect Communal Intellectual Property : Indonesian Perspective on Its New Government Regulation Inclusive Rights to Protect Communal Intellectual Property : Indonesian Perspective on Its New Government Regulation." *Cogent Social Sciences* 9, no. 2 (2023). https://doi.org/10.1080/23311886.2023.2274431.

Susanti, Diah Imaningrum. "Eksplorasi Perlindungan Kekayaan Intelektual Komunal Berbasis Hak Asasi Manusia." *Media Iuris* 5, no. 3 (2022): 401–28. https://doi.org/10.20473/mi.v5i3.40174.

———. *Perlindungan Negara Atas Warisan Budaya Bangsa*. *Setara Press*. Malang: Setara Press, 2018.

———. *Perlindungan Negara Atas Warisan Budaya Bangsa*. Malang: Setara Press, 2018.

Susanti, DIah Imaningrum. *Hak Cipta: Kajian Filosofis Dan Historis*. *Setara Press*. Malang: Setara Press, 2017.

Susanti, Diah Imaningrum, Raymundus I Made Sudhiarsa, and Rini Susrijani. *Ekspresi Budaya Tradisional Dan Hak Kekayaan Intelektual*. *Widya Sasana Publication*. Malang: Widya Sasana Publication, 2019.

Undang-Undang Hak Cipta, Pub. L. No. 28/2014, 1 (2014). www.hukumonline.com.

Undang-Undang Republik Indonesia Nomor 11 Tahun 2010 tentang Cagar BUdaya,

Undang-Undang Republik Indonesia Nomor 12 Tahun 2010 Tentang Cagar Budaya § (2010).

Wacks, Raymond. *Philosophy of Law, A Very Short Introduction*. Oxford: Oxfrod University Press, 2006.

Weley, Nadia Carolina, Viona Puspita, and Gustina Aryani. "Peran Hukum Adat Dan Hukum Nasional Dalam Melindungi Pengetahuan Tradisional Sebagai Kekayaan Intelektual Komunal." *Barelang Journal of Legal Studies* 2, no. 1 (2024): 17–56.

WIPO. "Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions," 2013.

REGULATIONS AND INTERNATIONAL CONVENTIONS

Government Regulation Number 56 Tahun 2022 on Communal Intellectual Property

Law Number 11 Tahun 2010 tentang Tangible Cultural Property

Undang-Undang No. 28/2014 o Copyright

Minister of Human Rights Regulation Number 13 of 2017 on Communal Intellctual Property Data

Presidential Regulation Number 78 of 2007 tentang Pengesahan Convention for the Safeguarding of the Intangible Cultural Heritage

Minister of Education and Culture Number 106 tahun 2013 on Intangible Cultural Heritage of Indonesia

UNESCO, The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage

UNESCO, The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions,

United Nations, The 2007 UN Declaration on the Rights of Indigenous Peoples.