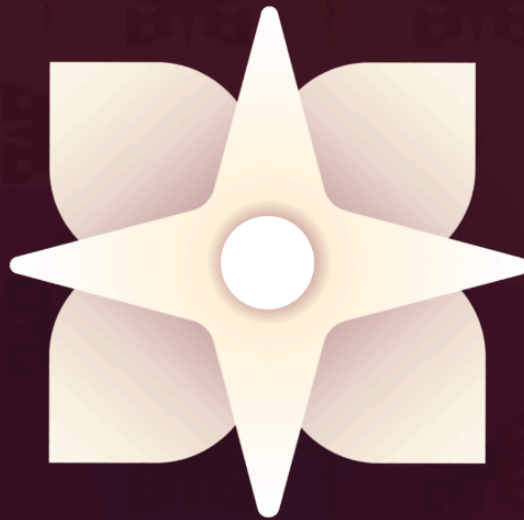


ALSA LEGAL REVIEW A 2026

Indigenous Communities and the Copyright Vacuum Over Traditional Arts in Indonesia



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**Indigenous Communities and the Copyright Vacuum Over Traditional Arts in
Indonesia**

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ABSTRACT

Indonesia possesses an immense diversity of Traditional Cultural Expressions (TCEs), yet their legal protection remains hindered by fundamental constraints. Under Law No. 28 of 2014 on Copyright (Copyright Law), the state is designated as the copyright holder for TCEs, a provision that in practice often excludes indigenous communities from ownership and fair benefit-sharing. This research identifies a structural clash between the individualistic paradigm of modern copyright and the communal, intergenerational nature of TCEs. The ambiguity of this legal framework has rendered TCEs vulnerable to illegal commercial exploitation and cross-border claims by foreign parties, as seen in cases involving batik motifs and the Pendet dance. Consequently, this study proposes the enactment of “sui generis” legislation that recognizes customary law communities as collective rights holders, alongside the strengthening of a national inventory system as a legal mechanism to establish evidence of legitimate origin and prevent future cultural misappropriation.

Keywords: *Copyright Law, Traditional Cultural Expressions, indigenous communities, sui generis, communal protection.*

ABSTRAK

Indonesia memiliki kekayaan Ekspresi Budaya Tradisional (EBT) yang sangat beragam, namun perlindungan hukum terhadap bentuk seni tersebut masih menghadapi kendala fundamental. Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta (UU Hak Cipta), negara ditetapkan sebagai pemegang hak cipta atas EBT, sebuah ketentuan yang dalam praktiknya justru mengeksklusikan komunitas adat dari hak kepemilikan dan pembagian keuntungan yang adil. Penelitian ini mengidentifikasi adanya benturan karakter antara paradigma hak cipta modern yang bersifat individualistik dengan sifat EBT yang komunal dan turun-temurun. Ketidakjelasan kerangka hukum ini telah menyebabkan kerentanan EBT terhadap eksploitasi komersial ilegal dan klaim lintas batas oleh pihak asing, seperti pada kasus motif batik dan Tari Pendet. Oleh karena itu, penelitian ini mengusulkan perlunya pembentukan regulasi “sui generis” yang mengakui masyarakat

hukum adat sebagai pemegang hak kolektif, serta penguatan sistem inventarisasi nasional sebagai mekanisme bukti hukum kepemilikan yang sah untuk mencegah penyalahgunaan budaya di masa depan.

Kata Kunci: UU Hak Cipta, Ekspresi Budaya Tradisional, masyarakat hukum adat, sui generis, perlindungan komunal.

CHAPTER I

INTRODUCTION

1.1. Background

Traditional arts or *kesenian tradisional* is defined by the former Ministry of Education and Culture (Kementerian Pendidikan dan Kebudayaan), whose cultural affairs are now administered by the Ministry of Culture (Kementerian Kebudayaan) as an expression of a humane desire for art and beauty that is culturally passed down from generation to generation.¹ As of 2024, the Ministry of Education and Culture has recorded over 35.779 *Objek Pemajuan Kebudayaan (OPK)*.² Under Law No. 5 of 2017 on the Advancement of Culture (Undang-Undang No. 5 Tahun 2017 tentang Pemajuan Kebudayaan, “UU Pemajuan Kebudayaan”), OPK comprise ten categories of equal standing includes traditional art forms such as customs, languages, manuscripts, traditional sports and knowledge, folk games and rituals, traditional technology, and oral traditions.³ More recently, following the designation session held in Jakarta on 10 October 2025, 2.727 of these objects had been formally designated as Indonesian Intangible Cultural Heritage (*Warisan Budaya Takbenda Indonesia/WBTbI*).⁴ This heterogeneity in traditional arts has also resulted in several recognitions from global institutions as well, with 13 cultural art heritages acknowledged by the United Nations Educational, Scientific and Cultural Organization (UNESCO).⁵

¹Ministry of Education and Culture, Traditional Arts (Kesenian Tradisional), (Jakarta: Ministry of Education and Culture, 2017), <https://repositori.kemendikdasmen.go.id/32178/>, accessed 1 June 2026.

²Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi, "Jumlah pencatatan Objek Pemajuan Kebudayaan (OPK) - 2024," Satu Data Indonesia, February 26, 2025, <https://data.go.id/dataset/jumlah-pencatatan-objek-pemajuan-kebudayaan-opk-2024> accessed on 29th June 2026

³Law on The Advancement of Culture (Undang-Undang Tentang Pemajuan Kebudayaan), Law Number 5 of 2017, LN No. 104 of 2017 TLN No. 6055, hereinafter referred to as UU Pemajuan Kebudayaan, Article 5.

⁴Good News From Indonesia, "Menjaga Warisan Budaya Takbenda, Melestarikan Kekayaan Indonesia," 21 Oktober 2025, <https://insight.goodnewsfromindonesia.id/menjaga-warisan-budaya-takbenda-melestarikan-kekayaan-indonesia/>, accessed 29 Juni 2026.

⁵Data and Information Technology Center of the Ministry of Education, Culture, Research, and Technology, “Linguistic and Literary Statistics” (“Statistik Kebahasaan dan Kesastraan”), DapoBudBas, https://budbas.data.kemdikbud.go.id/statistik/isi_6a7fb539-fdf6-4c36-8046-98d3d146d453.pdf, accessed on 1 June 2026.

Despite the diversity of traditional arts itself, the protection of these art forms currently exists within limited frameworks. UU Pemajuan Kebudayaan recognizes traditional art as part of OPK, mandating the state to protect, develop, and utilize traditional art as part of the national heritage.⁶ Meanwhile, Law No. 28 of 2014 on Copyright (Undang-Undang No. 28 tentang Hak Cipta, “**UU Hak Cipta**”) establishes the foundation of Indonesia’s copyright law.⁷ The law itself expands on traditional arts in Article 38 of UU Hak Cipta on Traditional Cultural Expressions (TCEs), which designates the state as the copyright holder for such art forms.⁸

Traditional cultural expressions, termed *ekspresi budaya tradisional* in Indonesian law and used by the World Intellectual Property Organization (WIPO) interchangeably with expressions of folklore, are the tangible and intangible forms in which a community's traditional culture and knowledge are expressed, communicated, or manifested. WIPO describes such expressions as integral to the cultural and social identity of indigenous and local communities, embodying their know-how and skills and transmitting their core values and beliefs, and as encompassing forms as varied as music, dance, art, designs, signs and symbols, performances, ceremonies, handicrafts, and narratives.⁹ Indonesian law mirrors this breath: the Elucidation of Article 38 Section (1) of the UU Hak Cipta defines traditional cultural expressions as covering one or a combination of verbal textual expressions such as prose and poetry, music, movement including dance, theatre such as wayang and folk drama, and fine art produced in two or three dimensions.¹⁰ What unites these forms, and what sets them apart from the works ordinarily contemplated by copyright, is their communal authorship and intergenerational transmission, a quality that recurs throughout the analysis in this thesis.

Under the Law on the Advancement of Culture, traditional art falls within the ten OPK enumerated in Article 5, namely oral traditions, manuscripts, customs, rituals,

⁶UU Pemajuan Kebudayaan, Article 5.

⁷Law on Copyright (Undang-Undang tentang Hak Cipta), Law Number 28 of 2014, LN No. 266 of 2014, TLN No. 5599, hereinafter referred to as UU Hak Cipta

⁸UU Hak Cipta, Article. 38

⁹World Intellectual Property Organization, "Traditional Cultural Expressions," <https://www.wipo.int/en/web/traditional-knowledge/traditional-cultural-expressions/index>, accessed on 30th June 2026.

¹⁰UU Hak Cipta, Article 38.

traditional knowledge, traditional technology, art, language, folk games, and traditional sports. These objects are advanced through four pillars: protection, development, utilization, and guidance (*pembinaan*).¹¹ Protection in particular is carried out through inventory, safeguarding, maintenance, rescue, and publication, with the inventory function channelled through the Integrated Cultural Data System (*Sistem Pendataan Kebudayaan Terpadu*).¹² The law further conditions the utilization of OPK by large industry or foreign parties on a permit issued by the state, which requires prior informed consent, the sharing of benefits, and attribution of the object's origin.¹³ These provisions, however, frame culture predominantly as a matter of state stewardship and administrative record keeping, casting the government as the responsible actor rather than vesting enforceable proprietary entitlements in the communities themselves.

For its part, Article 38 of the Copyright Law elaborates this same model centred on the state. Article 38 Section (1) vests the copyright over traditional cultural expressions in the State; Article 38 Section (2) obliges the State to inventory, safeguard, and preserve them; and Article 38 Section (3) requires that any use respect the values living within the custodial community (*masyarakat pengembannya*). Such protection, moreover, endures without any time limit under Article 60 Section (1).¹⁴ Crucially, Article 38 Section (4) defers the substantive rules, namely how the copyright held by the state is to be exercised and for whose ultimate benefit, to an implementing Government Regulation that has never been enacted to this day, leaving the scheme largely declaratory in practice.¹⁵

Neither regulations, however, clearly establishes proprietary rights, legal ownership, benefit sharing, or an inventory mechanism over traditional arts, a gap examined in detail in Chapter II. The average indigenous community holds little to no power over the copyright ownership of their own traditional art forms. From the

¹¹UU Pemajuan Kebudayaan, Article. 5 jo. Article. 1 Number 1.

¹²UU Pemajuan Kebudayaan, Article. 1 Number 4 jo. Article. 1 Section (12).

¹³UU Pemajuan Kebudayaan, Article. 36

¹⁴UU Hak Cipta, Article. 38.

¹⁵UU Hak Cipta, Article. 60 Section (1).

perspective of intellectual property law, traditional arts represent cultural assets with substantial social, economic, and historical value to its indigenous communities.¹⁶

Regardless of these existing laws, the protection of traditional arts under the UU Hak Cipta remains a conundrum.¹⁷ The difficulty arises from a fundamental clash of characters.¹⁸ Copyright is proprietary and individualistic, whereas traditional cultural expressions are communal and hereditary.¹⁹ This tension places an additional responsibility on the state and local authorities.²⁰ They must manage the inventory of traditional arts while also designing a solution that benefits both the state and the indigenous communities involved.²¹ Their preservation is significant as it not only contributes to the safeguarding of local indigenous communities, but Indonesia's overall cultural identity as well.²² This is challenged by the current legal frameworks, namely the UU Pemajuan Kebudayaan and the UU Hak Cipta, neither of which clearly regulates the legal position of indigenous communities as the custodians and creators of these traditional art forms.²³ This gap creates the looming threat of reproduction and commercialization of traditional art forms by third parties.²⁴

The significance of this issue lies in the protection of the rights and interests of indigenous communities involved in cultivating their traditional art. The absence of a clear copyright framework creates a legal uncertainty regarding the ownership, attribution, and the distribution of benefits that are derived from traditional arts by the state or otherwise.²⁵ As a result, indigenous communities often remain excluded from

¹⁶Amalia Karunia Putri, "Kelemahan Undang-Undang Hak Cipta Dalam Melindungi Ekspresi Budaya Tradisional," *Dharmasisya: Jurnal Program Magister Hukum FHUI*, Vol. 2, No. 18 (2022), hlm. 780.

¹⁷Setiyono, D. Keumala, A. Sabirin, and N. Nursantih, "Has Indonesia Safeguarded Traditional Cultural Expressions?," *Jambura Law Review*, Vol. 6, Issue 02 (2024), p. 213.

¹⁸Diah Imaningrum Susanti, R. Susrijani, and R. M. Sudhiarsa, "Traditional Cultural Expressions..." p. 258.

¹⁹*Ibid.*

²⁰UU Pemajuan Kebudayaan, Article 43 j.o. Article 44.

²¹UU Pemajuan Kebudayaan, Article 16; *see also* Peraturan Pemerintah Tentang Kekayaan Intelektual Komunal, PP Nomor 56 Tahun 2022.

²²Victor Ganap, "Konsep Multikultural dan Etnisitas Pribumi Dalam Penelitian Seni," *Jurnal Humaniora*, Vol. 24, No. 2 (2012), p. 156.

²³B. Erlina and Melisa Safitri, "Traditional Cultural Expressions Both Within and Beyond the Context of Intellectual Property Law in Indonesia," *Progressive Law Review*, Vol. 4, No. 2 (2022), p. 104.

²⁴B. R. Mulhimmah and R. Olagunju, "Effectiveness of Islamic Law in Protecting the Copyright of Indigenous Peoples of Indonesia in the Form of Traditional Knowledge & Traditional Cultural Expressions," *Jurnal IUS Kajian Hukum dan Keadilan*, Vol. 10, Issue 3 (2022), p. 582.

²⁵Brigitte Vézina dan George Nicholas, "Supporting Indigenous Communities at the Grassroots," *WIPO Magazine*, 19 Februari 2014, tersedia pada

the economic, cultural, and reputational benefits derived from the use of their traditional cultural expressions, despite being their original custodians and having safeguarded these traditions across generations. The case of using Tari Pendet without permission nor credit, to commercialize Malaysia Tourism by the Malaysia Tourism Promotion Board, is a real life example of it.²⁶ As Tari Pendet is considered a sacred dance in Bali, Indonesians regarded using Tari Pendet in the “Visit Malaysia” commercial as groundless claim to one of Indonesia TCEs.²⁷

Turns out, this issue can be seen in many cases of cultural misappropriation around the world, where indigenous heritage is used and commercialized without the communities' consent or fair benefit-sharing. For example, in Indonesia, traditional motifs, batik, woven textiles, and other forms of indigenous craftsmanship are often reproduced through mass production and digital printing.²⁸ These products are sold at lower prices and reach a much wider market than the handmade originals. While businesses benefit from the commercial value of these cultural expressions, the artisans who created and preserved them receive little economic return. This makes it increasingly difficult for traditional craftspeople to compete and sustain their livelihoods.

1.2. Research Problem

Based on the background described above, the issues to be examined in this research are as follows:

1. What legal gaps exist in Indonesia's copyright protection of traditional arts?
2. Why are indigenous communities excluded from ownership and benefit-sharing of their traditional art forms?
3. How can existing regulations and international instruments strengthen the copyright protection of traditional arts in Indonesia

<https://www.wipo.int/en/web/wipo-magazine/articles/supporting-indigenous-communities-at-the-grassroots-38717>, diakses pada tanggal 1 Juni 2026.

²⁶Lilik Prihatin, Ferry Fauzi, dan Anisa Lestari, “Perlindungan Hukum Terhadap Tari Tradisional Sebagai Warisan Budaya Indonesia (Perspektif Hukum Internasional),” *Judge: Jurnal Hukum*, Vol. 6, No. 3, (2025), p. 642.

²⁷*Ibid.*

²⁸United Nations Educational, Scientific and Cultural Organization (UNESCO), Periodic Report on the Convention (cycle 2020-2024), Section C-2010-00393 (Indonesian Angklung), Source 13

CHAPTER II

ANALYSIS

2.1 Defining Traditional Cultural Expressions and Their Importance to Indigenous Communities

Traditional Cultural Expressions (TCEs) constitute a vital facet of a community's intangible cultural heritage.²⁹ These expressions encompass a broad spectrum of cultural phenomena, including dances, songs, stories, ceremonies, traditional dresses, carvings, motifs, and performances. What distinguishes TCEs from ordinary creative works is that they are not the product of a single identifiable author.³⁰ They emerge and evolve through collective participation across generations, embodying shared values and spiritual beliefs.³¹ TCEs are therefore best understood as communal assets, rather than as property owned by an individual.³² Because of this communal character, TCEs are integral to the cultural and social identities of indigenous and local communities.³³

However, this communal nature also places indigenous communities in a legally vulnerable position. For these communities, TCEs are inseparable with their cultural and social identity, sustained across generations as a shared inheritance.³⁴ This legal vulnerability stems from the incompatibility between the modern intellectual property legal system and the characteristics of traditional knowledge.³⁵ The modern intellectual property concept is conceived as individual and exclusive, predicated on concepts of identifiable authorship, private ownership, and time-bound contrast.³⁶ TCEs and traditional knowledge are defined by their communal and intergenerational nature, emerging from its collective creative processes

²⁹World Intellectual Property Organization, *Intellectual Property and Traditional Cultural Expressions/Folklore*, Booklet No. 1, WIPO Publication No. 913(E), (Geneva: World Intellectual Property Organization, s.a.), p. 5

³⁰World Intellectual Property Organization, *Traditional Cultural Expressions/Expressions of Folklore: Legal and Policy Options*, WIPO/GRTKF/IC/6/3, https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_6/wipo_grtkf_ic_6_3.doc, accessed on 30th June 2026.

³¹*Ibid.*

³²*Ibid.*

³³*Ibid.*

³⁴Davilla Prawidya Azaria, Ali Imran Nasution, Taup iqqurrahman, Tajna Putri, Jasmine, dan Muhammad Rafi Raditya, "Harmonisasi Regulasi Hak Lingkungan Masyarakat Adat Suku Laut Pada Agenda Pembangunan Berkelanjutan," *Journal of Swara Justisia*, Vol. 7, Issue 4 (2024), p. 1219.

³⁵Yusuf Gunawan, "Hak Cipta Kearifan Lokal Indonesia dan Eksploitasi Komersial," *IBLAM Law Review*, Vol. 5, No. 3 (2025), p. 52.

³⁶*Ibid.*

that reflect a community's shared history and social identity.³⁷ Because these cultural assets are typically passed down orally and lack a single definitive creator, they often fail to meet conventional Intellectual Property (IP) requirements such as novelty or fixation, leaving them vulnerable to commercial misappropriation within the global public domain.³⁸ This contradictory conception makes TCEs something used and consumed generally, thereby making the Indonesian indigenous community weaken their rights to make legal claims about TCEs. Consequently, the right to TCE's royalties is not easily accessible for indigenous communities to get ahold of.³⁹ This condition results in a situation where the state is the only party that can receive copyright use of TCEs.

TCEs span so many different things that this becomes even more difficult. From a journal published by Institut Seni Indonesia Surakarta, traditional arts is clarified as an essential public expression, not individual expressions, bound by the characteristics of their respective culture which bring with them their local wisdom.⁴⁰ In Indonesia, TCEs have varied into different aspects, from verbal, performances to arts in material form.⁴¹ This diversity poses a considerable challenge to existing intellectual property frameworks, which were primarily designed to protect works with identifiable authors and tangible fixation.⁴² Many traditional cultural expressions, however, are collectively developed across generations, transmitted orally or through customary practice, and regarded by indigenous communities as an inseparable part of their cultural identity rather than as private property.⁴³ Consequently, the protection afforded under Indonesia's current copyright regime remains

³⁷World Intellectual Property Organization, "Traditional Cultural Expressions," <https://www.wipo.int/en/web/traditional-knowledge/traditional-cultural-expressions/index>, accessed on 30th June 2026.

³⁸Eva Mir'atun Niswah, "Legal Protection of Traditional Cultural Expressions 'Penginyongan' in Banyumas Regency Based on Law No.28 of 2014 concerning Copyright," *International Journal of Social Science and Religion (IJSSR)* Vol. 5, No. 1 (2024), p. 95

³⁹Marcellino Gonzales, "Study of the Implications of the Government Regulation of the Republic of Indonesia Number 56 of 2022 Concerning Communal Intellectual Property in Indonesia," *Indonesian Law Journal*, Vol. 16, No. 1 (2023), p. 11.

⁴⁰A. P. Widiarsa and H. 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* Vol. 22, No. 2 (2024) p. 239.

⁴¹*Ibid.*, p. 240.,

⁴²*Ibid.*

⁴³*Ibid.*

limited, particularly for oral traditions and communal cultural expressions that do not conform to conventional copyright requirements.⁴⁴

Furthermore, although Article 38 of the Law No. 28 of 2014 on Copyright (Undang-Undang No. 28 tentang Hak Cipta, “**UU Hak Cipta**”) provides that the copyright over TCEs is held by the State, the provision has been criticized for its normative ambiguity, as it fails to clearly define the State's role or adequately recognize indigenous communities as the primary custodians of their cultural heritage.⁴⁵ These conceptual and regulatory shortcomings have facilitated the unjust commercialization of TCEs both domestically and internationally.⁴⁶ Traditional cultural expressions are increasingly reproduced, adapted, and marketed in the form of handicrafts, embroidery, batik motifs, traditional designs, musical performances, and other creative products without obtaining the consent of the originating communities or providing them with equitable economic or cultural benefits.⁴⁷ As a result, while third parties are often able to obtain legal or commercial advantages from such utilization, the indigenous communities that have preserved these traditions for generations frequently lack effective legal standing to control, authorize, or benefit from the exploitation of their own cultural heritage.⁴⁸ This demonstrates that, despite the cultural and economic significance of TCEs, the existing legal framework has yet to provide comprehensive protection capable of safeguarding communal ownership and preventing unauthorized commercial exploitation.⁴⁹

Taken together, these characteristics reveal why the protection of TCEs cannot be resolved within the ordinary logic of copyright. The communal authorship, indefinite lifespan, and customary governance that define traditional arts are precisely the elements that a regime built upon individual authorship and a fixed term of protection is ill-equipped to

⁴⁴Yusuf Gunawan, "Hak Cipta Kearifan...", P. 52.

⁴⁵Mohammad Fahrial Amrulla et al., "Interpreting 'Held by the State': Article 38 (1) Copyright Law and Traditional Cultural Expression Protection," *Rechtsidee*, Vol. 14, No. 1 (2026), p. 9

⁴⁶*Ibid.*, p. 9-10

⁴⁷*Ibid.*

⁴⁸Rahayu Sri Utami and Moch. Gufron Fajar Rezki, "Copyright Certification of Son Horek Works in East Java: Social Impact and Legal Implications," *Kajian Ilmiah Hukum dan Kenegaraan (KIHAN)*, Vol. 4, No. 2 (2025), p. 138,

⁴⁹Daud Bunar Buwono et al., "Analysis of the Forms and Barriers of Legal Protection for Seren Taun Ciptamulya as a Traditional Cultural Expression," *AHKAM* Vol. 5, No. 1 (2026), p. 2345

recognise.⁵⁰ The result is a definitional mismatch in which the very features that make TCEs culturally valuable are also the features that render them legally invisible. It is this mismatch, together with the concrete gaps it produces within UU Hak Cipta and Law No. 5 of 2017 on the Advancement of Culture (Undang-Undang No. 5 Tahun 2017 tentang Pemajuan Kebudayaan, “**UU Pemajuan Kebudayaan**”) that the following section examines in detail.⁵¹

This vulnerability is felt most acutely where TCEs take material form. Whereas intangible expressions such as oral traditions or ceremonies are difficult for outside parties to capture and commodify, tangible expressions such as crafts, textiles, and motifs can be readily copied, registered, and sold under conventional intellectual property regimes.⁵² The absence of any documented inventory or evidentiary record of origin leaves these material forms especially exposed, allowing third parties to appropriate communal designs as private property while the originating communities remain without a clear legal basis to object.⁵³

2.2 Legal Gaps in the Copyright Protection of Traditional Arts in Indonesia

As TCEs is an acknowledged subject of copyright, benefits to traditional arts should be prescribed to its copyright holder.⁵⁴ Due to the vulnerable status in Indonesia, the rights of indigenous communities regarding the copyright of TCEs has a lot of incompatibility.⁵⁵ This issue encompasses the rights to bring forth a copyright infringement action, receive monetary gains, and exercise control over the commercial utilization of the protected work.⁵⁶

2.2.1 Communal Authorship

The prevailing IP paradigm, particularly within the UU Hak Cipta, is fundamentally predicated upon individual authorship.⁵⁷ This legal framework

⁵⁰Hafizah Novianti et al., "Perlindungan Hukum Terhadap Ciri Khas Ekspresi Budaya Tradisional Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, Vol. 3, No. 3 (2025), p. 2341-2342.,

⁵¹*Ibid.*

⁵²*Ibid.*

⁵³*Ibid.*

⁵⁴Diah Imaningrum Susanti, Rini Susrijani, and Raymundus I Made Sudhiarsa, "Traditional Cultural Expressions and Intellectual Property Rights in Indonesia," *Yuridika*, Vol. 35, No. 2 (2020), p. 258.

⁵⁵Baiq Ratna Mulhimmah, Ridwan Olagunju, "Effectiveness of Islamic Law in Protecting The Copyright of Indigenous Peoples of Indonesia in the Form of Traditional Knowledge & Traditional Cultural Expressions," *Jurnal IUS Kajian Hukum dan Keadilan*, Vol. 10, Issue 3 (2022), p. 582.

⁵⁶*Ibid.*

⁵⁷Ditha Maharani, Moh. Wazir Kamil, Yuyun Meliyani, Ikhwan Aulia Fatahillah, "Kepastian Hukum Kepemilikan Hak Cipta Atas Karya Artificial Intelligence: Analisis Kekosongan Norma dalam Undang-Undang No. 28 Tahun 2014," *Jurnal Sosial Humaniora dan Pendidikan*, Vol. 1, No. 4, (2026), p. 337.

grants exclusive rights to identifiable creators for a finite period, aiming to incentivize innovation and reward individual creativity.⁵⁸ Such a system operates effectively in contexts where the origin of a work and its creator are ascertainable.⁵⁹

Applying UU Hak Cipta's system to TCEs, however, reveals profound structural contradictions. The assumption that each work has a singular creator whose ownership can be clearly assigned does not correspond to the collective and intergenerational nature of traditional expressions.⁶⁰ For many indigenous and local communities, TCEs function as shared assets serving collective interests rather than individual economic pursuits.⁶¹ This fundamental divergence in worldview underscores the limitations of applying the Western IP concept rooted in Anglo-American copyright and Continental European *droit d'auteur* traditions, both of which are premised upon identifiable individual authorship and exclusive ownership rights to communal cultural heritage.⁶² The regulation that regulates copyright in Indonesia, UU Hak Cipta, is regulated based on the western IP conception, by all means does not give protection to TCEs because it contradicts with the communal or unidentifiable authorship of TCEs.⁶³

Therefore, in Indonesia legal paradigm, TCEs are regulated under the PP Kekayaan Intelektual Komunal, in which categorized as Communal Intellectual Property (**CIP**).⁶⁴ CIP is a form of IP that carries both communal character and economic values while still upheld moral, social, and traditional values by PP Kekayaan Intelektual Komunal.⁶⁵ TCEs are defined as all forms of expression including the tangible, non-tangible, or a combination of both

⁵⁸Ulya Yasmine Prisandani, "Balancing Intellectual Property Protection and Release Exclusive Rights for Sustainability Purposes," *Journal of Intellectual Property*, Vol. 7, Issue 2 (2024), p. 122.

⁵⁹*Ibid.*

⁶⁰Diah Imaningrum Susanti, R. Susrijani, and R. M. Sudhiarsa, "Traditional Cultural Expressions..." p. 258.

⁶¹B. Erlina and Melisa Safitri, "Traditional Cultural Expressions..." p. 95.

⁶²Setiyono, Dinda Keumala, Ahmad Sabirin dan Nadia Nursantih, "Has Indonesia Safeguarded..." p. 213.

⁶³Erlina B. dan Melisa Safitri, "Traditional Cultural Expressions..." p. 95.

⁶⁴Communal Intellectual Property, Government Regulation No. 56 of 2022, LN No. 232 of 2022 TLN No. 6837, hereinafter referred to as PP Kekayaan Intelektual Komunal, Article 1 Number 1

⁶⁵PP Kekayaan Intelektual Komunal, Article 1 Number 1

that shows the existence of traditional culture held communally and throughout generations by PP Kekayaan Intelektual Komunal.⁶⁶ This regulation is more suitable due to its recognition of communalism values in the definition. In the end, even though there is a protection for it, the artisan hasn't got any dime that they deserved. This gap reflects a broader pattern across every IP instrument examined in this chapter. State ownership is, by design, defensible as a means of preventing conflict between horizontal laying claim to the same cultural expressions. In practice, however, it still fails to protect communal rights because it carries no binding legal obligation. Trademark law shows the same pattern.⁶⁷ Collective and certification marks offer a closer structural fit to communal ownership, since they do not require an identifiable single creator. Yet they too protect only commercial and reputational value, without requiring benefit sharing or reaching the spiritual and intergenerational dimensions central to TCEs. What CIP, state copyright, and collective trademarks share, then, is not a failure of recognition, but a failure of enforcement.

2.2.2 Determining The Original Owner

Second, beyond the assumption that a work has only one creator, another challenge lies in determining who holds ownership rights over the work. UU Hak Cipta's reliance on a single creator as the rights-holder creates a significant legal gap when applied to TCEs.⁶⁸ These expressions have evolved and been transmitted collectively over many generations.⁶⁹ This complicates matters of licensing, permission, and enforcement because it is often impossible to identify a sole rights-holder or to determine who has authority to grant permission for use.⁷⁰ The resulting legal ambiguity

⁶⁶PP Kekayaan Intelektual Komunal, Article 1 Number 2

⁶⁷Carolina Castaldi, et al., "Inclusive Intellectual Property Rights? The Case of Collective Trademarks", *The Journal of Development Studies*, Vol. 62 No. 3, (2025). p. 501.

⁶⁸D. I. Susanti, R. Susrijani, and R. M. Sudhiarsa, "Traditional Cultural Expressions.." p. 258.

⁶⁹B. Erlina and Melisa Safitri, "Traditional Cultural Expressions..." p. 95.

⁷⁰Setiyono, D. Keumala, A. Sabirin, and N. Nursantih, "Has Indonesia Safeguarded...", p. 213.

frequently hampers the effective protection and management of these cultural assets.⁷¹

Meanwhile, the Government Regulation on Communal Intellectual Property (PP Kekayaan Intelektual Komunal) defines TCEs as any form of creative expression, whether tangible, intangible, or a combination of both, that reflects the existence of a traditional culture held communally and passed down across generations.⁷² Based on this definition, original ownership of TCEs is inherently attributed to the communal society from which they originate. This is reinforced by Article 6(b) of the regulation, which stipulates that TCEs may be held and carried out communally and collectively by indigenous law communities and/or local communities as their community of origin.⁷³

However, this communal ownership framework faces a significant practical obstacle. TCEs are, by nature, largely undocumented.⁷⁴ Because they are transmitted orally and through practice across generations rather than recorded in written or fixed form, TCEs are rarely codified into a format that can be readily registered, verified, or relied upon under existing legal mechanisms.⁷⁵ This absence of documentation creates a gap between the normative recognition of communal ownership under the regulation and its practical enforceability. Without a documented record, it becomes difficult to prove which community holds a given TCE, to verify its authenticity, or to establish a clear basis for granting or denying permission for its use.

2.2.3 Duration

Third, the issue of duration presents a further challenge in applying conventional copyright principles to TCEs. Under the copyright framework established by international instruments such as the Berne Convention for the Protection of Literary and Artistic Works and adopted in many national

⁷¹B. R. Mulhimmah and R. Olagunju, "Effectiveness of Islamic Law...", p. 582.

⁷²PP Kekayaan Intelektual Komunal, Article 1 Number 2

⁷³PP Kekayaan Intelektual Komunal, Article 6 Point b.

⁷⁴PP Kekayaan Intelektual Komunal, Article 6 Point b.

⁷⁵PP Kekayaan Intelektual Komunal, Article 6 Point b.

copyright systems, protection is generally granted for a limited period, after which the protected work enters the public domain.⁷⁶ In Indonesia, the Copyright Law applies the same temporal logic to most works, granting protection for the life of the author plus seventy years and shorter fixed terms of fifty or twenty-five years for certain categories of works.⁷⁷ This temporal limitation is premised upon the assumption that copyrighted works originate from identifiable creators whose exclusive rights should eventually be balanced against the public interest in access and use.⁷⁸

This system sits uneasily with the nature of TCEs, which are collectively created, maintained, and even transmitted across generations rather than attributable to a single author at a specific point in time.⁷⁹ As a result, the expiration of legal protection may occur even though the expression continues to hold substantial cultural, social, and spiritual significance for the community from which it originates. Many traditional songs, dances, rituals, and artistic expressions remain actively practiced and regarded as integral components of cultural identity long after any conventional copyright term would have expired.⁸⁰ Consequently, the time-limited structure of copyright protection often fails to accommodate the enduring and intergenerational character of TCEs.⁸¹ For TCEs themselves, however, the Law departs from this scheme by providing that copyright over TCEs held by the State subsists without any time limit.⁸²

⁷⁶Berne Convention for the Protection of Literary and Artistic Works (adopted 9 September 1886, as last amended 28 September 1979) 1161 UNTS 3, Article 7.

⁷⁷UU Hak Cipta, Article 58 Section (1) and Article 59.

⁷⁸Berne Convention for the Protection of Literary and Artistic Works, Article 7; *see also* World Intellectual Property Organization, "Protecting Traditional Cultural Expressions – Some Questions for Lawmakers," WIPO Magazine. Available at <https://www.wipo.int/en/web/wipo-magazine/articles/protecting-traditional-cultural-expressions-some-questions-for-lawmakers-40072>, accessed on 29 June 2026.

⁷⁹Mariam Aroian, "Traditional Cultural Expressions and Copyright Law: Denoting the Long-lasting Confusion," *The Journal of World Intellectual Property*, Vol. 28 (2025), p. 573.

⁸⁰World Intellectual Property Organization, *Traditional Cultural Expressions/Expressions of Folklore: Legal and Policy Options*, WIPO/GRTKF/IC/6/3 (Geneva: WIPO, 2003).

⁸¹World Intellectual Property Organization (WIPO), *Intellectual Property and Traditional Cultural Expressions/Folklore* (Geneva: WIPO, 2017), 9–13.

⁸²UU Hak Cipta, Article 60 Section (1).

2.2.4 Failure In The Government's Approach

Fourth, the Indonesian legal approach, as articulated in Article 38 of the UU Hak Cipta addresses this difficulty by designating the state as the legal copyright holder of TCEs.⁸³ While this provides a pragmatic mechanism for cases where individual authors cannot be identified, it raises significant questions regarding the appropriate custodianship of such expressions.⁸⁴ Many scholars and community stakeholders argue that indigenous and local communities, having preserved and transmitted these expressions across generations, should be recognized as primary custodians rather than the state.⁸⁵ This debate underscores the ongoing challenge of crafting legal protections that are both effective and culturally appropriate.⁸⁶ The following sections examine the specific legal framework governing TCEs in Indonesia, the practical consequences of its deficiencies, and potential remedies drawn from domestic constitutional law, comparative case law, and international instruments.⁸⁷

2.2.5 Regulatory Vacuum in Benefit Sharing of TCEs

Lastly, other than UU Hak Cipta, Indonesia has another regulation that regulates royalties and copyrights of TCEs. UU Pemajuan Kebudayaan recognizes traditional art as part of OPK, mandating the state to protect, develop, and utilize traditional art as part of the national heritage.⁸⁸ In addition, Article 37 UU Pemajuan Kebudayaan provides a clearer framework regarding the economic benefits allocation when traditional arts are utilized commercially.⁸⁹ The regulation states that every industry or foreign party that uses TCEs for commercial purposes must have the permission from the

⁸³UU Hak Cipta, Article. 38.

⁸⁴Mohammad Fahrial Amrulla, et al., "Copyright Protection Reform for Traditional Cultural Expressions: Confirming the Status and Position of Communities," *PATTIMURA Legal Journal*, Vol. 5, No. 1 (2026), p. 23.

⁸⁵*Ibid.*

⁸⁶Mohammad Fahrial Amrulla, et al., "Copyright Protection Reform..." p. 22.; *see also* United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UNGA Res 61/295, Article 31.

⁸⁷*Ibid.*, p. 23.

⁸⁸UU Pemajuan Kebudayaan, Article 5 *j.o* Article 1 Number 3.

⁸⁹UU Pemajuan Kebudayaan, Article. 37.

ministry.⁹⁰ However, UU Pemajuan Kebudayaan provides little to no detail over the monetary rights of the indigenous community from which it originated.⁹¹ This issue is further caused by the informal form in which most indigenous groups and cultures take shape, which prevents TCEs from being recorded formally as an object of copyright.⁹² TCEs generically is passed down orally or communally making it an informal form and does not qualify to be recognized by the law.⁹³ The mechanism provided mandates that indigenous groups must be formally recognized by the law to be protected in legal practices.⁹⁴ Given the fact of the field that this step is not always necessarily applied, further steps are needed to be taken to be able to fully protect and give social and financial credit to indigenous communities and their art forms.

2.3 Implications of Indonesia's Intellectual Property Legal Barriers in Practice

Concluding the legal barriers within Indonesia's IP framework discussed above, these barriers are not merely theoretical. They have particularly been proven in reality, manifesting in concrete disputes that fall into two recurring patterns: cross-border claims by foreign parties and the illegal commercialization of traditional arts.⁹⁵ The following cases illustrate each in turn.

2.3.1 Cross-Border Claims over Indonesian Traditional Arts

Indonesia is one of the most culturally diverse countries in the world.⁹⁶ Despite the recognition of diverse cultures, Indonesia's traditional cultural expressions have repeatedly become the subject of cross-border claims by foreign parties. In July 2020, China's state news agency Xinhua posted a 49-second video on Twitter describing batik as a traditional craft common

⁹⁰UU Pemajuan Kebudayaan, Article 37.

⁹¹UU Pemajuan Kebudayaan, Article 37.

⁹²Simon Butt dan Tim Lindsey, *Indonesian Law*, (Oxford: Oxford University Press, 2018), p. 20.,

⁹³World Intellectual Property Organization, "The Protection of Traditional Cultural Expressions/Expressions of Folklore," WIPO Doc WIPO/GRTKF/IC/7/3 (Geneva: WIPO, 2004), para. 34.

⁹⁴Law on Human Rights, (Undang-Undang tentang Hak Asasi Manusia), Law Number 39 of 1999, LN No. 165 of 1999, TLN No. 3886 . Article 6.

⁹⁵Mohammad Fahrial Amrulla, et al., "Copyright Protection Reform...", p. 23–24.

⁹⁶Universitas Islam Internasional Indonesia, "Diverse Culture" n.d., <https://uiii.ac.id/diverse-culture/>, accessed on 29 June 2026.

among ethnic groups in China, practiced by ethnic minority groups in Guizhou and Yunnan, with no mention of its Indonesian origin.⁹⁷ The post drew widespread backlash from Indonesian citizens on social media and prompted Indonesia's Ministry of Foreign Affairs to publicly call for a correction.⁹⁸ Xinhua eventually revised its post, acknowledging that batik is a word of Indonesian origin referring to a wax-resist dyeing technique practiced in many parts of the world.⁹⁹ Prior to this incident, a similar controversy had already emerged when a Malaysian contestant at the Miss Grand International 2018 pageant wore a batik Parang motif, which reignited public debate over the ownership of cultural heritage shared across the region.¹⁰⁰

These cases share a common pattern. Each time a cross-border claim over Indonesian traditional arts arises, the response from Indonesia is reactive, relying on public pressure and diplomatic statements rather than a formal legal mechanism.¹⁰¹ This pattern stems from how Article 38 of the UU Hak Cipta frames ownership: it designates the State as the copyright holder of TCEs, yet copyright is automatic and territorial, offering no international registry in which the State could record its TCEs nor any forum in which a rival heritage claim could be pursued as an infringement.¹⁰² Holding a right it cannot meaningfully enforce abroad, the State is left to rely on diplomatic protest and public pressure rather than litigation each time a claim surfaces.¹⁰³ However, no registration system or documented inventory currently functions as

⁹⁷"Wax-Off: Indonesians Furious as Chinese State Media Claims Batik as Traditional Craft," Coconuts Jakarta, 13 July 2020, <https://coconuts.co/jakarta/lifestyle/wax-off-indonesians-furious-as-chinese-state-media-claims-batik-as-national-heritage>, accessed on 16 June 2026.

⁹⁸Ismira Lutfia Tisnadibrata, "Never Say Dye: Chinese Batik Claim Angers Indonesian Netizens," Arab News, 18 July 2020, <https://www.arabnews.com/node/1706671/world>, accessed on 16 June 2026.

⁹⁹"China's Unilateral Claim About Batik as Traditional Chinese Culture," VOI, <https://voi.id/en/news/8663>, accessed on 16 June 2026.

¹⁰⁰Melanie Chalil "Indonesians Rage on Twitter After Chinese State Media Claims Batik as Traditional Chinese Art Form," Yahoo News Malaysia, 13 July 2020, <https://malaysia.news.yahoo.com/indonesians-rage-twitter-chinese-state-044645635.html>, accessed on 16 June 2026.

¹⁰¹Abrar Halim, Wannofri Samry, and Anatona, "Indonesia's Policy Response to Malaysian Cultural Claims (2007–2019)," Analisis Sejarah, Vol. 15, No. 2 (2025), p. 141.

¹⁰²*Ibid.*

¹⁰³*Ibid.*

conclusive legal evidence of origin and ownership when a dispute arises at the international level.¹⁰⁴ However, no registration system or documented inventory currently functions as conclusive legal evidence of origin and ownership when a dispute arises at the international level.¹⁰⁵ This protection gap is precisely why a defensive mechanism built on a digital inventory and database of Indonesia's traditional cultural expressions is needed in order to allow the State to establish documented evidence of origin pre-emptively and shift from reacting after a claim goes viral to preventing it in the first place.

2.3.2 Illegal Commercialization of Traditional Arts in Material Form

As discussed in Section 2.2, neither UU Hak Cipta nor UU Pemajuan Kebudayaan provides a comprehensive legal framework capable of identifying the authorship of traditional arts. Consequently, these regulations provide no clear legal basis for the proprietary rights, ownership, or benefit-sharing of traditional arts on behalf of their rightful indigenous communities, particularly when those expressions are commercially exploited.¹⁰⁶ This legislative gap creates legal uncertainty, limiting the ability of indigenous communities to assert ownership and exercise their rights as the custodians and creators of their traditional arts.¹⁰⁷ As a result, there have been various cases of TCEs that had been claimed, stolen and used without consent of the indigenous communities by various parties.¹⁰⁸

As a depiction of the situation, one instance involving the TCEs in its tangible form demonstrates a problem, specifically in the material form, that had encountered a problem that inflicted a loss to the traditional community and the state. A notable example is the case of Ketut Deni Aryasa. Ketut Deni Aryasa was a former designer that worked in PT KTI, a jewelry company

¹⁰⁴A.A.Sg. Manik Maharani Putri and Kadek Januarsa Adi Sudharma, "Analisis Implementasi Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta Sebagai Instrumen Pelestarian Dan Perlindungan Tari Tradisional Dari Ancaman Klaim Budaya Oleh Negara Asing," *Consensus : Jurnal Ilmu Hukum*, Vol. 4, Issue 1 (2025), p. 71.

¹⁰⁵*Ibid.*

¹⁰⁶Mohammad Fahrial Amrulla, et al., "Copyright Protection Reform..." p. 23.

¹⁰⁷I. Gede Agus Kurniawan, "The Existence of Copyrights on Traditional Cultural Expressions Held by the State: Implications and Orientations," in *Intellectual Property – Global Perspective Advances and Challenges* (London: IntechOpen, 2023), <https://doi.org/10.5772/intechopen.1001312>.

¹⁰⁸Mohammad Fahrial Amrulla, et al., "Copyright Protection Reform...", p. 23–24.

specializing in jewelry with traditional styles.¹⁰⁹ He then resigned and opened his own *Commanditaire Vennootschap* (CV).¹¹⁰ Through this business, he began producing a product similar to that of PT KTI, namely pieces of jewelry with a crocodile-skin motif.¹¹¹ These motifs resemble Bali indigenous communities as TCEs of their own.¹¹² A foreign party then registered these motifs as its own copyright, without the consent of the relevant traditional community¹¹³

Meanwhile, UU Hak Cipta establishes the foundation of Indonesia's copyright law. The law itself expands on traditional arts in Article 38 of UU Hak Cipta on TCEs, which designates the state as the copyright holder for such art forms.¹¹⁴ As a result, he was then indicted with violation of Article 38 of UU Hak Cipta for selling TCEs to a foreign party without consent.¹¹⁵ This case, henceforth highlights the limited effectiveness of Indonesia's legal framework in safeguarding TCEs, as the existing legal frameworks have not consistently applied its meaning into practice.

2.4 Strengthening the Protection of Traditional Arts Through Comparative and International Approaches

The legal vacuum described in the preceding subchapters is not unique to Indonesia. Many states face the same tension between the individual and exclusive character of copyright and the communal, intergenerational nature of TCEs.¹¹⁶ A number of countries have responded by building *sui generis* regimes, that is, dedicated protection frameworks designed outside the conventional copyright

¹⁰⁹Supreme Court Decision (Putusan Mahkamah Agung) No. 823 K/Pid.Sus/2009 (decided 23 February 2011), p. 2.

¹¹⁰Court Decision No. 823 K/Pid.Sus/2009, p. 2.

¹¹¹Court Decision. 823 K/Pid.Sus/2009, p. 2; see also Octa Verius Wiro, "Perlindungan Ekspresi Budaya Tradisional Bali Terhadap Klaim PT Karya Tangan Indah (Studi Kasus Putusan No. 823/K/Pid.Sus/2009)," *Unes Law Review*, Vol. 6, No. 3 (2024), p. 9625.

¹¹²Direktorat Jenderal Kekayaan Intelektual, Modul Kekayaan Intelektual Komunal, "Motif Kulit Buaya dari Bali"; see also Wiro, "Perlindungan Ekspresi Budaya Tradisional...", p. 9625.

¹¹³Court Decision No. 823 K/Pid.Sus/2009; see also Octa Verius Wiro, "Perlindungan Ekspresi Budaya..." p. 9625.

¹¹⁴UU Hak Cipta, Article 38.

¹¹⁵Octa Verius Wiro, "Perlindungan Ekspresi Budaya...", p. 9625.

¹¹⁶Mariam Aroian, "Traditional Cultural Expressions...", p. 568–569.

structure so as to accommodate collective ownership.¹¹⁷ This subchapter examines comparative models from several jurisdictions, situates them within international standards on community rights, and concludes by formulating concrete steps toward a community based protection framework for traditional arts in Indonesia.

2.4.1 Comparative Approaches to the Protection of Traditional Cultural Expressions

The experience of several states demonstrates that the limitations of conventional copyright can be addressed through regimes that designate the community, rather than the state, as the rights holder. Panama provides one of the earliest examples. Through Law No. 20 of 2000 on the Special Intellectual Property Regime Governing the Collective Rights of Indigenous Peoples for the Protection and Defence of their Cultural Identity and their Traditional Knowledge (Ley No. 20 de 26 de junio de 2000, *del Régimen Especial de Propiedad Intelectual sobre los Derechos Colectivos de los Pueblos Indígenas para la Protección y Defensa de su Identidad Cultural y de sus Conocimientos Tradicionales*, "**Panama Law No. 20 of 2000**"), Panama became the first country in the world to enact a *sui generis* IP regime for indigenous peoples, granting collective, exclusive, and perpetual rights over their creations, inventions, and traditional expressions.¹¹⁸ This protection is operationalized through a registration system administered by the Ministry of Commerce and Industry and is reinforced by Executive Decree No. 12 of 2001.¹¹⁹ One example of its

¹¹⁷See, e.g., Panama, Law No. 20 of 26 June 2000 (Special Intellectual Property Regime Governing the Collective Rights of Indigenous Peoples for the Protection and Defence of their Cultural Identity and their Traditional Knowledge); Philippines, Indigenous Peoples' Rights Act of 1997; and the Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture (2002). For an overview, see World Intellectual Property Organization, "Traditional Cultural Expressions/Expressions of Folklore: Legal and Policy Options," WIPO Doc WIPO/GRTKF/IC/6/3 (Geneva: WIPO, 2004).

¹¹⁸Law No. 20 of 26 June 2000 on the Special Intellectual Property Regime with Respect to the Collective Rights of Indigenous Peoples to the Protection and Defense of their Cultural Identity and Traditional Knowledge (Panama) (enacted 26 June 2000) Gaceta Oficial No. 24,083, Article 1.,

¹¹⁹Executive Decree No. 12 of 20 March 2001 on the Implementation of Law No. 20 of 26 June 2000 on the Special Intellectual Property Regime Governing the Collective Rights of Indigenous Peoples for the Protection and Defense of their Cultural Identity and their Traditional Knowledge (Panama), (enacted 20 March 2001) Gaceta Oficial No. 24,270, Article 1.

application is the protection of the Mola Kuna motif belonging to the Kuna people, which requires non-indigenous artisans to state clearly that their products are replicas, along with their place of origin.¹²⁰

In the Pacific region, the Secretariat of the Pacific Community developed the Model Law for the Protection of Traditional Knowledge and Expressions of Culture, known as the Pacific Model Law 2002.¹²¹ This model instrument creates a category of traditional cultural rights that are held collectively and without time limitation, accompanied by moral rights, and it requires prior informed consent from the originating community before any use outside the customary context.¹²² The model was endorsed by the Pacific ministers of culture in 2002, and several states such as Fiji, Vanuatu, Papua New Guinea, and Palau have taken steps toward enacting national legislation based upon it.¹²³

2.4.2 International Standards on Community Rights over Traditional Cultural Expressions

International recognition of community rights over TCEs has grown steadily. The United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) of 2007, in Article 31, affirms the right of indigenous peoples to maintain and control their cultural heritage, traditional knowledge, and traditional cultural expressions, and obliges

¹²⁰Panama: Empowering Indigenous Women through a Better Protection and Marketing of Handicrafts," WIPO Magazine. Available at <https://www.wipo.int/en/web/wipo-magazine/articles/panama-empowering-indigenous-women-through-a-better-protection-and-marketing-of-handicrafts-35026>, accessed on 29th June 2026.

¹²¹Secretariat of the Pacific Community, "Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture," (Suva: Secretariat of the Pacific Community, 2002), pp. 4 (hereinafter "Pacific Model Law 2002").

¹²²Pacific Model Law 2002, cl. 7 (traditional cultural rights, held collectively and in perpetuity) and sec. 13 (moral rights, perpetual and inalienable); *see also* Secretariat of the Pacific Community, "Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture," (Suva: Secretariat of the Pacific Community, 2002), pp. 4 (hereinafter "Pacific Model Law 2002").

¹²³"Protecting Traditional Pacific Knowledge and Culture," New Zealand Government (Beehive.govt.nz), 2006. Available at <https://www.beehive.govt.nz/release/protecting-traditional-pacific-knowledge-and-culture>, accessed on 29th June 2026; *see also* Secretariat of the Pacific Community, Guidelines for Developing National Legislation..., (Noumea: Secretariat of the Pacific Community, 2006).

states to protect those rights.¹²⁴ Within the field of IP, WIPO has negotiated these issues since 2010, an effort discussed further below.¹²⁵ As a WIPO member state with substantial TCEs wealth, Indonesia has clear reasons to align its domestic framework with this emerging direction.¹²⁶

To understand Indonesia's domestic copyright framework, it must be situated within the broader international IP order, at the centre of which is WIPO, the United Nations specialised agency responsible for the global IP system.¹²⁷ Conventional IP categories such as copyright, patents, and trademarks were never designed to accommodate collectively held and intergenerational cultural assets.¹²⁸ For this reason, WIPO established in 2000 the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), which since 2010 has conducted text-based negotiations to develop legal instruments for the protection of Traditional Knowledge (TK), TCEs, and Genetic Resources (GRs).¹²⁹

For a state such as Indonesia, whose national protection of TCEs under Article 38 of the UU Hak Cipta lacks any evidentiary infrastructure of origin, WIPO is significant because it is the principal multilateral forum.¹³⁰ The norms governing cross-border claims over folklore and traditional arts are actually negotiated, and the strength of those norms directly determines whether Indonesia can move from

¹²⁴United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UNGA Res 61/295, Article 31.

¹²⁵World Intellectual Property Organization, "Intergovernmental Committee (IGC)." Available at <https://www.wipo.int/en/web/igc>, accessed on 29th June 2026; *see also* Peter K. Yu, "WIPO Negotiations on Intellectual Property, Genetic Resources and Associated Traditional Knowledge," SSRN (2025).

¹²⁶*Ibid.*

¹²⁷Convention Establishing the World Intellectual Property Organization (signed 14 July 1967, as amended 28 September 1979) 828 UNTS 3; WIPO became a specialised agency of the United Nations in 1974.

¹²⁸Mariam Aroian, "Traditional Cultural Expressions..." , p. 568-569.

¹²⁹World Intellectual Property Organization, "The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)," <https://www.wipo.int/en/web/igc>, accessed on 22 June 2026.

¹³⁰*Ibid.*

diplomatic protest to legal entitlement when a motif such as the batik Parang is appropriated abroad.¹³¹ That significance, however, is tempered by the current state of the negotiations.¹³² In May 2024, WIPO member states adopted the Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge.¹³³ This was the first WIPO treaty to explicitly acknowledge Indigenous peoples and local communities.¹³⁴ However, that treaty covers only genetic resources and the traditional knowledge associated with them.¹³⁵ It does not extend a binding regime to TCEs such as batik, weaving, or dance.¹³⁶ Meanwhile, negotiations on a separate instrument focusing on TK and TCEs are ongoing.¹³⁷ The draft articles were transmitted to the 2025 WIPO General Assembly, but they have not yet resulted in a binding convention.¹³⁸ It is against this backdrop that the second and third issues guiding this study acquire their full meaning.

2.4.3 Action Towards a Community-Based Protection Framework for Traditional Arts in Indonesia

Indonesia has taken an initial step through Government Regulation No. 56 of 2022 on Communal Intellectual Property (“Peraturan Pemerintah No. 56 tentang Kekayaan Intelektual Komunal, **“PP Kekayaan Intelektual Komunal”**”), which implements Article 38 paragraph 4 of the UU Hak Cipta by establishing a framework for the inventorying of communal IP and providing defensive protection

¹³¹*Ibid.*

¹³²*Ibid.*

¹³³World Intellectual Property Organization, "WIPO Member States Adopt Historic New Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge," WIPO (24 May 2024). Available at https://www.wipo.int/pressroom/en/articles/2024/article_0007.html, accessed on 29th June 2026.,

¹³⁴*Ibid.*

¹³⁵*Ibid.*

¹³⁶World Intellectual Property Organization, "IGC 51 Summary," WIPO (2025). Available at <https://www.wipo.int/en/web/igc/w/news/2025/igc-51-summary>, accessed on 29th June 2026.

¹³⁷*Ibid.*

¹³⁸*Ibid.*

against misappropriation.¹³⁹ Yet this protection is only defensive and administrative, neither recognizes community ownership nor provides for royalties or benefit-sharing, leaving the state as rights holder and the central vacuum unresolved.¹⁴⁰ Drawing on the comparative and international lessons above, Indonesia should enact a *sui generis* law recognising customary law communities (*masyarakat hukum adat*) as collective rights holders rather than mere authors, complement the existing inventory with a consent based benefit sharing mechanism, and align national policy with Article 31 of UNDRIP so that defensive and community based protection together safeguard both the economic value of TCEs and their custodians.

2.4.3.1 Enact Dedicated *Sui Generis* Legislation

The most fundamental reform is the enactment of a dedicated *sui generis* law governing TCEs. While Article 38 of UU Hak Cipta¹⁴¹ recognizes state control over TCEs, it does not provide a comprehensive framework that reflects their communal nature or addresses the practical challenges of authorization, commercialization, and benefit-sharing. As discussed in the previous section, copyright protection remains conceptually ill-suited for TCEs because it is premised on individual authorship, originality, and limited terms of protection.¹⁴²

A *sui generis* regime should therefore recognize indigenous communities as the primary custodians of TCEs while clarifying the State's role as a facilitator rather than the exclusive rights-holder.¹⁴³ The legislation should also establish clear procedures for obtaining

¹³⁹Government Regulation on the Protection of Communal Intellectual Property (Peraturan Pemerintah tentang Perlindungan Kekayaan Intelektual Komunal), Government Regulation Number. 56 of 2022, LN No. 235 of 2022, TLN No. 6838 hereinafter referred to as PP Kekayaan Intelektual Komunal, Article 4.

¹⁴⁰Mohammad Fahrial Amrulla et al., "Interpreting 'Held by...' p. 6.

¹⁴¹*Ibid.*

¹⁴²*Ibid.*

¹⁴³Brendan Tobin and Krystyna Swiderska, *Speaking in Tongues: Indigenous Participation in the Development of a Sui Generis Regime to Protect Traditional Knowledge in Peru*, (London: IIED, 2001), 1. See also Ramadhan, et al., supra note 1, 892.

Prior Informed Consent (PIC) before TCEs are used commercially, introduce fair and equitable benefit-sharing arrangements for originating communities, and even provide mechanisms for resolving disputes involving unauthorized use.¹⁴⁴ Such a framework would address the normative gaps in the current copyright regime while ensuring that the cultural and economic interests of indigenous communities receive legal recognition.¹⁴⁵

2.4.3.2 Strengthen the National Inventory as a Legal Protection Mechanism

Indonesia has taken an important step toward protecting TCEs through PP Kekayaan Intelektual Komunal, which establishes a framework for documenting communal intellectual property and traditional cultural expressions.¹⁴⁶ Nevertheless, the inventory mandated under this regulation currently functions primarily as a cultural database rather than as an effective legal instrument capable of resolving ownership disputes or providing concrete evidentiary weight.¹⁴⁷ This limitation stems in part from the absence of standardized data requirements: without uniform criteria for what information must be recorded, the inventory risks becoming a passive archive rather than a tool that communities and courts can actually rely upon. To strengthen its protective function, the inventory should therefore be required to contain standardized information regarding the origin of each traditional cultural expression, the indigenous or local community that safeguards it, its cultural and historical significance, and any available documentation evidencing its historical use.¹⁴⁸ Such records should be maintained through regular updates and close

¹⁴⁴World Intellectual Property Organization, *Comments on Draft Provisions on Protection of Traditional Cultural Expressions (TCEs) / Expressions of Folklore*, WIPO/GRTKF/IC/16/4 (2010)

¹⁴⁵Muhammad Citra Ramadhan, "The Concept of Originality and Prior Art in First to Declare: A Strategy to Prevent Unilateral Claims on Traditional Cultural Expressions," *Rechtsvinding*, Vol. 3, No. 1 (2025), p. 189.

¹⁴⁶*Ibid.*

¹⁴⁷*Ibid.*

¹⁴⁸*Ibid.*

coordination between the Directorate General of Intellectual Property, the Ministry of Culture, and regional governments, given that local authorities are often closest to the communities from which these expressions originate.¹⁴⁹

2.4.3.3 Establish an Integrated Institutional Coordination Mechanism

The protection of TCEs currently involves multiple institutions with overlapping responsibilities, including the Directorate General of Intellectual Property, the Ministry of Culture, and regional governments. However, the absence of clear institutional coordination often results in fragmented policies and delayed responses to cases of misappropriation.¹⁵⁰ Instead of establishing an entirely new agency, Indonesia could strengthen coordination by creating a specialized unit within the Directorate General of Intellectual Property that works closely with the Ministry of Culture, the Ministry of Foreign Affairs, and indigenous community representatives. This unit could monitor potential cases of domestic and international misappropriation, coordinate legal responses where necessary, facilitate access to legal assistance for indigenous communities, and provide guidance on the commercialization of TCEs.¹⁵¹ Last, what is important is ensuring meaningful participation by indigenous communities throughout the decision-making process. A protection framework that operates solely through state institutions risks repeating the shortcomings of the current regime by limiting community involvement in decisions concerning their own cultural heritage.¹⁵²

2.4.3.4 Strengthen Geographical Indications as a Complementary Economic Instrument

¹⁴⁹*Ibid.*

¹⁵⁰Mohammad Fahrial Amrulla, et al., "Interpreting 'Held by...'" p. 471-472.

¹⁵¹M. Citra Ramadhan, Rahmad Syah, and Shulhan Iqbal Nasution, "Indigenous Data Sovereignty and Blockchain: Reconfiguring Legal Protection of Communal Intellectual Property in Indonesia," *Journal of Cultural Analysis and Social Change* 10, No. 2 (2025): 892.

¹⁵²*Ibid.*

Although Geographical Indications (GIs) cannot protect all forms of TCEs, they provide an important mechanism for safeguarding traditional products whose value is closely linked to a specific geographical origin. Indonesia has successfully registered numerous GIs for products such as batik, woven textiles, coffee, and other traditional commodities.¹⁵³ Nevertheless, GI protection primarily safeguards the reputation and geographical origin of products rather than ensuring that economic benefits are distributed fairly among the artisan communities responsible for preserving traditional knowledge.¹⁵⁴

Under the current legal framework, Geographical Indications in Indonesia are regulated primarily through Law No. 20 of 2016 on Marks and Geographical Indications (Undang-Undang No. 20 Tahun 2016 tentang Merek dan Indikasi Geografis, "**UU Merek dan Indikasi Geografis**"), which requires registration to be undertaken collectively through a Masyarakat Perlindungan Indikasi Geografis (**MPIG**), or Geographical Indication Protection Society, representing the producers or artisans of a given region. While this collective registration structure formally recognizes the communal nature of traditional production, it does not, in itself, establish binding mechanisms for equitable benefit-sharing among individual artisans within the community¹⁵⁵. In practice, the economic gains generated by an increase in market value or reputation following GI registration often according crue disproportionately to intermediaries, larger producers, or exporters who are better positioned to capitalize on the certified status, while smallholder artisans who sustain the traditional knowledge and

¹⁵³Vimala Mary A, "The Role of Intellectual Property in Promoting and Commercializing Products Based on Traditional Knowledge, Traditional Cultural Expressions and Geographical Indications," *Indian Journal of Integrated Research in Law*, Vol. 5, No. 5 (2024), p. 112, 115.

¹⁵⁴*Ibid.*

¹⁵⁵Diana Harding, Kevin Muhamad Lukman, Miranda Risang Ayu Palar, and Ryo Kohsaka, "Geographical Indication in Indonesia: A Review on the Spatial Distribution and Classification of Geographical Indication-Registered Products and -Related Publications," *Journal of World Intellectual Property* 28, no. 1 (2025), 263.

craftsmanship underlying the product may see limited direct benefit¹⁵⁶. This gap between legal recognition and equitable economic distribution underscores the importance of strengthening GI protection as a complementary instrument.¹⁵⁷

¹⁵⁶Catherine Durand and Stéphane Fournier, "Can Geographical Indications Modernize Indonesian and Vietnamese Agriculture? Analyzing the Role of National and Local Governments and Producers' Strategies," *World Development* 98 (2017), 93.

¹⁵⁷Vinicius Ap. Cardoso, *et.al*, "The Benefits and Barriers of Geographical Indications to Producers: A Review," *Renewable Agriculture and Food Systems* Vol. 37, No. 6 (2022), p. 707.

CHAPTER III

CLOSING

3.1 Conclusions

Based on the analysis and discussions presented in the preceding chapters, this study draws several key conclusions:

1. Indonesia's current legal framework remains inadequate in providing effective protection for TCEs due to the fundamental incompatibility between conventional copyright principles, which favor individual ownership and limited duration and the communal, intergenerational nature of traditional arts. While Article 38 of the Law No. 28 of 2014 on Copyright designates the State as the official rights holder of TCEs, the provision contains a major legal gap by failing to clearly define ownership, authorization procedures, and benefit-sharing mechanisms. Furthermore, the existing statutory framework lacks precise legal definitions and robust enforcement tools required to address digital piracy and cross-border commercial exploitation. This regulatory ambiguity creates a critical legal vacuum, leaving traditional arts structural vulnerable to unauthorized commercialization and foreign cultural misappropriation;
2. Indigenous communities are excluded from ownership and benefit-sharing of their traditional art forms primarily due to the fundamental incompatibility between conventional copyright logic and the nature of TCEs. The modern intellectual property regime under UU Hak Cipta relies on an individualistic paradigm requiring identifiable single authors, fixed terms of protection, and even tangible fixation. Furthermore, Article 38 Section 1 of UU Hak Cipta vests the copyright over TCEs in the State rather than the originating customary communities in which it frames culture as state administrative custody rather than granting enforceable proprietary entitlements to indigenous groups. This issue is worsened by the legal vacuum under Article 38 Section 4 of UU Hak Cipta, as the implementing regulation specifying how the state exercises these rights and distributes benefits has never been enacted. Similarly, while Article 37 of Law No. 5 of 2017 on the Advancement of Culture requires state permits for commercial utilization of traditional arts, it provides no mechanisms for monetary rights or direct benefit-sharing for indigenous communities. Lastly, because TCEs are largely uncoded and transmitted informally, most

customary law communities lack formal legal recognition and documented evidence of ownership, rendering them legally unable to assert ownership, or claim economic royalties when their cultural heritage is commercially exploited by third parties or claimed abroad;

3. To achieve meaningful legal protection for traditional arts thus depends on utilizing existing regulations and international instruments to transition from a conventional copyright approach toward a community-based *sui generis* framework. Domestically, Indonesia must enact a dedicated *sui generis* law recognizing *masyarakat hukum adat* as collective rights holders while transforming the inventory system under Government Regulation No. 56 of 2022 on Communal Intellectual Property into a centralized digital database that serves as binding legal evidence of origin and custodianship. This legislative reform should be supported by integrated institutional coordination among the Directorate General of Intellectual Property, the Ministry of Culture, and regional governments, alongside the strategic use of GIs to ensure equitable economic distribution for artisans. Internationally, Indonesia should align its national policies with Article 31 of United Nations Declaration on the Rights of Indigenous Peoples of 2007 and draw lessons from jurisdictions like Panama and the Pacific Island states. Furthermore, by actively monitoring World Intellectual Property Organization negotiations on Traditional Knowledge and TCEs, Indonesia can proactively establish a pre-emptive legal shield rather than relying on reactive diplomatic protests during cross-border cultural disputes.

3.2 Suggestion

Based on the conclusions drawn above, and to address the existing legal gaps while enhancing the protection of TCEs in Indonesia, this study puts forward the following strategic recommendations:

1. Indonesia's current legal framework for intellectual property, largely suited to the premise of Anglo-American individual ownership, has been ineffective in addressing issues of communal ownership and the benefit-sharing of indigenous communities in relation to TCEs. Article 38 Section 1 of UU Hak Cipta vests copyright over TCEs in the State rather than in the originating indigenous or local communities, while Article

Section 4 leaves the substantive rules governing the exercise of those rights to a Government Regulation that has yet to be enacted. Article 37 of UU Pemajuan Kebudayaan requires ministerial approval for the commercial use of traditional arts by industries or foreign parties but offers little guidance on how the originating communities should participate in or benefit from such exploitation. These regulations show there is a gap which requires creating a *sui generis* legal framework that moves beyond contemporary copyright law and is able to acknowledge the presence of indigenous communities as not only custodians, but also the legal owners of their traditional artworks

2. Copyright over TCEs is vested in the State rather in the originating indigenous or local communities under Article 38 Section 1 of UU Hak Cipta while Article 38 Section 4, which was meant to govern the substantive exercise of those rights, has never been enacted through the required Government Regulation. Article 37 of the UU Pemajuan Kebudayaan requires ministerial approval for commercial use of traditional arts by industries or foreign parties but offers little guidance on how the originating communities should participate in or benefit from such exploitation. This reflects a framework largely suited to the premise of Anglo-American individual ownership, which has been ineffective in addressing issues of communal ownership and benefit-sharing of indigenous communities, leaving them without a clear legal position as owners of their own traditional art forms.
3. The State should strengthen the current inventory system under PP Kekayaan Intelektual Komunal, transforming it from a passive cultural database into a credible legal instrument capable of resolving ownership disputes by requiring standardized information to be recorded for each traditional cultural expression and maintaining it through regular update coordinated between the Directorate General of Intellectual Property, the Ministry of Culture, and regional governments, given that local authorities are often closest to the communities from which these expressions originate. At the international level, this same inventory should be developed into a digital database of Indonesia's TCEs, allowing the State to establish documented evidence of origin pre-emptively, rather than relying, as it currently does, on reactive diplomatic protest after a cross-border claim such as the Xinhua batik incident or the

"Visit Malaysia" Tari Pendet controversy has already gone viral. GI governance should also be strengthened by increasing the participation of local producer associations and artisan communities in the management of registered GIs, with greater transparency in licensing arrangements and the allocation of revenues to help ensure that commercialization contributes directly to the sustainability of traditional craftsmanship, and by establishing community development funds financed through licensing revenues or other commercial arrangements involving GI-protected products to support artisan training, intergenerational knowledge transmission, access to production materials, and cultural preservation programs.¹⁵⁸ It is important, however, to distinguish GI protection from the proposed *sui generis* framework, since GIs primarily protect products associated with a particular geographical origin, while *sui generis* legislation should focus on safeguarding the broader cultural and communal dimensions of traditional cultural expressions.¹⁵⁹ A more comprehensive and systematically maintained inventory would enable the State and indigenous communities to establish stronger evidentiary claims over traditional arts, particularly in cases involving cross-border cultural disputes and unauthorized commercial exploitation, and would contribute to greater legal certainty by facilitating the identification of rightful custodians and preserving historical records of cultural heritage.

¹⁵⁸M. Citra Ramadhan, Rahmad Syah, and Shulhan Iqbal Nasution, "Indigenous Data Sovereignty..." p.894.

¹⁵⁹Vinicius Ap. Cardoso, Ana Elisa Bressan Smith Lourenzani, Marcellus Marques Caldas, Carlos Henrique Correia Bernardo, and Rafael Bernardo, "The Benefits and Barriers of Geographical Indications to Producers: A Review," *Renewable Agriculture and Food Systems* 37 (2022), 707.

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