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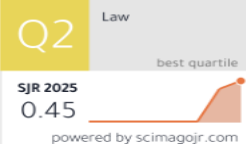
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Has Indonesia Safeguarded Traditional Cultural Expressions?

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Abstract

The Government of the Republic of Indonesia recognized the importance of intellectual property in folklore since the 1982 Copyright Law was enacted (Article 10 of Law No. 6/1982). The study seeks to understand what obstacles Indonesia faces in protecting tribal peoples' communal rights over traditional cultural expressions, also called expressions of folklore in the digital age, and how other nations are resolving them. What is Indonesia's plan for developing and safeguarding traditional cultural manifestations in the digital age, as seen from other nations? The study employs a case-based, normative legal research methodology. The findings, an urgent need for specific institutions that control access benefit sharing from usage by foreign parties, as well as a special anti-theft task force for communal intellectual property rights in the digital era that takes the form of a support organization for tribal peoples. To increase cooperation in the inventorying and documentation of Tribal peoples who own collective intellectual property, optimization also calls for coordination of involvement between the federal government, local governments, and autonomous bodies operating under them, such as the Ministry of Tourism, the Creative Economy Agency, and Tribal peoples' organizations.

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1. Introduction

The cultural variety, ethnic diversity, linguistic diversity, and religious diversity of Indonesia as an archipelago must also be maintained.¹ A cultural production is anything produced by people that broadens the range of human emotions and ideas.² Traditional cultural works can take many different forms, but they do not contain machines or technology. The history and civilization of humanity have maintained the priceless heritage of artistic creations that enhance taste. Given that the digital era is the primary issue that leads to theft and claim of traditional cultural expression ("TCEs") by other countries in this age of modern technology, the common difficulty is how to ensure that Tribal cultural expressions continue to exist and remain protected.

In Indonesia the value of the intellectual property of folklore has been acknowledged since the Copyright Law³ went into effect in 1982, Article 10 of Law No. 6/1982 states that in protecting the framework of the people's cultural products, the Government can prevent monopolies and copyrights on works of historical, prehistoric, paleo and other heritage. In many copyright laws, including in Indonesia, the state often owns the copyright to cultural assets such as prehistoric legacy, historical works, cultural objects, folklore, and folk culture commodities. This ownership serves to restrict outsiders from using them without proper authorization or permission. Because TCEs will affect the owners' identities if they go extinct, it is crucial to preserve and conserve them. The qualities of TCEs, which include the values of traditional cultural manifestations that need to be kept and safeguarded, must therefore be grasped to be able to understand it, namely:⁴

- a. Transmission and inheritance are typically done orally;

¹ Gugun El Guyanie and Aji Baskoro, "The Constitutional Rights of Indigenous Beliefs Adherents in Minority Fiqh Perspective," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (December 29, 2021): 155–76, <https://doi.org/10.18326/ijtihad.v21i2.155-176>.

² Intan Nevla Cahyana and Ahmad Sabirin, "Optimizing The Protection of Cultural Expressions of Indigenous Peoples in Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 17, no. 2 (July 31, 2023): 209, <https://doi.org/10.30641/kebijakan.2023.V17.209-220>.

³ Christoph Antons, ed., *Traditional Knowledge, Traditional Cultural Expressions, and Intellectual Property Law in the Asia-Pacific Region*, Max Planck Series on Asian Intellectual Property Law, v. 14 (Alphen aan den Rijn : Frederick, MD: Kluwer Law International ; Aspen Publishers [distributor for North, Central, and South America], 2009).

⁴ Simona Bustani, "Urgensi Pengaturan Ekspresi Budaya (Folklore) Masyarakat Adat," *Jurnal Hukum PRIORIS*, 2, no. 4 (2010): 246–55.

- b. Folklore is transmitted among collectivities in this case in a fixed form over a minimum period of two generations;
- c. It is anonymous, in which case the name of the creator is no longer known to others;
- d. It is typically patterned and spontaneous, in this case for example the use of clichés; and
- e. It serves a sacred purpose in the communal life of the community, such as special dances for traditional ceremonies.
- f. It is pre-logical (has a way of thinking that doesn't adhere to logic in general);
- g. The ownership of it is transferred to the public domain.

TCEs are one of the intriguing and rapidly expanding fields in the preservation of conventional intellectual property. The United Nations ("UN") uses the term TCEs, especially in the Declaration on the Rights of Tribal Peoples. The World Intellectual Property Organization ("WIPO") also employs this phrase in several international fora.⁵ WIPO outlines criteria such as distinctive uniqueness, tribal peoples or local communities, and cultural communities or nations where these forms of expression live and grow among people representing their cultural, social identity, or heritage that should be maintained in its draft agreement on the protection of TCEs or expressions of folklore.

TCEs is the name given to intellectual property that raises certain questions about cultural norms that are still developing in contemporary cultures all around the world. Additionally, it helps to express local culture and fosters a sense of community. The idea also offers significant financial benefits to support tribal peoples' way of life. TCEs for Indonesia's cultural history can be found in many facets of communal life, including signs, names, and symbols; vocal expressions such as fairy tales, legends, and myths; poetry; riddles; tales; words (like Sumatran Rhymes and Javanese Parikan); and poetry. It also encompasses more concrete expressions such as art supplies, social status, crafts (made of wood, metal, linen, stone, jewelry, and needlework), traditional home architecture, and places of worship such as mosques, temples, and churches.

⁵ World Intellectual Property Organization, *Intellectual Property and Traditional Cultural Expressions/Folklore* (Geneva, Switzerland: World Intellectual Property Organization, 2009).

Along with noises and musical instruments, it also features rhythms, songs, and instrumental music.⁶

TCEs are governed in Indonesia under Law Number 28 of 2014 on Copyright ("UUHC"), which repeals Law Number 19 of 2002's restrictions. According to Article 38 of the 2014 UUHC, TCEs include:

- a. written and spoken language, prose, and poetry, covering a variety of subjects and conveying significant ideas that can be presented as traditional or literary narratives;
- b. vocal, instrumental, or a mix of the two types of music;
- c. dance-based movement;
- d. theater, including both classic theater and puppet acts;
- e. fine arts, created in two and three dimensions using a variety of shapes and mediums, including metal, ceramics, and bamboo;
- f. traditional ceremonies.

TCEs are protected in Indonesia by several provisions in various laws and regulations already in place. But as of late 2014, there was some optimism for TCE protection thanks to the copyright law of Indonesia. The following is stated in Article 38 of the UUHC: (1) The state owns the copyright over TCEs; (2) The state is required to keep track of, safeguard, and handle TCEs as mentioned in paragraph one; (3) The use of TCEs as mentioned in paragraph one must take into account the values embraced by the developer community; and (4) Government regulations govern additional provisions regarding the copyright owned by the state over TCEs as mentioned in paragraph one.

In the digital age, several facets of Indonesian culture have been claimed to belong to other nations. Reog Ponorogo Dance and Kuda Lumping Dance, both from East Java, are two of them. The Reog Ponorogo Dance lawsuit began in November 2007 when the dance was included in the Visit Malaysia 2007 tourism campaign. This lawsuit started

⁶ Prasetyo Hadi Purwandoko, Adi Sulistiyono, and M. Hawin, "The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright," *Indonesian Journal of International Law* 18, no. 4 (July 31, 2021): 543, <https://doi.org/10.17304/ijil.vol18.4.823>.

because a Malaysian tourism advertisement featured the Barongan Dance, a dance that is similar to the Reog Ponorogo but was probably brought to Malaysia by immigrants from Indonesia. The people of Ponorogo viewed this as identity theft because the advertisement did not mention the origin of the dance, and the words 'Reog Ponorogo' on the Singa Barong mask were replaced with the words 'Malaysia'.⁷ The writing "Reog Ponorogo," a necessary component of the Dadak Merak mask, was not present during the campaign. The 2004 Basic Guidelines for Reog Ponorogo Art in Cultural Performances are categorically violated by this. The term "Malaysia" was substituted for "Reog Ponorogo" by the Malaysian side. The dance should always be performed with the words "Reog Ponorogo" present.⁸ Additionally, there are still numerous instances of theft by foreign parties, like as the Malaysian government's theft of ancient manuscripts from Riau.⁹

On the other side, a Malaysian competitor in the Miss Grand International competition in 2017 adopted *Kuda Lumping* as a symbol of her Javanese culture, which they referred to as *Kuda Kepang*.¹⁰ The traditional Indonesian dishes Lumpia Semarang, Rendang, and Cendol are traditional Indonesian foods that have been promised by foreign nationals in several cases. This is an example of art and culture theft that is still occurring, which can damage Indonesia economically and socially. Theft of art and culture can disrupt traditional values and reduce their richness. As a result, sui generis national laws must be used to protect TCEs through the legal system. The legal preservation of traditional knowledge can, among other things, result in increasing use of such knowledge, which is a major driver for higher regional tourism earnings and an

⁷ Binus, "Identitas Nasional Di Tengah Kondisi Pengklaiman Budaya Asli Indonesia Oleh Negara Asing," Binus, 2020, <https://Binus.Ac.Id/Character-Building/2020/05/Identitas-Nasional-Ditengah-Kondisi-Pengklaiman-Budaya-Asli-Indonesia-Oleh-Negara-Asing-2/>.

⁸ Lisa Clare Mapson, "Kesenian, Identitas, Dan Hak Cipta: Kasus 'Pencurian' Reog Ponorogo" (Malang, Universitas Muhammadiyah Malang, 2010).

⁹ Detik News, "Naskah Kuno Melayu Indonesia Diboyong Ke Malaysia," *Detik News*, accessed July 12, 2009, <https://news.detik.com/berita/d-1141485/-naskah-kuno-melayu-indonesia-diboyong-ke-malaysia>.

¹⁰ Puput Tripeni Juniman, "Indonesia Kumpulkan Bukti Kuda Lumping Yang Diklaim Malaysia," *CNN Indonesia*, October 5, 2015, <https://www.cnnindonesia.com/hiburan/20171005084029-241-246243/indonesia-kumpulkan-bukti-kuda-lumping-yang-diklaim-malaysia>.

expanding number of options. Traditional communities also have a stronger feeling of worth and belonging.

TCEs also have a promising economic future, particularly in the tourism industry. Additionally, the nation's foreign exchange revenues are greatly boosted by creative economy industries including weaving, woodcarving, and silversmithing. However, the advancement of information technology may result in several improper uses of TCEs now in use. Up to a global level, diverse commercialization of TCEs takes place together with numerous unsuitable distortions, alterations, or modifications. Examples of misuse of Indonesian TCEs include the claiming of the traditional song *Rasa Sayang* without the permission of the local Maluku people as the original owner and the theft of ancient manuscripts from Southeast Sulawesi that were digitized and sold at a museum in Malaysia.¹¹

The Republic of Indonesia's Ministry of Industry reported that the country's citizens lost 40 trillion rupiahs, and it is predicted that by 2030, this country will have lost up to 100 trillion rupiahs. To create laws that will be appropriately applied, it is essential to take into account the community's values as well as those of the environment, traditions, and people.¹² Therefore, it is imperative to ensure that legalization is protected immediately as a sign of the government's sincerity about preserving the nation's unique regional cultural manifestations to guard against more losses in the future.¹³ The preservation of cultural civilization and the welfare of the entire Indonesian population is stipulated by Article 33 verse 3 of the 1945 Constitution of the Republic of Indonesia ("UUD"), which recognizes the importance of the nation's richness in terms of its natural resources, cultural diversity, and tourism potential.

¹¹ Victor T King, "Identity, Material Culture and Tourism: Of Ritual Cloths and Totem Poles," *South East Asia Research* 25, no. 2 (June 2017): 192–207, <https://doi.org/10.1177/0967828X16654259>.

¹² Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban: Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro* (Jakarta: UKI Press, 2006).

¹³ Abdul Atsar, "Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta," *Law Reform* 13, no. 2 (September 28, 2017): 284, <https://doi.org/10.14710/lr.v13i2.16162>.

2. Problem Statement

It is a brief statement, the authors created two questions that urgently need to be examined for the issues shown above. The problems are formulated as follows: want to know what are the challenges in upholding Tribal peoples' community rights over TCEs in the digital era in Indonesia and how other countries deal with that. What is the solution to the problem of developing and protecting traditional cultural expressions in the digital era in Indonesia as viewed from other countries?

3. Methods

The research employs a comparative approach and legal normative methodology because in this study we just compare the regulation between Indonesia and several countries regarding the protection of TCEs in the digital era. It is a legal study that is carried out by going over secondary sources, official papers, such as court rulings on TCEs, books, and research findings in the form of reports/journals, newsletters, and other publications or library materials the main material, such as different laws and regulations related to IPR regulations, especially on tribal peoples' communal rights to traditional cultural expressions as the main data,¹⁴ such as the UUD 1945, Law Number 28 of 2014 concerning Copyright, and Law No. 5 of 2017 concerning the Advancement of Culture. Furthermore, comparative legal research is conducted between TCEs in Indonesia and India, Australia, and New Zealand about TCEs to obtain advantages or advantages as well as similarities and differences as well as the relationship between legal systems, institutions, and protection of TCEs itself in the digital era.

Marzuki defines normative legal research as a legal procedure or as the study of legal theories to address current legal issues. It is known as document research because it frequently uses secondary data and is referred to as doctrinal research since it is restricted to existing legal regulations and legal resources. Consequently, there is no need to conduct a field search for data. The authors of this study will offer recommendations on the scope of TCEs in Indonesia, the issues with defending the collective TCEs rights of Tribal peoples in the digital age, and how to advance and

¹⁴ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2015).

safeguard traditional cultural expressions.¹⁵

4. The Challenges in Upholding Tribal Peoples' Community Rights Over TCEs in the Digital Era

The advancement of contemporary technology, particularly in the realm of telecommunications, digital economics, and information technology, has the potential to result in various inappropriate uses of extant Traditional Cultural Expressions (TCEs).¹⁶ TCEs are being commercialized in several ways, even on a worldwide scale, without the owners' permission. This commercialization frequently occurs in tandem with different types of TCE distortion, change, and modification.¹⁷ There may also be situations where traditional cultural property is claimed as one's own.

Returning to the idea of traditional knowledge as a belief system in the lives of tribal peoples, it might manifest itself in the form of healing plants and medications, carving art, plant breeding, weaving, and tribal peoples' culture. The state gains exclusive rights to the copyrighted work as the owner of TCEs' copyrights. Publication, replication, translation, modification, arrangement, transformation, distribution, performance, announcement, communication, and leasing are all considered exclusive rights according to the UUHC. According to the WIPO, TCEs are meant to distinguish between an intellectual work derived from a traditional culture that is owned by a traditional community group and a cultural creation that is customary and owned by a traditional community.

A traditional cultural intellectual work can be identified and attributed to a particular community group using this interpretation as a guiding concept. Rights that are produced by the human mind in the form of work and are frequently owned by the community are referred to as communal intellectual property rights. Traditional knowledge, geographical markers, genetic material, and traditional cultural

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005).

¹⁶ Mira Burri, "Digital Technologies and Traditional Cultural Expressions: A Positive Look at a Difficult Relationship," *International Journal of Cultural Property* 17, no. 1 (February 2010): 33–63, <https://doi.org/10.1017/S0940739110000032>.

¹⁷ Ria Wierma Putri et al., "The Legal Protection Towards Traditional Clothes: Intellectual Property Regimes in ASEAN," *Substantive Justice International Journal of Law* 5, no. 1 (June 22, 2022): 49, <https://doi.org/10.56087/substantivejustice.v5i1.165>.

expressions are the four categories under which tribal communal IPR falls.¹⁸ Hence, the authors concluded that communal intellectual property pertains to the conventional intellectual property that is owned by the Tribal communities.¹⁹

Indonesia is characterized by its ethnic and cultural diversity, which has resulted in a vast array of TCEs that are considered a valuable cultural heritage. The preservation of this legacy is imperative to prevent its extinction and to explore its economic benefits. The financial potential of TCEs in Indonesia is particularly evident in the tourism sector and the creative economy. Therefore, it is crucial to actively conserve and examine the TCEs in the country to fully realize its economic potential.²⁰

An international intellectual property framework that inclines towards extended rather than abbreviated protection periods, institutes a greater number of property rights, enforces uniform minimum protection standards across all nations, and restricts the states' autonomy to customize substantive standards by their economic development level, is deemed to be protectionist.²¹ The present situation is analogous to the scenario that transpired during the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), which gave rise to a discourse on the inappropriate exploitation of traditional knowledge. In reaction to this, various global entities, such as the WTO, have deliberated on the interdependence between traditional knowledge and intellectual property. In this instance, the TRIPS Council was directed by the 2001 Doha Ministerial Declaration of the WTO²² this study aims to examine the interrelationship among the Agreement on Trade-Related Aspects of TRIPS, the Convention on Biological Diversity ("CBD"), and the safeguarding of customary knowledge and cultural expressions.

¹⁸ Robiatu Adawiyah and Rumawi, "Pengaturan Hak Kekayaan Intelektual Dalam Masyarakat Komunal Di Indonesia," *Jurnal Ilmiah Hukum Kenotariatan*, Jurnal Ilmiah Hukum Kenotariatan, 10, no. 1 (2021): 1–16, <http://dx.doi.org/10.28946/rpt.v10i1.672>.

¹⁹ Simona Bustani, "Perlindungan Hak Komunal Masyarakat Adat Dalam Perspektif Kekayaan Intelektual Tradisional Di Era Globalisasi: Kenyataan Dan Harapan," *Jurnal Hukum PRIORIS* 6, no. 3 (2018): 304–25.

²⁰ John Howkins, *The Creative Economy: How People Make Money from Ideas*, Reprinted with updated material (London: Penguin Books, 2007).

²¹ Justin Hughes, "The Philosophy of Intellectual Property," *Georgetown Law Journal* 77, no. 287 (1998): 287.

²² Tully, L Danielle, "Prospects for Progress: The TRIPS Agreement and Developing Countries After the DOHA Conference," *Boston College International and Comparative Law Review* 26, no. 1 (2003): 129.

Henceforth, the WIPO exclusively promulgated guidelines for the settlement of Technology Cooperation Service disputes between nations during its 33rd session. In the event of any TCE-related conflicts, subsequent settlement procedures are governed by the respective provisions of each country.²³ There are additional factors that may pose as hindrances, specifically;²⁴ The public's awareness of the importance of registering intellectual property rights remains incomplete, leading to rampant theft of creative products by foreign entities. Additionally, there is a dearth of knowledge regarding Communal Intellectual Property Rights, which can be attributed to the government's failure to disseminate information to the public. Consequently, stakeholders in the creative industry are unable to comprehend the advantages of IPR protection. Furthermore, there is a prevalent misconception that IPR management is a time-consuming and complicated process that incurs exorbitant costs. In practice, bureaucratic procedures often involve illegal levies to expedite the licensing process.

The concept of ownership of anonymous works is governed by the principles of copyright law enshrined in The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention 1967). The protections afforded by the 1967 Berne Convention can be invoked to safeguard cultural creations whose authors remain unidentified, even though it does not explicitly address the protection of TCEs.²⁵ The clause about "anonymous works" in the Bern Convention is a constituent of intellectual property law that can be indirectly extended to TCEs, as per Article 15, paragraph 4. This provision stipulates that: "The signatories of the Bern Convention are required to designate competent authorities with their national laws to protect the interests and rights of published works whose authors are unknown."

The WIPO Performances and Phonograms Treaty (the "WPPT") is a global accord that was signed on December 20, 1996, in Geneva by WIPO members.²⁶ Despite having a

²³ Priscilia Sakul, "Perlindungan Hukum Terhadap Hak Cipta Warisan Budaya Batik Bangsa Indonesia Ditinjau Dari Perspektif Hukum Internasional," *Lex Privatum* 8, no. 3 (2019): 188–204.

²⁴ Ganefi Ganefi, "Sinergitas Industri Kreatif Berbasis Hak Kekayaan Intelektual Dalam Menunjang Pariwisata," *Supremasi Hukum: Jurnal Penelitian Hukum* 28, no. 2 (September 16, 2019): 188–204, <https://doi.org/10.33369/jsh.28.2.188-204>.

²⁵ Kholis Roisah, "Perlindungan Ekspresi Budaya Tradisional Dalam Sistem Hukum Kekayaan Intelektual," *Masalah-Masalah Hukum* 43, no. 3 (2014): 372.

²⁶ Sheinblatt, J. S, "The WIPO Copyright Treaty," *Berkeley Technology Law Journal* 13 (1998): 535.

broad objective to create and uphold the protection of the intellectual property of sound recording producers and performers, the WPPT only has a limited amount of information on TCEs. The WPPT does, however, protect TCEs because live performances of traditional dances, poems, plays, songs, music, and various other traditional art forms are common. Therefore, the protection of the performer's right to the performance may also be applied within the context of TCE protection.

The WPPT has a distinct definition of the term "performer" from the 1961 Rome Convention. According to Article 3(a) of the 1961 Rome Convention, actors, singers, musicians, dancers, and others who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works are all deemed performers.²⁷ While conceding that the works performed cannot be limited to "literary and artistic works" from the present era, the WPPT goes even further in identifying a performer. According to Article 2(a) of the WPPT, performers include individuals who act, sing, deliver, declaim, play in, interpret, or otherwise present literary or artistic works or folkloric manifestations. They also include musicians and dancers.²⁸ The WPPT also offers protection to traditional artists who perform Traditional Cultural Expressions based on the description of performers mentioned above. Despite the WPPT's scant coverage of TCEs, the treaty's overarching goal of establishing and upholding the protection of performers and sound recording producers' intellectual property rights can be used to help traditional artists who perform TCEs.

Purwandoko, Sulistiyono, and Hawin conducted a study that revealed a shift in the perception of traditional works in developing nations. Due to several variables, these works are no longer seen as stand-alone objects but rather as having economic value. Richly resourced nations are starting to use their traditional wisdom to their advantage in international trade. This shows that long-established tribal or traditional civilizations' creative and cultural traditions are today regarded as priceless economic assets. However, under the pretense of a research partnership, cultural information,

²⁷ Belotsky, L, "Performers' Rights: Solved and Unsolved Problems Part Two," *Tel Aviv University Studies in Law* 12 (1994): 321.

²⁸ Robin Lakes, "The Messages behind the Methods: The Authoritarian Pedagogical Legacy in Western Concert Dance Technique Training and Rehearsals," *Arts Education Policy Review* 106, no. 5 (May 2005): 3–20, <https://doi.org/10.3200/AEPR.106.5.3-20>.

and traditional culture are routinely stolen in many places.

As an illustration, the lawsuit against Balinese craftspeople in 1991 in the New York District Court was due to the commercialization of their traditional cultural expressions (TCE) without the permission of the indigenous people. The case involved necklaces with Borobudur motifs, which were sold without the consent of the original creators. This is an example of the inappropriate distortion, alteration, and modification of TCE that can occur when traditional knowledge and cultural expressions are commercialized without the involvement of the indigenous people. Additionally, there have been instances of some types of commercialization of renewable energy on a worldwide scale without the permission of indigenous peoples.²⁹ The aforementioned issues can be comprehensively analyzed and gleaned from a multitude of nations, namely India, Australia, and New Zealand, in terms of their respective approaches to tackling the challenges posed by the TCEs in the digital era.

4.1. India

India, a nation with a diversified and rich cultural legacy, is known for its striking contrasts between traditional rural life and tribal people and modern technology. Even though life's rhythms and ethos vary greatly, it is amazing how much harmony can be found in the diverse cultural forms. The primary law covering films, sound recordings, literary and artistic works, as well as the rights of performers and broadcasting organizations in India is the Copyright Act of 1957.³⁰ Although the Act has been modified numerous times, the most recent revision took place in 1994. It should be noted that neither separate law nor the Act contains any provisions for the protection of folklore or its expressions.

Folklore's tangible elements cannot be protected under the Patent Act or the Designs Act. Performing artists, who are defined as "an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, the person delivering a lecture, or any other person

²⁹ Purwandoko, Sulistiyono, and Hawin, "The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright" See also; Zaka Firma Aditya and Sholahuddin Al-Fatih, "The Legal Protection System of Indigenous Peoples in Southeast Asia," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (September 21, 2023): 285–309, <https://doi.org/10.22219/ljih.v31i2.27619>.

³⁰ Bhatt Sontakke, A. H., "SCOPE of Rights of Broadcasting Organizations under Copyright Act, 1957," *Rajiv Gandhi National Law University Student Law Review* 1, no. 1 (2012): 102–21.

who makes a performance," were given some protection under the Copyright Act in 1994."³¹ The performer's right is restricted and only provides the chance to stop specific actions committed without the performer's permission.

The performer's right is outlined in Chapter VI, Section 38 of the Act and lasts for 25 years commencing on the first day of the calendar year after the year the performance is made.³² The limited rights granted to performers are meant to prevent certain actions from being carried out without their permission, such as broadcasting or communicating the performance to the general public, recording the performance audibly or visually, or reproducing an audible or visually made recording of the performance. However, a performer forfeits all ownership rights to the movie if they consent to have their performance featured in a cinematograph.³³

Even though the definition of performance includes the performance of an expression of folklore, the functioning of performer rights in folklore expressions is constrained by the limited scope of those rights. However, whether or not they are members of the community, folklore performers are still entitled to these restricted privileges. These privileges must be restricted, though, to performers from the community or those who do so with its approval. The general public is not aware of all of the performer's rights and other aspects of the Copyright Act. As a result, even the few rights granted to performers are only upheld in a very small number of carefully chosen circumstances. The management and administration of these rights in India are further complicated by the lack of collective administration of copyright and adjacent rights.

The Indian legal system uses several pieces of law to provide traditional knowledge and cultural manifestations with some level of protection, including the Indian Patents Act of 1970, the Indian Copyright Act of 1957, and the Biological Diversity Act of 2002. Examples include clauses in the Patents Act that forbid the patenting of previous art,

³¹ Singh, D, "Legal Regime and Concern in Intellectual Property Rights: A Critical Analysis," *Supremo Amicus* 31 (September 2022): 81.

³² Brenda Milner, "Disorders of Learning and Memory after Temporal Lobe Lesions in Man: Chapter 25," *Neurosurgery* 19, no. Supplement 1 (January 1972): 421-46, https://doi.org/10.1093/neurosurgery/19.CN_suppl_1.421.

³³ Raymond Sarraute, "Current Theory on the Moral Right of Authors and Artists under French Law," *The American Journal of Comparative Law* 16, no. 4 (1968): 465, <https://doi.org/10.2307/838764>.

also known as traditional knowledge, which is thought to be information that is well-known or that has been in use for a sizable period in any community. Similar protections are provided by the Copyright Act for traditional cultural expressions like folk music, dance, and other performing arts.³⁴

India has registered more than 400 geographical indicators.³⁵ These intellectual property rights aim to recognize the unique properties of local goods, such as the Morel mushroom, and the talent of local artisans who make Channapatna toys in Bangalore. Channapatna toys are traditional crafts that have been passed down for generations.³⁶ They are known for their vibrant colors, intricate designs, and eco-friendly production. They have a rich history, dating back to the Tipu Sultan era, and are now protected as geographical indications (GIs) under the World Trade Organization.³⁷ It is an important step toward giving Indian products the proper legitimacy in international trade, which is becoming increasingly important in negotiations like the most recent trade and investment accords between India and the EU.³⁸ Other economic sectors, including the textile and fashion industries, which are significant drivers of the Indian economy, may benefit from the protection of intellectual property. The textile and fashion industries in India are significant drivers of the Indian economy, contributing to about 15% of the country's Gross Domestic Product (GDP) and employing around 12% of the workforce.³⁹

4.2. Australia

The Protection of Tribal Knowledge in the Intellectual Property System Work Plan

³⁴ Prabuddha Ganguli, "Indian Path towards TRIPS Compliance," *World Patent Information* 25, no. 2 (June 2003): 143–49, [https://doi.org/10.1016/S0172-2190\(03\)00023-1](https://doi.org/10.1016/S0172-2190(03)00023-1).

³⁵ Niharika Sahoo Bhattacharya, ed., *Geographical Indication Protection in India: The Evolving Paradigm* (Singapore: Springer, 2022).

³⁶ Nirmal Sengupta, "Traditional Knowledge in Manufacturing and Industry," in *Traditional Knowledge in Modern India*, by Nirmal Sengupta (New Delhi: Springer India, 2019), 105–25, https://doi.org/10.1007/978-81-322-3922-2_5.

³⁷ Hermann Kulke and Dietmar Rothermund, *A History of India*, Sixth edition (London; New York: Routledge, Taylor & Francis Group, 2016).

³⁸ Marc Bungenberg and Angshuman Hazarika, "The European Union's Trade and Investment Policy in Asia: New Challenges and Opportunities in a Changing Global Environment – or: Following Individual Roadmaps," *Asia Europe Journal* 15, no. 4 (December 2017): 377–97, <https://doi.org/10.1007/s10308-017-0485-2>.

³⁹ Confederation of Indian Industry, "Addressing Intellectual Property Matters in the Manufacturing Sector," *Confederatiorn of Indian Industry*, December 20, 2023, <https://ciiblog.in/addressing-intellectual-property-matters-in-the-manufacturing-sector/>.

2020-2021 is presently being implemented by IP Australia.⁴⁰ The present Project aims to enhance IP Australia's engagement with Aboriginal and Torres Strait Islander communities and their Traditional Knowledge ("TK") and TCEs, with a focus on both cultural integrity and economic potential. In furtherance of this objective, IP Australia issued the Tribal Knowledge Consultation paper in February 2021, which addresses four key areas about trademarks, designs, and patents. These areas include:

- a. the establishment of a Tribal Advisory Panel;
- b. the implementation of measures for trade-marks or designs that incorporate Tribal Knowledge;
- c. the application of new requirements for the disclosure of the source of Tribal Knowledge in innovations; and
- d. the exploration of possible labeling schemes for Aboriginal and Torres Strait Islander products, aimed at promoting the sale of authentic products and discouraging the purchase of inauthentic ones.⁴¹

State and territory law predominantly governs the preservation of cultural heritage. However, the Australian government also offers protection for some listed sites under the EPBC Act, and under the ATSIHP Act, it has the authority to make "last-minute" declarations as it allows for the protection of areas or objects that are under threat. Under section 27B of the Act, it is an offense to carry out an act that has, will, or is likely to have a significant effect on the environment at an overseas Commonwealth Heritage site (LOPHSA), unless approved by the Minister.

The EPBC Act governs the Commonwealth Heritage List, which identifies places owned or leased by Commonwealth or Australian Government bodies, and the National Heritage List, which contains places considered to have outstanding heritage value. The Act also protects wetlands of international importance and provides the legal framework for the implementation of Australia's obligations under the Ramsar

⁴⁰ IP Australia, "Protection of Indigenous Knowledge in the Intellectual Property System, Work Plan 2020-2021" (IP Australia, September 2020), <https://www.ipaustralia.gov.au/sites/default/files/ip-australia-indigenous-knowledge-work-plan-2020-2021.pdf>.

⁴¹ IP Australia, "Indigenous Knowledge" (IP Australia, 2021), https://www.ipaustralia.gov.au/sites/default/files/ik_consultation_2021.pdf.

Convention. When state or territorial legislation falls short of protecting cultural heritage, the Australian Government is frequently seen as stepping in to fill the gap.⁴² Several state and territory laws forbid the destruction of cultural heritage, such as the Aboriginal Heritage Act of 2006 in Victoria, while other laws impose a "duty" to refrain from doing so, such as the Aboriginal Cultural Heritage Act of 2003 in Queensland. In Queensland, creating a cultural heritage management plan could help satisfy this obligation,⁴³ land users in Queensland are required to exercise a duty of care and take all reasonable and practical measures to ensure their activities do not damage Aboriginal or Torres Strait Islander cultural heritage.⁴⁴

The EPBC Act offers a development assessment regime that focuses on significant impacts on Matters of National Environmental Significance,⁴⁵ including World Heritage sites and Commonwealth and national heritage places. Federal cultural heritage law operates in addition to state and territory law. In addition to state and territorial approval, significant impacts on heritage at any of these locations are necessary. A federal-state assessment process that has been mutually agreed upon may be used for big projects to conduct a single impact assessment procedure.⁴⁶

A World Heritage site's cultural heritage values are likely to be significantly impacted by action if it restricts or prevents the site from being used for cultural or ceremonial purposes, removes, damages, or significantly disturbs cultural artifacts or ceremonial objects, or permanently defaces or obscures rock art or other cultural or ceremonial features. Similar to this, action is likely to significantly affect the cultural heritage values of a National Heritage place if it restricts or inhibits continued use of the site as

⁴² Shearing, S, "Reforming Australia's National Heritage Law Framework," *Macquarie Journal of International and Comparative Environmental Law* 8 (2012): 71.

⁴³ Queenslanders Government, "Cultural Heritage Duty of Care" (Queenslanders Government, 2022), <https://www.qld.gov.au/firstnations/environment-land-use-native-title/cultural-heritage/cultural-heritage-duty-of-care>.

⁴⁴ Rachele Wilson and Tristan Pearce, "Management Challenges for Aboriginal Cultural Heritage in Peri-Urban Queensland," *Australian Geographer* 48, no. 2 (April 3, 2017): 203–17, <https://doi.org/10.1080/00049182.2016.1254006>.

⁴⁵ Gumley, W, "Calls for New Matters of National Environmental Significance," *National Environmental Law Review* 1 (2005): 43–49.

⁴⁶ Matthew Storey, "The Right to Enjoy Cultural Heritage and Australian Indigenous Cultural Heritage Legislation," *Nordic Journal of Human Rights* 41, no. 1 (January 2, 2023): 49–69, <https://doi.org/10.1080/18918131.2022.2150410>.

a cultural or ceremonial site, permanently reduces the place's cultural significance for the community or group to which its National Heritage values relate, or destroys or damages cultural or ceremonial artifacts, features, or objects.

The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act) creates a system whereby Aboriginal and Torres Strait Islander people can request protection of places, things, or categories of things that are particularly important to them from threats of harm or degradation from the Minister of Environment.⁴⁷ Section 22 of the ATSIHP Act defines a ministerial declaration violation as a crime. Under the ATSIHP Act, there are many declarations kinds, from emergency declarations to longer-term protections. Ministerial declarations may be revoked by the Federal Court based on judicial scrutiny. including emergency declarations and long-term protection. The minister's statement may be revoked by the Federal Court based on judicial oversight. The ATSIHP Act provides for the protection of Aboriginal and Torres Strait Islander heritage, including places, objects, and cultural practices.⁴⁸ The Act also recognizes the right of Aboriginal and Torres Strait Islander peoples to manage and protect their cultural heritage.

Sections 9 and 10 of the ATSIHP Act provide for verbal or written requests for the protection of cultural heritage.⁴⁹ A case must explain the location's importance in terms of cultural heritage and why it needs to be protected in the face of dangers. The minister may need 1-2 months to process a declaration for a 30-day emergency, whereas it might take 6-9 months for a longer-term proclamation. The state and territory governments must be consulted before the minister can declare whether the region is effectively protected by their legislation.

4.3. New Zealand

⁴⁷ Wooden, T, "The'1954 Hague Convention': Aboriginal and Torres Strait Islander Sacred Sites as Cultural Property," *Australian Year Book of International Law* 34 (2016): 127-48.

⁴⁸ Tina Douglas, "But That's Our Traditional Knowledge!-Australia's Cultural Heritage Laws and ICIP," *Art + Law* 1 (2013): 5-11.

⁴⁹ Water and the Environment Department of Agriculture, "The Aboriginal and Torres Strait Islander Heritage Protection Act 1984: General Guide" (Water and the Environment Department of Agriculture, 2021), <https://www.agriculture.gov.au/sites/default/files/documents/atsihp-act-general-guide.pdf>; Smith, K, "AGL Accused of Releasing Wastewater into Sydney's Sewerage System," AGL accused of releasing wastewater into Sydney's sewerage system, March 4, 2016, 6, <https://www.greenleft.org.au/content/agl-accused-releasing-wastewater-sydneys-sewerage-system>.

The administration of the Protected Objects Act 1975 (NZ) in New Zealand is under the purview of the Manatū Taonga Ministry for Culture & Heritage.⁵⁰ The Act outlines nine distinct categories of protected objects in New Zealand, which include archaeological objects, art objects, social history objects, and Nga taonga tūturu (objects that pertain to Māori culture and are over 50 years old). The Act governs the export, illegal import or export, and foreign objects of these items, as well as the sale, trade, or ownership of *taonga tūturu*.⁵¹ The International Institutes for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects and the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property 1970 were ratified by New Zealand in 2007. These conventions serve to enhance the global safeguarding of New Zealand's cultural heritage artifacts.

A trademark that the Commissioner believes has the potential to insult a sizable segment of the community, including the Māori people, may not be registered, according to Section 17(1)(c) of the Trade Marks Act.⁵² Additionally, Sections 177-178 require the Commissioner to create a Māori Advisory Committee, whose job it is to advise on whether a proposed trademark that is based on a Māori sign, including text and imagery, is likely to offend the Māori community. Any invention that is found to be "contrary to public order or morality" is ineligible for patent protection, according to Section 15 of the Patents Act of 2013.⁵³ The Māori Advisory Committee may be consulted by the Commissioner for advice when reaching this decision.

The Act's Sections 225-228 require the creation of a Māori Advisory Committee, whose members are knowledgeable in Tikanga Māori (Māori procedure) and Mātauranga

⁵⁰ Ministry for Culture and Heritage New Zealand, "Protected Objects Act 1975," Pub. L. No. 1975 No 41, Public Act 1975 No 41 (2021), <https://www.legislation.govt.nz/act/public/1975/0041/latest/DLM432116.html>.

⁵¹ Manatū Taonga Ministry for Culture & Heritage, "Protected Objects," Pub. L. No. Legislative Act 1975, Legislative Act 1975 (n.d.), <https://mch.govt.nz/nz-identity-heritage/protected-objects>.

⁵² Employment Ministry of Business and Innovation New Zealand, "Trade Marks Act 2002," Pub. L. No. 2002 No 49, Public Act 2002 No 49 (2002), <https://legislation.govt.nz/act/public/2002/0049/57.0/whole.html#DLM165216>.

⁵³ Ministry of Business, Innovation, and Employment, "Patents Act 2013," Pub. L. No. Public Act 2013 No. 68, 2013 No. 68 (2013), <https://www.legislation.govt.nz/act/public/2013/0068/latest/whole.html>.

Maori (Māori traditional knowledge). The Committee's job is to advise the Commissioner on whether an innovation claimed in a patent application is derived from indigenous plants or animals or Māori traditional knowledge.⁵⁴ The Committee must also evaluate whether the commercial exploitation of the innovation is likely to be incompatible with Maori values if such a derivation is proven.⁵⁵

In Indonesia, in 1985, a legal dispute arose involving Desak Nyoman Suarti, a silver entrepreneur operating in Ubud Village. Suarti specialized in the production of woven motifs, including Mats, Bedegeng, Kelakat, and Kelabang Mantra. The plaintiff in this case was Rois Hill, a Marika-based businessman who filed a lawsuit against Suarti in an American court, alleging that she had infringed upon his proprietary motifs.⁵⁶ According to data collected between January and July of 2008, the revenue generated by the silver craft industry amounted to only \$3,810.23 in US dollars. In the same period in 2015, the revenue had decreased significantly, reaching only \$90.13 in US dollars. This decrease in revenue might be ascribed to the disappearance of certain classic Balinese motifs, such as Parta Ulanda, Jawan, Kuping Guling, Batuh Poh, and Batu Timun, which are regarded as folkloric artworks. The revenue of the sector has suffered because of the loss of these motifs. The loss of traditional motifs and ornaments such as 800 traditional Balinese silver motifs patented by foreigners has hurt the sector's income in Indonesia. The disappearance of the "Jepara Harisson & Gill Carvings: A Piece of History" catalog is another example of intellectual property theft.. A foreigner, Christopher Harisson, has claimed ownership of the carving motif, a Jepara original, and is preventing other parties from exploiting it in the furniture sector. According to Harisson, such works are in the public domain.⁵⁷

⁵⁴ Flavell, W., "E Toru Ngā Reo: A Case Study of a Spanish Language Programme in a Kura Kaupapa Māori" (University of Waikato, 2012), <https://researchcommons.waikato.ac.nz/items/9be9a827-7ffd-4e22-bae1-9c4dc06af099>.

⁵⁵ Katharina Ruckstuhl et al., "Recognising and Valuing Māori Innovation in the High-Tech Sector: A Capacity Approach," *Journal of the Royal Society of New Zealand* 49, no. sup1 (November 29, 2019): 72–88, <https://doi.org/10.1080/03036758.2019.1668814>.

⁵⁶ Simona Bustani, "Transplantasi Hukum Modern Terhadap Budaya Hukum Komunitas Pengrajin Dalam Melindungi Desain Tradisional Kerajinan Perak Celuk Di Kabupaten Gianyar Bali," *Jurnal Penelitian Dan Karya Ilmiah Lembaga Penelitian Universitas Trisakti* 1, no. 1 (2016): 9–31.

⁵⁷ Anis Mashdurohatun, Ariy Khaerudin, and Teguh Prasetyo, "Intellectual Property Protection of Indigenous Peoples in Indonesia: Quo Vadis?," *Sociological Jurisprudence Journal* 3, no. 1 (May 27, 2020): 1–7, <https://doi.org/10.22225/scj.3.1.1268.1-7>.

5. The Solution to the Problem of Developing and Protecting Traditional Cultural Expressions in The Digital Era in Indonesia Viewed from Other Countries

One of the nations with intellectual property based on local knowledge is the archipelago of Indonesia. The exceptional TCEs that represent the tribal knowledge have a great impact on advancing the culture of the nation. According to a study by Rafianti, Ramli, and Permata, traditional artists are starting to use technology to display the beauty of Indonesia's TCEs on various digital platforms. Puppet shows, regional dances and music, and other traditional works can all be performed outside of live performances in the age of Industry 4.0. These pieces of art can be produced, captured on camera, and shared online, promoting the creative sector and preserving TCEs.⁵⁸

According to Dewi Sulistianingsih, protecting intellectual property based on conventional wisdom can be accomplished by advancing science and technology, which benefits the larger community economically. To strengthen the understanding of Indonesia's intellectual property based on tribal wisdom, local innovation must also be encouraged.⁵⁹ Tzen Wong and Claudia Fernandina explained that to maintain the cultural, economic, and social development of tribal peoples and communities, public associations, and non-profit organizations.⁶⁰ In the opinion of Yulia and Zainol, the preservation of TCEs is of the utmost importance in the process of nation-building, as it acts as a reflection of national identity and cultural heritage and provides a collective opportunity to expose TCEs to the global community.⁶¹

⁵⁸ Laina Rafianti, Ahmad M. Ramli, and Rika Ratna Permata, "Promoting Traditional Cultural Expressions via YouTube," *Jurnal Dinamika Hukum* 19, no. 1 (January 7, 2019): 19, <https://doi.org/10.20884/1.jdh.2019.19.1.2419>.

⁵⁹ Dewi Sulistianingsih et al., "Strengthening Intellectual Property Development Based on Local Wisdom in Indonesia," in *Proceedings of the 4th International Conference on Indonesian Legal Studies, ICILS 2021, June 8-9 2021, Semarang, Indonesia* (Proceedings of the 4th International Conference on Indonesian Legal Studies, ICILS 2021, June 8-9 2021, Semarang, Indonesia, Semarang, Indonesia: EAI, 2022), <https://doi.org/10.4108/eai.8-6-2021.2314363>.

⁶⁰ Tzen Wong and Claudia Fernandini, "Traditional Cultural Expressions: Preservation and Innovation," in *Intellectual Property and Human Development*, ed. Tzen Wong and Graham Dutfield, 1st ed. (Cambridge University Press, 2010), 179, <https://doi.org/10.1017/CBO9780511761027.008>.

⁶¹ Atsar, "Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta" see also; Novendri

Regrettably, the Intellectual Property Rights (“IPR”) framework outlined in the Copyright Law does not align with the communal nature of TCEs, which is passed down from one generation to the next. Consequently, the preservation and safeguarding of TCEs necessitates the development of a concept that corresponds to its existence, which can be achieved through the collection of data in digital libraries.⁶² Tribal communities possess a significant capacity for producing works of art that are steeped in traditional cultural practices and are primarily intended for ritualistic purposes.⁶³ These works of traditional cultural expression have gained considerable economic value over time, necessitating the implementation of robust protective measures to prevent legal infringements by external entities that could impede economic growth.⁶⁴ The proliferation of technology and information in contemporary times has facilitated the widespread dissemination and emulation of traditional cultural expressions, thereby exacerbating the need for effective safeguards.⁶⁵ Intellectual property (IP) protection can play an important role in this regard. Intellectual property protection can enable communities and their members to commercialize their tradition-based creations, should they wish to do so, and/or to exclude free competitors.⁶⁶ It can also help in certifying the origin of arts and crafts (through trademark certification) or by combating counterfeit products deemed 'genuine' (through unfair competition law).

The economic potential created by traditional cultural expressions (TCEs) in the region is anticipated to produce long-term profitability given the growing significance of intellectual property rights (IPR) in the future. However, there is a need for improvement in the creation of performance spaces for TCEs to express and

Mohamad Nggilu, Lisnawaty Wadju Badu, and Suwitno Yutye Imran, “Legal Protection Bonda And Bulango Language : In Reality And Prospect,” *Jambura Law Review* 3, no. 1 (November 4, 2020): 19–36, <https://doi.org/10.33756/jlr.v3i1.6947>.

⁶² Yulia Yulia, Ashiqin Zinatul, and Jumadiah Jumadiah, “The Preservation of Traditional Cultural Expression in Aceh and Malaysia,” *International Journal of Science and Research* 8, no. 11 (2019): 484–88.

⁶³ Jonathan Friedman, “Tribes, States, and Transformations,” in Maurice Bloch, *Marxist Analyses and Social Anthropology* (London: Routledge, 2004), 161–202.

⁶⁴ Richard T. Rapp, “Benefits and Costs of Intellectual Property Protection in Developing Countries,” *Journal of World Trade* 24, no. Issue 5 (October 1, 1990): 75, <https://doi.org/10.54648/TRAD1990033>.

⁶⁵ Mahmuda Pancawisma Febriharini, “Eksistensi Hak Atas Kekayaan Intelektual Terhadap Hukum Siber,” *Serat Acitya* 5, no. 1 (2016): 15.

⁶⁶ Carlos M Correa, “Traditional Knowledge and Intellectual Property: Issues and Options Surrounding the Protection of Traditional Knowledge,” *Geneva: The Quaker United Nations Office (QUNO)* 17 (2001).

materialize.⁶⁷

The performance infrastructure and facilities are still insufficient to enable the deployment of community TCEs actualization in places with large existing TCEs wealth, leading to restricted recognition by other countries. Government-imposed inventory and record-keeping requirements can be a significant area of weakness. Because it largely focuses on individual ownership of creations and does not govern collectively held traditional rights by a community, Indonesia's copyright law is not comprehensive in providing protection and appropriate usage for regional communities.⁶⁸ Therefore, strengthening the capacity of communities to manage and enforce their rights, as well as providing government services and legal assistance, is critical for effective TCE protection. Extensive awareness-raising and training programs are needed to ensure that communities and people benefit from laws designed to protect their TCEs. Establishing appropriate legal aid and institutions to help communities manage and enforce their rights is essential for e-TCE. Implementing sui generis systems and non-IP options,⁶⁹ such as trade practices and labeling laws, use of contracts, customary and indigenous laws and protocols, cultural heritage preservation laws and programmes, and ordinary remedies, can provide additional protection for TCEs.

Moreover, a prevalent issue concerning TCEs is the lack of understanding among the local population regarding legal protection and the nature of TCEs. The local populace only understands situations where a work of production is widely acknowledged, encounters piracy, or is claimed by an outsider, leading them to believe that the copyrighted work they produced is valuable. As a result, anybody can study and use the material for their goals, including foreign parties or other countries. This difficulty is a typical one for Indonesian cultural growth, which frequently leads to recognition of Indonesian culture by other nations. The Intergovernmental Committee on

⁶⁷ Carolyn Renée Pautz, "Afro-Cuban Folkloric Dance in the Age of Intellectual Property," *International Journal of Cultural Property* 25, no. 2 (May 2018): 179–201, <https://doi.org/10.1017/S0940739118000115>.

⁶⁸ Yulia Yulia, Ashiqin Zinatul, and Jumadiah Jumadiah, "The Preservation of Traditional Cultural Expression in Aceh and Malaysia."

⁶⁹ Appukuttan Damodaran, "Traditional Knowledge, Intellectual Property Rights and Biodiversity Conservation: Critical Issues and Key Challenges," *Journal of Intellectual Property Rights* 13 (September 2008): 509–13.

Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (WIPO IC-GRTKF) of the World Intellectual Property Organization believes that several Indonesian traditional works, such as traditional specialties and traditional architectural art, should be protected as folklore.⁷⁰

The repercussions of policy mechanisms that are ineffective in safeguarding the intellectual property of traditional communities have led to the exploitation of their assets by external entities. The recurrent exploitation of Tribal groups' intellectual property by external parties can be attributed to the insufficiency of legal safeguards in place.⁷¹

Traditional knowledge, expressions, and cultural manifestations can be protected through the legal system in the same way as intellectual property rights are, especially if they have been kept in their original form by individuals. In addition to recognizing an individual's originality, the goal of the intellectual property protection system is to: (1) hasten the dissemination of knowledge about the pertinent creativity (outcome); (2) encourage further development and exploration of the pertinent concepts; (3) prevent the emergence of comparable creativity (outcome); and (4) strengthen the pertinent ingenuity (outcome).⁷² Society must uphold and comprehend the system of intellectual property protection, despite the initial clash between the legal culture of Indonesian society and intellectual property rights.⁷³ The idea of "protection" refers to taking action to stop people from using electronic benefits transfers improperly and without authorization. There are several reasons, it is crucial to preserve TCEs as a part of traditional knowledge. These include the possible financial benefits of utilizing traditional knowledge as it can be monetized through various means, such as licensing, royalties, and sales of traditional products. This can provide economic opportunities

⁷⁰ Reh Bungana Perangin-angin, "Perlindungan Ekspresi Budaya Tradisional Di Indonesia" (Seminar Nasional Tahunan Fakultas Ilmu Sosial Universitas Negeri Medan, Medan: Universitas Negeri Medan, 2017).

⁷¹ Kholis Roisah, "Legal Politics Of Protection Of Indonesian Traditional Cultural Expressions/Folklore," *Diponegoro Law Review* 2, no. 1 (April 28, 2017): 185, <https://doi.org/10.14710/dilrev.2.1.2017.185-202>.

⁷² Endang Purwaningsih, *Hak kekayaan intelektual (HKI) dan lisensi*, Cetakan ke-I (Bandung: Mandar Maju, 2012).

⁷³ Sulistianingsih et al., "Strengthening Intellectual Property Development Based on Local Wisdom in Indonesia."

for local communities and contribute to their overall development, achieving justice within the framework of international trade as it allows local communities to benefit from their cultural expressions. This can prevent the exploitation of traditional knowledge by external entities, and ensure that the benefits of cultural expressions are shared equitably., and the duty to uphold the rights of local people for recognizing their cultural heritage and the value they place on their traditional practices. This can help maintain cultural diversity promote respect for the rights of indigenous and local communities., and support educational and research objectives.⁷⁴ TCE can be a valuable resource for educational and research purposes, providing insights into traditional practices, beliefs, and values. It can contribute to a better understanding of human history and culture.

Traditional cultural expressions, such as the Kecak Dance in Bali, the Jember Carnival in East Java, and the Tingkeban Ceremony in Central Java, have become important drivers of economic development in recent years. To support the expansion of the tourism industry in rural areas, collective intellectual property rights (IPRs) that are based on a knowledge-based economy must include intellectual property that is based on regional cultural expressions.⁷⁵

Developing countries have shown more support for international rights to traditional knowledge than developed countries have. Developing nations have concurrently voiced disapproval of how intellectual property rights affect social issues like the accessibility of healthcare and educational resources. However, developing countries are debating whether intellectual property rights have an impact on social issues such as access to healthcare and educational resources due to their concerns about the negative effects of globalization and the importance of strong intellectual property rights.⁷⁶

In contemporary times, there has been a persistent prevalence of instances of

⁷⁴ Agus R. Sarjono, *Hak kekayaan intelektual dan pengetahuan tradisional*, Ed. 2., cet. 1 (Bandung: Alumni, 2010).

⁷⁵ Slamet Yuswanto, "Analisis Pengembangan Usaha Berbasis Kekayaan Intelektual," *Lingkar Widyaiswara* 4 (2017): 8–24.

⁷⁶ J Janewa OseiTutu, "A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law," *Marq. Intell. Prop. L. Rev* 15 (2011): 147.

infringement upon regional cultures.⁷⁷ The World Intellectual Property Organization (WIPO) is an entity that is concerned with the protection of intellectual property.

In light of the aforementioned challenges, it is imperative to implement defensive measures through the conduct of data collection and inventory initiatives. In conjunction with the inventory process, it is crucial to be cognizant of several salient factors, namely;⁷⁸ The preservation of Tribal peoples' rights is a crucial objective that inventories should strive to achieve. This can be accomplished by preventing the theft of their collectively owned intellectual property (KIK) and refraining from sharing any profits derived from it. Additionally, inventories should be designed to facilitate the acquisition of information about the utilization of KIK by relevant parties. Inventory systems must be safeguarded against careless access, as this can result in the exploitation of KIK by third parties, which can be detrimental to the community. It is essential to communicate to Tribal peoples that the documentation of KIK is solely for inventory purposes.

With the implementation of Law No. 5 of 2017, which relates to the Promotion of Culture, the protection of traditional cultural manifestations should improve. Article 1 Point 3⁷⁹ on Promoting Culture aims to increase Indonesian culture's contribution to world civilization by maintaining, advancing, putting to use, and guiding cultural activities. Additionally, it acts as a tool for safeguarding the textual and contextual cultural treasures unique to each geographical area and emphasizing the key aspects of local culture.⁸⁰ Nevertheless, it is ironic that the optimal implementation of the aforementioned has not been achieved uniformly across all regions.

The Ministry of Law and Human Rights ("Ditjen KI") is in charge of building a particular forum for Indonesian communal intellectual property works,⁸¹ supplying data

⁷⁷ Simona Bustani, "Urgensi Pengaturan Ekspresi Budaya (Folklore) Masyarakat Adat."

⁷⁸ Slamet Yuswanto, "Analisis Pengembangan Usaha Berbasis Kekayaan Intelektual."

⁷⁹ See "Law No. 5 of 2017, article 1 Point 3 which said "Cultural Advancement is an effort to improve cultural resilience and contribution to Indonesian culture in the midst of world civilization through Protection, Development, Utilization and Coaching Culture.

⁸⁰ Amalia Resti Faozi, "Perlindungan Hukum Terhadap Karya Cipta Ekspresi Budaya Tradisional Di Bidang Seni Tari" (Universitas Muhammadiyah Surakarta, 2018).

⁸¹ Sonny Sudiar, "Kajian Pembentukan Taman Budaya Terpadu Kabupaten Mahakam Ulu," Laporan Penelitian Kerjasama (Mahakam Ulu: Unit Layanan Strategis Stakeholder Center (ULS2C) Universitas Mulawarman dengan Pemerintah Kabupaten mahakam Ulu, 2022),

information systems, and publishing inventory data on the Ditjen KI's internet platform. It is noteworthy that municipal governments, the Creative Economy Agency, the Ministry of Tourism, and tribal groups are not subject to this obligation. To achieve the best possible protection of TCEs, it is crucial to consult all pertinent stakeholders. A profit-sharing system is also required to boost local income and support the growth of the national economy. TCEs are legally protected through intellectual property, but numerous steps can be taken to increase public knowledge and awareness of the value of preserving and protecting TCEs. These steps include encouraging communities to uphold their customary laws and local wisdom, enhancing the protection of communal intellectual property databases, and taking part in communal intellectual property registration.

Drawing on the preceding resource, the safeguarding of traditional cultural expressions (TCEs) in promoting regional tourism necessitates a multifaceted approach that extends beyond intellectual property rights (IPR) and legal measures. Specifically, this approach should encompass non-IPR and non-legal strategies, including the following: 1) Developing an appealing website accessible to a broad audience to showcase TCE works and introduce them to the global community, 2) Educating legal practitioners to avoid infringing on TCE protection and establishing a specialized task force to combat communal IPR theft. This task force should comprise an advocacy team for Tribal peoples and a regulatory institution that oversees the benefit-sharing mechanism for foreign parties' utilization of TCEs. It should also have the authority to impose legal sanctions on groups that engage in the theft of traditional cultural expressions, 3) Additionally, the collaboration of efforts among the Central Government, local governments, and autonomous agencies, such as the Creative Economy Agency, the Ministry of Tourism, and Tribal peoples' organizations, is necessary for the optimization of TCE preservation. The goal of this collaboration should be to improve teamwork in the identification and recording of Tribal members who own collective intellectual property.

Also, Numerous potential answers have been put out to deal with these problems.

https://repository.unmul.ac.id/bitstream/handle/123456789/45571/Laporan%20Akhir_Kajian%20Taman%20Budaya%20Terpadu.pdf?sequence=1.

Participating communities and those who hold traditional knowledge in the process of discovering and cataloging traditional knowledge and cultural expressions is one strategy. This can make sure that ownership is correctly established and that knowledge and expressions are accurately recorded. Educating IP experts and politicians about the cultural importance and worth of traditional knowledge and cultural expressions is another strategy. This can make it more likely that these interested parties will understand why such knowledge and expressions need to be protected. Lastly, it could be required to use tools like benefit-sharing agreements to strike a balance between the interests of various stakeholders. These agreements can help ensure that communities and those who hold traditional knowledge receive an equitable share of the advantages associated with the utilization of their knowledge and creative expressions.

6. Conclusion

Drawing upon the findings of the aforementioned study, the present researchers wish to assert the outcomes of their investigation. It has been observed that the communal intellectual property of tribal peoples, referred to as TCEs, lacks adequate legal protection. A specific anti-theft task force and the creation of specialized regulations or legislation are urgently required to protect the interests of tribal peoples in the digital age. To govern the method of access profit sharing from use by foreign parties, such steps should include the creation of an advocate team for tribal peoples and specialized institutions. Additionally, for TCEs to be optimized, central, local, and autonomous government agencies as well as tribal peoples' organizations and the Creative Economy Agency must coordinate their efforts to better cooperate in identifying and documenting tribal peoples who own collective intellectual property.

Therefore, it is crucial to improve the regional economy's optimization by utilizing the potential of local tourism and TCEs of tribal peoples. This can be accomplished through working with the film business, building a website to promote digitization, and undertaking other similar projects. To effectively monitor Tribal peoples' TCEs in the context of their territories, it is also required to construct a unique organization that acts as a regional representative. This organization should be situated in a strategically important province. Furthermore, as the current parent law does not go into enough

detail, a separate rule or law about the TCEs of Tribal peoples is necessary. Therefore, a more precise law is urgently required to protect tribal peoples' TCEs.

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Has Indonesia Safeguarded Traditional Cultural Expressions?

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Has Indonesia Safeguarded Traditional Cultural Expressions?

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Abstract

The Government of the Republic of Indonesia recognized the importance of intellectual property in folklore since the 1982 Copyright Law was enacted (Article 10 of Law No. 6/1982). The study seeks to understand what obstacles Indonesia faces in protecting tribal peoples' communal rights over traditional cultural expressions, also called expressions of folklore in the digital age, and how other nations are resolving them. What is Indonesia's plan for developing and safeguarding traditional cultural manifestations in the digital age, as seen from other nations? The study employs a case-based, narrative legal research methodology. The findings show an urgent need for specific institutions that control access benefit sharing from usage by foreign parties, as well as a special anti-theft task force for communal intellectual property rights in the digital era that takes the form of a support organization for tribal peoples. To increase cooperation in the inventing and documentation of Tribal peoples who own collective intellectual property, optimization also calls for coordination of involvement between the federal government, local governments, and autonomous bodies operating under them, such as the Ministry of Tourism, the Creative Economy Agency, and Tribal peoples' organizations.

1. Introduction

The cultural variety, ethnic diversity, linguistic diversity, and religious diversity of Indonesia as an archipelago must also be maintained.¹ A cultural production is anything produced by people that broadens the range of human emotions and ideas.² Traditional cultural works can take many different forms, but they do not contain machines or technology. The history and civilization of humanity have maintained the priceless heritage of artistic creations that enhance taste. Given that the digital era is the primary issue that leads to theft and claim of traditional cultural expression ("TCEs") by other countries in this age of modern technology, the common difficulty is how to ensure that Tribal cultural expressions continue to exist and remain protected.

In Indonesia the value of the intellectual property of folklore has been acknowledged since the Copyright Law³ went into effect in 1982. Article 10 of Law No. 6/1982 states that in protecting the framework of the people's cultural products, the Government can prevent monopolies and copyrights on works of historical, prehistoric, paleo and other heritage. In many copyright laws, including in Indonesia, the state often owns the copyright to cultural assets such as prehistoric legacy, historical works, cultural objects, folklore, and folk culture commodities. This ownership serves to restrict outsiders from using them without proper authorization or permission. Because TCEs will affect the owners' identities if they go extinct, it is crucial to preserve and conserve them. The qualities of TCEs, which include the values of traditional cultural manifestations that need to be kept and safeguarded, must therefore be grasped to be able to understand it, namely:⁴

- a. Transmission and inheritance are typically done orally;

¹ Gugen El Gyanie and Aji Baskoro, "The Constitutional Rights of Indigenous Beliefs Adherents in Minority High Perspective," *Ushad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (December 29, 2021): 155-76, <https://doi.org/10.18328/ujshad.v21i2.155-176>.

² Intan Neka Cahyana and Ahmad Sahrin, "Optimizing The Protection of Cultural Expressions of Indigenous Peoples in Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 17, no. 2 (July 31, 2023): 209, <https://doi.org/10.30641/kebijakan.2023.V17.209-220>.

³ Christoph Antons, ed., *Tradition of Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region*, Max Planck Series on Asian Intellectual Property Law, v. 14 (Alphen aan den Rijn: Frederick, MD: Kluwer Law International; Aspen Publishers [distributor for North, Central, and South America], 2009).

⁴ Simena Bustani, "Urgensi Pengaturan Beperti Budaya (Folklore) Masyarakat Adat," *Jurnal Hukum PRIORITY*, 2, no. 4 (2010): 246-55.

- b. Folklore is transmitted among collectivities in this case in a fixed form over a minimum period of two generations;
- c. It is anonymous, in which case the name of the creator is no longer known to others;
- d. It is typically patterned and spontaneous, in this case for example the use of clichés; and
- e. It serves a sacred purpose in the communal life of the community, such as special dances for traditional ceremonies.
- f. It is pre-logical (has a way of thinking that doesn't adhere to logic in general);
- g. The ownership of it is transferred to the public domain.

TCEs are one of the intriguing and rapidly expanding fields in the preservation of conventional intellectual property. The United Nations ("UN") uses the term TCEs, especially in the Declaration on the Rights of Tribal Peoples. The World Intellectual Property Organization ("WIPO") also employs this phrase in several international fora.⁵ WIPO outlines criteria such as distinctive uniqueness, tribal peoples or local communities, and cultural communities or nations where these forms of expression live and grow among people representing their cultural, social identity, or heritage that should be maintained in its draft agreement on the protection of TCEs or expressions of folklore.

TCEs is the name given to intellectual property that raises certain questions about cultural norms that are still developing in contemporary cultures all around the world. Additionally, it helps to express local culture and fosters a sense of community. The idea also offers significant financial benefits to support tribal peoples' way of life. TCEs for Indonesia's cultural history can be found in many facets of communal life, including signs, names, and symbols; vocal expressions such as fairy tales, legends, and myths; poetry; riddles; tales; words (like Sumatran Rhymes and Javanese Parikan); and poetry. It also encompasses more concrete expressions such as art supplies, social status, crafts (made of wood, metal, linen, stone, jewelry, and needlework), traditional home architecture, and places of worship such as mosques, temples, and churches.

⁵ World Intellectual Property Organization, *Intellectual Property and Traditional Cultural Expressions/Folklore* (Geneva, Switzerland: World Intellectual Property Organization, 2009).

Along with noises and musical instruments, it also features rhythms, songs, and instrumental music.⁶

TCEs are governed in Indonesia under Law Number 28 of 2014 on Copyright ("UUHC"), which repeals Law Number 19 of 2002's restrictions. According to Article 38 of the 2014 UUHC, TCEs include:

- a. written and spoken language, prose, and poetry, covering a variety of subjects and conveying significant ideas that can be presented as traditional or literary narratives;
- b. vocal, instrumental, or a mix of the two types of music;
- c. dance-based movement;
- d. theater, including both classic theater and puppet acts;
- e. fine arts, created in two and three dimensions using a variety of shapes and mediums, including metal, ceramics, and bamboo;
- f. traditional ceremonies.

TCEs are protected in Indonesia by several provisions in various laws and regulations already in place. But as of late 2014, there was some optimism for TCE protection thanks to the copyright law of Indonesia. The following is stated in Article 38 of the UUHC: (1) The state owns the copyright over TCEs; (2) The state is required to keep track of, safeguard, and handle TCEs as mentioned in paragraph one; (3) The use of TCEs as mentioned in paragraph one must take into account the values embraced by the developer community; and (4) Government regulations govern additional provisions regarding the copyright owned by the state over TCEs as mentioned in paragraph one.

In the digital age, several facets of Indonesian culture have been claimed to belong to other nations. Reog Ponorogo Dance and Kuda Lumping Dance, both from East Java, are two of them. The Reog Ponorogo Dance lawsuit began in November 2007 when the dance was included in the Visit Malaysia 2007 tourism campaign. This lawsuit started

⁶ Prasetyu Hadi Prawandoko, Adi Sulitijono, and M. Hawin, "The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright," *Indonesian Journal of International Law* 10, no. 4 (July 31, 2021): 543, <https://doi.org/10.17304/ijil.vol10.4.823>.

because a Malaysian tourism advertisement featured the Barongan Dance, a dance that is similar to the Reog Ponorogo but was probably brought to Malaysia by immigrants from Indonesia. The people of Ponorogo viewed this as identity theft because the advertisement did not mention the origin of the dance, and the words 'Reog Ponorogo' on the Singa Barong mask were replaced with the words 'Malaysia'.⁷ The writing "Reog Ponorogo," a necessary component of the Dadak Merak mask, was not present during the campaign. The 2004 Basic Guidelines for Reog Ponorogo Art in Cultural Performances are categorically violated by this. The term "Malaysia" was substituted for "Reog Ponorogo" by the Malaysian side. The dance should always be performed with the words "Reog Ponorogo" present.⁸ Additionally, there are still numerous instances of theft by foreign parties, like as the Malaysian government's theft of ancient manuscripts from Riau.⁹

On the other side, a Malaysian competitor in the Miss Grand International competition in 2017 adopted *Kuda Lumping* as a symbol of her Javanese culture, which they referred to as *Kuda Kepang*.¹⁰ The traditional Indonesian dishes Lumpia Semarang, Rendang, and Cendol are traditional Indonesian foods that have been promised by foreign nationals in several cases. This is an example of art and culture theft that is still occurring, which can damage Indonesia economically and socially. Theft of art and culture can disrupt traditional values and reduce their richness. As a result, sui generis national laws must be used to protect TCEs through the legal system. The legal preservation of traditional knowledge can, among other things, result in increasing use of such knowledge, which is a major driver for higher regional tourism earnings and an

⁷ Birus, "Identitas Nasional Di Tengah Kondisi Pengkaltan Budaya Asli Indonesia Oleh Negara Asing," Birus, 2020, <https://birus.ac.id/Character-Building/2020/05/identitas-nasional-ditengah-kondisi-pengkaltan-budaya-asli-indonesia-oleh-negara-asing-2/>.

⁸ Lisa Clara Mapion, "Kesenian, Identitas, Dan Hak Cipta Kasus 'Pencurian Reog Ponorogo'" (Malang, Universitas Muhammadiyah Malang, 2010).

⁹ Detik News, "Naskah Kuno Melayu Indonesia Diboyong Ke Malaysia," Detik News, accessed July 12, 2009, <https://news.detik.com/berita/d-1141485/-naskah-kuno-melayu-indonesia-diboyong-ke-malaysia>.

¹⁰ Puput Triperi Janimar, "Indonesia Kumpulkan Bakti Kuda Lumping Yang Diklaim Malaysia," CNN Indonesia, October 5, 2015, <https://www.cnnindonesia.com/hiburan/20171005084029-241-246243/indonesia-kumpulkan-bakti-kuda-lumping-yang-diklaim-malaysia>.

expanding number of options. Traditional communities also have a stronger feeling of worth and belonging.

TCEs also have a promising economic future, particularly in the tourism industry. Additionally, the nation's foreign exchange revenues are greatly boosted by creative economy industries including weaving, woodcarving, and silversmithing. However, the advancement of information technology may result in several improper uses of TCEs now in use. Up to a global level, diverse commercialization of TCEs takes place together with numerous unsuitable distortions, alterations, or modifications. Examples of misuse of Indonesian TCEs include the claiming of the traditional song *Rasa Sayang* without the permission of the local Maluku people as the original owner and the theft of ancient manuscripts from Southeast Sulawesi that were digitized and sold at a museum in Malaysia.¹¹

The Republic of Indonesia's Ministry of Industry reported that the country's citizens lost 40 trillion rupiahs, and it is predicted that by 2030, this country will have lost up to 100 trillion rupiahs. To create laws that will be appropriately applied, it is essential to take into account the community's values as well as those of the environment, traditions, and people.¹² Therefore, it is imperative to ensure that legalization is protected immediately as a sign of the government's sincerity about preserving the nation's unique regional cultural manifestations to guard against more losses in the future.¹³ The preservation of cultural civilization and the welfare of the entire Indonesian population is stipulated by Article 33 verse 3 of the 1945 Constitution of the Republic of Indonesia ("UUD"), which recognizes the importance of the nation's richness in terms of its natural resources, cultural diversity, and tourism potential.

¹¹ Victor T King, "Identity, Material Culture and Tourism: Of Ritual Cloths and Totem Poles," *South East Asia Research* 25, no. 2 (June 2017): 192-207, <https://doi.org/10.1177/0967828X16664259>.

¹² Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban: Sistem Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro* (Jakarta: UII Press, 2006).

¹³ Abdul Muar, "Perlindungan Hukum Terhadap Pengusahaan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 20 Tahun 2014 Tentang Hak Cipta," *Law Reform* 13, no. 2 (September 28, 2017): 284, <https://doi.org/10.14710/lr.v13i2.16162>.

2. Problem Statement

It is a brief statement, the authors created two questions that urgently need to be examined for the issues shown above. The problems are formulated as follows: want to know what are the challenges in upholding Tribal peoples' community rights over TCEs in the digital era in Indonesia and how other countries deal with that. What is the solution to the problem of developing and protecting traditional cultural expressions in the digital era in Indonesia as viewed from other countries?

3. Methods

The research employs a comparative approach and legal normative methodology because in this study we just compare the regulation between Indonesia and several countries regarding the protection of TCEs in the digital era. It is a legal study that is carried out by going over secondary sources, official papers, such as court rulings on TCEs, books, and research findings in the form of reports/journals, newsletters, and other publications or library materials the main material, such as different laws and regulations related to IPR regulations, especially on tribal peoples' communal rights to traditional cultural expressions as the main data,¹⁴ such as the UUD 1945, Law Number 28 of 2014 concerning Copyright, and Law No. 5 of 2017 concerning the Advancement of Culture. Furthermore, comparative legal research is conducted between TCEs in Indonesia and India, Australia, and New Zealand about TCEs to obtain advantages or advantages as well as similarities and differences as well as the relationship between legal systems, institutions, and protection of TCEs itself in the digital era.

Marzuli defines normative legal research as a legal procedure or as the study of legal theories to address current legal issues. It is known as document research because it frequently uses secondary data and is referred to as doctrinal research since it is restricted to existing legal regulations and legal resources. Consequently, there is no need to conduct a field search for data. The authors of this study will offer recommendations on the scope of TCEs in Indonesia, the issues with defending the collective TCEs rights of Tribal peoples in the digital age, and how to advance and

¹⁴ Soerjono Soekanto and Sri Masudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2015).

safeguard traditional cultural expressions.²⁰

4. The Challenges in Upholding Tribal Peoples' Community Rights Over TCEs in the Digital Era

The advancement of contemporary technology, particularly in the realm of telecommunications, digital economics, and information technology, has the potential to result in various inappropriate uses of extant Traditional Cultural Expressions (TCEs).²¹ TCEs are being commercialized in several ways, even on a worldwide scale, without the owners' permission. This commercialization frequently occurs in tandem with different types of TCE distortion, change, and modification.²² There may also be situations where traditional cultural property is claimed as one's own.

Returning to the idea of traditional knowledge as a belief system in the lives of tribal peoples, it might manifest itself in the form of healing plants and medications, carving art, plant breeding, weaving, and tribal peoples' culture. The state gains exclusive rights to the copyrighted work as the owner of TCEs' copyrights. Publication, replication, translation, modification, arrangement, transformation, distribution, performance, announcement, communication, and leasing are all considered exclusive rights according to the UUHC. According to the WIPO, TCEs are meant to distinguish between an intellectual work derived from a traditional culture that is owned by a traditional community group and a cultural creation that is customary and owned by a traditional community.

A traditional cultural intellectual work can be identified and attributed to a particular community group using this interpretation as a guiding concept. Rights that are produced by the human mind in the form of work and are frequently owned by the community are referred to as communal intellectual property rights. Traditional knowledge, geographical markers, genetic material, and traditional cultural

²⁰ Peter Mahul Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005).

²¹ Mira Burt, "Digital Technologies and Traditional Cultural Expressions: A Positive Look at a Difficult Relationship," *International Journal of Cultural Property* 17, no. 1 (February 2010): 33–63, <https://doi.org/10.1017/S0940739110000032>.

²² Ria Wierma Putri et al., "The Legal Protection Towards Traditional Clothes Intellectual Property Regimes in ASEAN," *Substantive Justice International Journal of Law* 5, no. 1 (June 22, 2022): 49, <https://doi.org/10.56087/substantivejustice.v5i1.165>.

expressions are the four categories under which tribal communal IPR falls.¹⁸ Hence, the authors concluded that communal intellectual property pertains to the conventional intellectual property that is owned by the Tribal communities.¹⁹

Indonesia is characterized by its ethnic and cultural diversity, which has resulted in a vast array of TCEs that are considered a valuable cultural heritage. The preservation of this legacy is imperative to prevent its extinction and to explore its economic benefits. The financial potential of TCEs in Indonesia is particularly evident in the tourism sector and the creative economy. Therefore, it is crucial to actively conserve and examine the TCEs in the country to fully realize its economic potential.²⁰

An international intellectual property framework that inclines towards extended rather than abbreviated protection periods, institutes a greater number of property rights, enforces uniform minimum protection standards across all nations, and restricts the states' autonomy to customize substantive standards by their economic development level, is deemed to be protectionist.²¹ The present situation is analogous to the scenario that transpired during the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), which gave rise to a discourse on the inappropriate exploitation of traditional knowledge. In reaction to this, various global entities, such as the WTO, have deliberated on the interdependence between traditional knowledge and intellectual property. In this instance, the TRIPS Council was directed by the 2001 Doha Ministerial Declaration of the WTO²² this study aims to examine the interrelationship among the Agreement on Trade-Related Aspects of TRIPS, the Convention on Biological Diversity ("CBD"), and the safeguarding of customary knowledge and cultural expressions.

¹⁸ Robiati Adawiyah and Rumiwi, "Pengaturan Hak Kekayaan Intelektual Dalam Masyarakat Komunal Di Indonesia," *Jurnal Ilmiah Hukum Kenotariatan*, Jurnal Ilmiah Hukum Kenotariatan, 10, no. 1 (2021): 1-6, <http://dx.doi.org/10.28946/rpt.v10i1.672>.

¹⁹ Simona Sutarni, "Perlindungan Hak Komunal Masyarakat Adat Dalam Perspektif Kekayaan Intelektual Tradisional Di Era Globalisasi: Kenyataan Dan Harapan," *Jurnal Hukum PRIORIS* 6, no. 3 (2018): 304-25.

²⁰ John Hwkins, *The Creative Economy: How People Make Money from Ideas*, Reprinted with updated material (London: Penguin Books, 2007).

²¹ Justin Hughes, "The Philosophy of Intellectual Property," *Georgetown Law Journal* 77, no. 287 (1998): 287.

²² Tully, L. Danialla, "Prospects for Progress: The TRIPS Agreement and Developing Countries After the DOHA Conference," *Boston College International and Comparative Law Review* 26, no. 1 (2003): 129.

Henceforth, the WIPO exclusively promulgated guidelines for the settlement of Technology Cooperation Service disputes between nations during its 33rd session. In the event of any TCE-related conflicts, subsequent settlement procedures are governed by the respective provisions of each country.²³ There are additional factors that may pose as hindrances, specifically:²⁴ The public's awareness of the importance of registering intellectual property rights remains incomplete, leading to rampant theft of creative products by foreign entities. Additionally, there is a dearth of knowledge regarding Communal Intellectual Property Rights, which can be attributed to the government's failure to disseminate information to the public. Consequently, stakeholders in the creative industry are unable to comprehend the advantages of IPR protection. Furthermore, there is a prevalent misconception that IPR management is a time-consuming and complicated process that incurs exorbitant costs. In practice, bureaucratic procedures often involve illegal levies to expedite the licensing process.

The concept of ownership of anonymous works is governed by the principles of copyright law enshrined in The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention 1967). The protections afforded by the 1967 Berne Convention can be invoked to safeguard cultural creations whose authors remain unidentified, even though it does not explicitly address the protection of TCEs.²⁵ The clause about "anonymous works" in the Bern Convention is a constituent of intellectual property law that can be indirectly extended to TCEs, as per Article 15, paragraph 4. This provision stipulates that: "The signatories of the Bern Convention are required to designate competent authorities with their national laws to protect the interests and rights of published works whose authors are unknown."

The WIPO Performances and Phonograms Treaty (the "WPPT") is a global accord that was signed on December 20, 1996, in Geneva by WIPO members.²⁶ Despite having a

²³ Priscilla Sakul, "Perlindungan Hukum Terhadap Hak Cipta Warisan Budaya Baik Bangsa Indonesia Ditinjau Dari Perspektif Hukum Internasional," *Lex Privatum* 8, no. 3 (2019): 188-204.

²⁴ Ganefi Ganefi, "Sinergitas Industri Kreatif Berbasis Hak Kekayaan Intelektual Dalam Meningkatkan Pariwisata," *Supremasi Hukum: Jurnal Penelitian Hukum* 28, no. 2 (September 16, 2019): 188-204, <https://doi.org/10.33369/jsh.28.2.188-204>.

²⁵ Khaila Rukiah, "Perlindungan Ekspresi Budaya Tradisional Dalam Sistem Hukum Kekayaan Intelektual," *Masalah-Masalah Hukum* 43, no. 3 (2014): 372.

²⁶ Shainblatt, J. S. "The WIPO Copyright Treaty," *Berkeley Technology Law Journal* 13 (1998): 535.

broad objective to create and uphold the protection of the intellectual property of sound recording producers and performers, the WPPT only has a limited amount of information on TCEs. The WPPT does, however, protect TCEs because live performances of traditional dances, poems, plays, songs, music, and various other traditional art forms are common. Therefore, the protection of the performer's right to the performance may also be applied within the context of TCE protection.

The WPPT has a distinct definition of the term "performer" from the 1961 Rome Convention. According to Article 3(a) of the 1961 Rome Convention, actors, singers, musicians, dancers, and others who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works are all deemed performers.¹⁷ While conceding that the works performed cannot be limited to "literary and artistic works" from the present era, the WPPT goes even further in identifying a performer. According to Article 2(a) of the WPPT, performers include individuals who act, sing, deliver, declaim, play in, interpret, or otherwise present literary or artistic works or folkloric manifestations. They also include musicians and dancers.¹⁸ The WPPT also offers protection to traditional artists who perform Traditional Cultural Expressions based on the description of performers mentioned above. Despite the WPPT's scant coverage of TCEs, the treaty's overarching goal of establishing and upholding the protection of performers and sound recording producers' intellectual property rights can be used to help traditional artists who perform TCEs.

Purwandoko, Sulistyono, and Hawin conducted a study that revealed a shift in the perception of traditional works in developing nations. Due to several variables, these works are no longer seen as stand-alone objects but rather as having economic value. Richly resourced nations are starting to use their traditional wisdom to their advantage in international trade. This shows that long-established tribal or traditional civilizations' creative and cultural traditions are today regarded as priceless economic assets. However, under the pretense of a research partnership, cultural information,

¹⁷ Boletsky, L. "Performers' Rights: Solved and Unsolved Problems Part Two," *Tel Aviv University Studies in Law* 12 (1994): 321.

¹⁸ Robin Laker, "The Messages behind the Methods: The Authoritarian Pedagogical Legacy in Western Concert Dance Technique Training and Rehearsals," *Arts Education Policy Review* 106, no. 5 (May 2005): 3–20, <https://doi.org/10.3200/AEPR.106.5.3-20>.

and traditional culture are routinely stolen in many places.

As an illustration, the lawsuit against Balinese craftspeople in 1991 in the New York District Court was due to the commercialization of their traditional cultural expressions (TCE) without the permission of the indigenous people. The case involved necklaces with Borobudur motifs, which were sold without the consent of the original creators. This is an example of the inappropriate distortion, alteration, and modification of TCE that can occur when traditional knowledge and cultural expressions are commercialized without the involvement of the indigenous people. Additionally, there have been instances of some types of commercialization of renewable energy on a worldwide scale without the permission of indigenous peoples.²⁹ The aforementioned issues can be comprehensively analyzed and gleaned from a multitude of nations, namely India, Australia, and New Zealand, in terms of their respective approaches to tackling the challenges posed by the TCEs in the digital era.

4.1. India

India, a nation with a diversified and rich cultural legacy, is known for its striking contrasts between traditional rural life and tribal people and modern technology. Even though life's rhythms and ethos vary greatly, it is amazing how much harmony can be found in the diverse cultural forms. The primary law covering films, sound recordings, literary and artistic works, as well as the rights of performers and broadcasting organizations in India is the Copyright Act of 1957.³⁰ Although the Act has been modified numerous times, the most recent revision took place in 1994. It should be noted that neither separate law nor the Act contains any provisions for the protection of folklore or its expressions.

Folklore's tangible elements cannot be protected under the Patent Act or the Designs Act. Performing artists, who are defined as "an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, the person delivering a lecture, or any other person

²⁹ Furwandoko, Sulistiyono, and Hawin, "The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 30 Law Number 28 of 2014 Regarding Copyright" See also; Zaka Firms Aditya and Sholahuddin Al-Fatih, "The Legal Protection System of Indigenous Peoples in Southeast Asia," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (September 21, 2023): 285-309, <https://doi.org/10.22219/ljh.v31i2.27610>.

³⁰ Bharti Sontakka, A. H, "SCOPE of Rights of Broadcasting Organizations under Copyright Act, 1957," *Rajiv Gandhi National Law University Student Law Review* 1, no. 1 (2012): 102-21.

who makes a performance," were given some protection under the Copyright Act in 1994.²² The performer's right is restricted and only provides the chance to stop specific actions committed without the performer's permission.

The performer's right is outlined in Chapter VI, Section 38 of the Act and lasts for 25 years commencing on the first day of the calendar year after the year the performance is made.²³ The limited rights granted to performers are meant to prevent certain actions from being carried out without their permission, such as broadcasting or communicating the performance to the general public, recording the performance audibly or visually, or reproducing an audible or visually made recording of the performance. However, a performer forfeits all ownership rights to the movie if they consent to have their performance featured in a cinematograph.²⁴

Even though the definition of performance includes the performance of an expression of folklore, the functioning of performer rights in folklore expressions is constrained by the limited scope of those rights. However, whether or not they are members of the community, folklore performers are still entitled to these restricted privileges. These privileges must be restricted, though, to performers from the community or those who do so with its approval. The general public is not aware of all of the performer's rights and other aspects of the Copyright Act. As a result, even the few rights granted to performers are only upheld in a very small number of carefully chosen circumstances. The management and administration of these rights in India are further complicated by the lack of collective administration of copyright and adjacent rights.

The Indian legal system uses several pieces of law to provide traditional knowledge and cultural manifestations with some level of protection, including the Indian Patents Act of 1970, the Indian Copyright Act of 1957, and the Biological Diversity Act of 2002. Examples include clauses in the Patents Act that forbid the patenting of previous art,

²² Singh, D. "Legal Regime and Concern in Intellectual Property Rights: A Critical Analysis," *Supremo Amicus* 31 (September 2022): 81.

²³ Brenda Milner, "Disorders of Learning and Memory after Temporal Lobe Lesions in Man: Chapter 25," *Neurosurgery* 19, no. Supplement 1 (January 1972): 421-46, https://doi.org/10.1093/neurosurgery/19.CN_suppl_1.421.

²⁴ Raymond Sarrasin, "Current Theory on the Moral Right of Authors and Artists under French Law," *The American Journal of Comparative Law* 16, no. 4 (1968): 465, <https://doi.org/10.2307/838764>.

also known as traditional knowledge, which is thought to be information that is well-known or that has been in use for a sizable period in any community. Similar protections are provided by the Copyright Act for traditional cultural expressions like folk music, dance, and other performing arts.²⁴

India has registered more than 400 geographical indicators.²⁵ These intellectual property rights aim to recognize the unique properties of local goods, such as the Morel mushroom, and the talent of local artisans who make Channapatna toys in Bangalore. Channapatna toys are traditional crafts that have been passed down for generations.²⁶ They are known for their vibrant colors, intricate designs, and eco-friendly production. They have a rich history, dating back to the Tipu Sultan era, and are now protected as geographical indications (GIs) under the World Trade Organization.²⁷ It is an important step toward giving Indian products the proper legitimacy in international trade, which is becoming increasingly important in negotiations like the most recent trade and investment accords between India and the EU.²⁸ Other economic sectors, including the textile and fashion industries, which are significant drivers of the Indian economy, may benefit from the protection of intellectual property. The textile and fashion industries in India are significant drivers of the Indian economy, contributing to about 15% of the country's Gross Domestic Product (GDP) and employing around 12% of the workforce.²⁹

4.2. Australia

The Protection of Tribal Knowledge in the Intellectual Property System Work Plan

²⁴ Prabuddha Ganguli, "Indian Path towards TRIPS Compliance," *World Patent Information* 25, no. 2 (June 2003): 143–49, [https://doi.org/10.1016/S0172-2190\(03\)00023-1](https://doi.org/10.1016/S0172-2190(03)00023-1).

²⁵ Niharika Sahoo Bhattacharya, ed., *Geographical Indication Protection in India: The Evolving Paradigm* (Singapore: Springer, 2022).

²⁶ Nirmal Sengupta, "Traditional Knowledge in Manufacturing and Industry," in *Traditional Knowledge in Modern India*, by Nirmal Sengupta (New Delhi: Springer India, 2019), 105–25, https://doi.org/10.1007/978-81-322-3922-2_5.

²⁷ Hermann Kulke and Dietmar Rothermund, *A History of India*, Sixth edition (London; New York: Routledge, Taylor & Francis Group, 2016).

²⁸ Marc Bungenberg and Arghuman Hazarika, "The European Union's Trade and Investment Policy in Asia: New Challenges and Opportunities in a Changing Global Environment – or: Following Individual Roadmaps," *Asia Europe Journal* 15, no. 4 (December 2017): 377–97, <https://doi.org/10.1007/s10308-017-0485-2>.

²⁹ Confederation of Indian Industry, "Addressing Intellectual Property Matters in the Manufacturing Sector," *Confederations of Indian Industry*, December 20, 2023, <https://citiindia.in/addressing-intellectual-property-matters-in-the-manufacturing-sector/>.

2020-2021 is presently being implemented by IP Australia.⁴⁰ The present Project aims to enhance IP Australia's engagement with Aboriginal and Torres Strait Islander communities and their Traditional Knowledge ("TK") and TCEs, with a focus on both cultural integrity and economic potential. In furtherance of this objective, IP Australia issued the Tribal Knowledge Consultation paper in February 2021, which addresses four key areas about trademarks, designs, and patents. These areas include:

- a. the establishment of a Tribal Advisory Panel;
- b. the implementation of measures for trade-marks or designs that incorporate Tribal Knowledge;
- c. the application of new requirements for the disclosure of the source of Tribal Knowledge in innovations; and
- d. the exploration of possible labeling schemes for Aboriginal and Torres Strait Islander products, aimed at promoting the sale of authentic products and discouraging the purchase of inauthentic ones.⁴¹

State and territory law predominantly governs the preservation of cultural heritage. However, the Australian government also offers protection for some listed sites under the EPBC Act, and under the ATSHP Act, it has the authority to make "last-minute" declarations as it allows for the protection of areas or objects that are under threat. Under section 27B of the Act, it is an offense to carry out an act that has, will, or is likely to have a significant effect on the environment at an overseas Commonwealth Heritage site (LOPHSA), unless approved by the Minister.

The EPBC Act governs the Commonwealth Heritage List, which identifies places owned or leased by Commonwealth or Australian Government bodies, and the National Heritage List, which contains places considered to have outstanding heritage value. The Act also protects wetlands of international importance and provides the legal framework for the implementation of Australia's obligations under the Ramsar

⁴⁰ IP Australia, "Protection of Indigenous Knowledge in the Intellectual Property System, Work Plan 2020-2021" (IP Australia, September 2020), <https://www.ipaustralia.gov.au/sites/default/files/ip-australia-indigenous-knowledge-work-plan-2020-2021.pdf>.

⁴¹ IP Australia, "Indigenous Knowledge" (IP Australia, 2021), https://www.ipaustralia.gov.au/sites/default/files/ik_consultation_2021.pdf.

Convention. When state or territorial legislation falls short of protecting cultural heritage, the Australian Government is frequently seen as stepping in to fill the gap.⁴² Several state and territory laws forbid the destruction of cultural heritage, such as the Aboriginal Heritage Act of 2006 in Victoria, while other laws impose a "duty" to refrain from doing so, such as the Aboriginal Cultural Heritage Act of 2003 in Queensland. In Queensland, creating a cultural heritage management plan could help satisfy this obligation,⁴³ land users in Queensland are required to exercise a duty of care and take all reasonable and practical measures to ensure their activities do not damage Aboriginal or Torres Strait Islander cultural heritage.⁴⁴

The EPBC Act offers a development assessment regime that focuses on significant impacts on Matters of National Environmental Significance,⁴⁵ including World Heritage sites and Commonwealth and national heritage places. Federal cultural heritage law operates in addition to state and territory law. In addition to state and territorial approval, significant impacts on heritage at any of these locations are necessary. A federal-state assessment process that has been mutually agreed upon may be used for big projects to conduct a single impact assessment procedure.⁴⁶

A World Heritage site's cultural heritage values are likely to be significantly impacted by action if it restricts or prevents the site from being used for cultural or ceremonial purposes, removes, damages, or significantly disturbs cultural artifacts or ceremonial objects, or permanently defaces or obscures rock art or other cultural or ceremonial features. Similar to this, action is likely to significantly affect the cultural heritage values of a National Heritage place if it restricts or inhibits continued use of the site as

⁴² Shearing, S. "Reforming Australia's National Heritage Law Framework," *Macquarie Journal of International and Comparative Environmental Law* 8 (2012): 71.

⁴³ Queenslanders Government, "Cultural Heritage Duty of Care" (Queenslanders Government, 2022), <https://www.qld.gov.au/life/nature/environment/land-use-native-title/cultural-heritage/cultural-heritage-duty-of-care>.

⁴⁴ Rachelle Wilson and Tristan Pearce, "Management Challenges for Aboriginal Cultural Heritage in Peri-Urban Queensland," *Australian Geographer* 48, no. 2 (April 3, 2017): 203–17, <https://doi.org/10.1080/00049182.2016.1254066>.

⁴⁵ Gunley, W. "Calls for New Matters of National Environmental Significance," *National Environmental Law Review* 3 (2005): 43–49.

⁴⁶ Matthew Storey, "The Right to Enjoy Cultural Heritage and Australian Indigenous Cultural Heritage Legislation," *Nordic Journal of Human Rights* 41, no. 1 (January 2, 2023): 49–69, <https://doi.org/10.1080/18918131.2022.2150410>.

a cultural or ceremonial site, permanently reduces the place's cultural significance for the community or group to which its National Heritage values relate, or destroys or damages cultural or ceremonial artifacts, features, or objects.

The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSHP Act) creates a system whereby Aboriginal and Torres Strait Islander people can request protection of places, things, or categories of things that are particularly important to them from threats of harm or degradation from the Minister of Environment.⁴⁰ Section 22 of the ATSHP Act defines a ministerial declaration violation as a crime. Under the ATSHP Act, there are many declarations kinds, from emergency declarations to longer-term protections. Ministerial declarations may be revoked by the Federal Court based on judicial scrutiny, including emergency declarations and long-term protection. The minister's statement may be revoked by the Federal Court based on judicial oversight. The ATSHP Act provides **for the protection of Aboriginal and Torres Strait Islander heritage**, including places, objects, and cultural practices.⁴¹ The Act also recognizes the right of Aboriginal and Torres Strait Islander peoples to manage and protect their cultural heritage.

Sections 9 and 10 of the ATSHP Act provide for verbal or written requests for the protection of cultural heritage.⁴² A case must explain the location's importance in terms of cultural heritage and why it needs to be protected in the face of dangers. The minister may need 1-2 months to process a declaration for a 30-day emergency, whereas it might take 6-9 months for a longer-term proclamation. The state and territory governments must be consulted before the minister can declare whether the region is effectively protected by their legislation.

4.3. New Zealand

⁴⁰ Wooden, T. "The 1984 Hagia Convention: Aboriginal and Torres Strait Islander Sacred Sites as Cultural Property." *Australian Year Book of International Law* 34 (2016): 127-48.

⁴¹ Tina Douglas, "But That's Our Traditional Knowledge-Australia's Cultural Heritage Laws and ICB," *Art + Law* 1 (2013): 5-11.

⁴² Water and the Environment Department of Agriculture, "The Aboriginal and Torres Strait Islander Heritage Protection Act 1984: General Guide" [Water and the Environment Department of Agriculture, 2021]. <https://www.agriculture.gov.au/sites/default/files/documents/atsihp-act-general-guide.pdf>; Smith, K. "AGL Accused of Releasing Wastewater into Sydney's Sewerage System." AGL accused of releasing wastewater into Sydney's sewerage system, March 4, 2016, 6. <https://www.greenleft.org.au/content/agl-accused-releasing-wastewater-ajdneys-sewerage-system>.

The administration of the Protected Objects Act 1975 (NZ) in New Zealand is under the purview of the Manatū Taonga Ministry for Culture & Heritage.³⁰ The Act outlines nine distinct categories of protected objects in New Zealand, which include archaeological objects, art objects, social history objects, and Nga taonga tūturu (objects that pertain to Māori culture and are over 50 years old). The Act governs the export, illegal import or export, and foreign objects of these items, as well as the sale, trade, or ownership of taonga tūturu.³¹ The International Institutes for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects and the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property 1970 were ratified by New Zealand in 2007. These conventions serve to enhance the global safeguarding of New Zealand's cultural heritage artifacts.

A trademark that the Commissioner believes has the potential to insult a sizable segment of the community, including the Māori people, may not be registered, according to Section 17(1)(c) of the Trade Marks Act.³² Additionally, Sections 177-178 require the Commissioner to create a Māori Advisory Committee, whose job it is to advise on whether a proposed trademark that is based on a Māori sign, including text and imagery, is likely to offend the Māori community. Any invention that is found to be "contrary to public order or morality" is ineligible for patent protection, according to Section 15 of the Patents Act of 2013.³³ The Māori Advisory Committee may be consulted by the Commissioner for advice when reaching this decision.

The Act's Sections 225-228 require the creation of a Māori Advisory Committee, whose members are knowledgeable in Tikanga Māori (Māori procedure) and Mātauranga

³⁰ Ministry for Culture and Heritage New Zealand, "Protected Objects Act 1975," Pub. L. No. 1975 No 41, Public Act 1975 No 41 [2021], <https://www.legislation.govt.nz/act/public/1975/0041/latest/DLM432136.html>.

³¹ Manatū Taonga Ministry for Culture & Heritage, "Protected Objects," Pub. L. No. Legislative Act 1975, Legislative Act 1975 (n.d.), <https://mch.govt.nz/ta-identity-heritage/protected-objects>.

³² Employment Ministry of Business and Innovation New Zealand, "Trade Marks Act 2002," Pub. L. No. 2002 No. 49, Public Act 2002 No. 49 [2002], <https://legislation.govt.nz/act/public/2002/0049/57.0/whole.html#DLM165216>.

³³ Ministry of Business, Innovation, and Employment, "Patents Act 2013," Pub. L. No. Public Act 2013 No. 68, 2013 No. 68 [2013], <https://www.legislation.govt.nz/act/public/2013/0068/latest/whole.html>.

Maori (Māori traditional knowledge). The Committee's job is to advise the Commissioner on whether an innovation claimed in a patent application is derived from indigenous plants or animals or Māori traditional knowledge.²⁴ The Committee must also evaluate whether the commercial exploitation of the innovation is likely to be incompatible with Maori values if such a derivation is proven.²⁵

In Indonesia, in 1985, a legal dispute arose involving Desak Nyoman Suarti, a silver entrepreneur operating in Ubud Village. Suarti specialized in the production of woven motifs, including Mats, Bedegeng, Kelakat, and Kelabang Mantra. The plaintiff in this case was Rob Hill, a Marika-based businessman who filed a lawsuit against Suarti in an American court, alleging that she had infringed upon his proprietary motifs.²⁶ According to data collected between January and July of 2008, the revenue generated by the silver craft industry amounted to only \$3,810.23 in US dollars. In the same period in 2015, the revenue had decreased significantly, reaching only \$90.13 in US dollars. This decrease in revenue might be ascribed to the disappearance of certain classic Balinese motifs, such as Parta Ulanda, Jawan, Kuping Guling, Batuh Poh, and Batu Timun, which are regarded as folkloric artworks. The revenue of the sector has suffered because of the loss of these motifs. The loss of traditional motifs and ornaments such as 800 traditional Balinese silver motifs patented by foreigners has hurt the sector's income in Indonesia. The disappearance of the "Jepara Harisson & Gill Carvings: A Piece of History" catalog is another example of intellectual property theft. A foreigner, Christopher Harisson, has claimed ownership of the carving motif, a Jepara original, and is preventing other parties from exploiting it in the furniture sector. According to Harisson, such works are in the public domain.²⁷

²⁴ Flavell, W., "E Taro Ngā Rau: A Case Study of a Spanish Language Programme in a Kura Kaupapa Māori" (University of Waikato, 2012). <https://researchcommons.waikato.ac.nz/items/9be9a827-7ff0-4e22-bae1-9e4dc06ad099>.

²⁵ Katharina Ruckstuhl et al., "Recognising and Valuing Māori Innovation in the High-Tech Sector: A Capacity Approach," *Journal of the Royal Society of New Zealand* 49, no. suppl (November 29, 2019): 72-88, <https://doi.org/10.1080/03036758.2019.1668814>.

²⁶ Simona Bustani, "Transplantasi Hukum Modern Terhadap Budaya Hukum Komunitas Pengrajin Dalam Melindungi Desain Tradisional Kerajinan Perak Cukuh Di Kabupaten Gianyar Bali," *Jurnal Penelitian Dan Karya Ilmiah Lembaga Penelitian Universitas Trisakti* 1, no. 1 (2016): 9-31.

²⁷ Anis Mashkurahatun, Ariy Khaerudin, and Teguh Prasetyo, "Intellectual Property Protection of Indigenous Peoples in Indonesia: Quo Vadis?," *Sociological Jurisprudence Journal* 3, no. 1 (May 27, 2020): 1-7, <https://doi.org/10.22225/sj.3.1.1268.1-7>.

5. The Solution to the Problem of Developing and Protecting Traditional Cultural Expressions in The Digital Era in Indonesia Viewed from Other Countries

One of the nations with intellectual property based on local knowledge is the archipelago of Indonesia. The exceptional TCEs that represent the tribal knowledge have a great impact on advancing the culture of the nation. According to a study by Rafianti, Ramli, and Permata, traditional artists are starting to use technology to display the beauty of Indonesia's TCEs on various digital platforms. Puppet shows, regional dances and music, and other traditional works can all be performed outside of live performances in the age of Industry 4.0. These pieces of art can be produced, captured on camera, and shared online, promoting the creative sector and preserving TCEs.⁵⁸

According to Dewi Sulistianingsih, protecting intellectual property based on conventional wisdom can be accomplished by advancing science and technology, which benefits the larger community economically. To strengthen the understanding of Indonesia's intellectual property based on tribal wisdom, local innovation must also be encouraged.⁵⁹ Teen Wong and Claudia Fernandina explained that to maintain the cultural, economic, and social development of tribal peoples and communities, public associations, and non-profit organizations.⁶⁰ In the opinion of Yulia and Zainol, the preservation of TCEs is of the utmost importance in the process of nation-building, as it acts as a reflection of national identity and cultural heritage and provides a collective opportunity to expose TCEs to the global community.⁶¹

⁵⁸ Laila Rafianti, Ahmad M. Ramli, and Rika Ratna Permata, "Promoting Traditional Cultural Expressions via YouTube," *Jurnal Dinamika Hukum* 19, no. 1 (January 7, 2019): 19, <https://doi.org/10.20884/1.jdh.2019.19.1.2419>.

⁵⁹ Dewi Sulistianingsih et al., "Strengthening Intellectual Property Development Based on Local Wisdom in Indonesia," in *Proceedings of the 4th International Conference on Indonesian Legal Studies, ICILS 2021, June 8-9 2021, Semarang, Indonesia* (Proceedings of the 4th International Conference on Indonesian Legal Studies, ICILS 2021, June 8-9 2021, Semarang, Indonesia, Semarang, Indonesia: EAI, 2022), <https://doi.org/10.4108/eai.8-6-2021.2314363>.

⁶⁰ Teen Wong and Claudia Fernandina, "Traditional Cultural Expressions: Preservation and Innovation," in *Intellectual Property and Human Development*, ed. Teen Wong and Graham Duffield, 1st ed. (Cambridge University Press, 2010), 179, <https://doi.org/10.1017/CBO9780511761027.008>.

⁶¹ Atsar, "Perlindungan Hukum Terhadap Pengetahuan Dan Ekspresi Budaya Tradisional Untuk Meningkatkan Kesejahteraan Masyarakat Ditinjau Dari Undang-Undang No. 5 Tahun 2017 Tentang Pemajuan Kebudayaan Dan Undang-Undang No. 28 Tahun 2014 Tentang Hak Cipta" see also: Novendri

Regrettably, the Intellectual Property Rights ("IPR") framework outlined in the Copyright Law does not align with the communal nature of TCEs, which is passed down from one generation to the next. Consequently, the preservation and safeguarding of TCEs necessitates the development of a concept that corresponds to its existence, which can be achieved through the collection of data in digital libraries.⁴² Tribal communities possess a significant capacity for producing works of art that are steeped in traditional cultural practices and are primarily intended for ritualistic purposes.⁴³ These works of traditional cultural expression have gained considerable economic value over time, necessitating the implementation of robust protective measures to prevent legal infringements by external entities that could impede economic growth.⁴⁴ The proliferation of technology and information in contemporary times has facilitated the widespread dissemination and emulation of traditional cultural expressions, thereby exacerbating the need for effective safeguards.⁴⁵ Intellectual property (IP) protection can play an important role in this regard. Intellectual property protection can enable communities and their members to commercialize their tradition-based creations, should they wish to do so, and/or to exclude free competitors.⁴⁶ It can also help in certifying the origin of arts and crafts (through trademark certification) or by combating counterfeit products deemed 'genuine' (through unfair competition law).

The economic potential created by traditional cultural expressions (TCEs) in the region is anticipated to produce long-term profitability given the growing significance of intellectual property rights (IPR) in the future. However, there is a need for improvement in the creation of performance spaces for TCEs to express and

Mohamad Nggilu, Lisnawaty Wadju Badu, and Susitno Yotye Iman, "Legal Protection Benda Asli Bulango Longgung: In Reality And Prospect," *Jambang Law Review* 3, no. 1 (November 4, 2020): 19–36, <https://doi.org/10.333756/jlr.v3i1.6947>.

⁴² Yulia Yulia, Ashiqin Zinatul, and Jamadiah Jamadiah, "The Preservation of Traditional Cultural Expression in Aceh and Malaysia," *International Journal of Science and Research* 8, no. 11 (2019): 404–88.

⁴³ Jonathan Friedman, "Tribes, States, and Transformations," in Maurice Bloch, *Marxist Analysis and Social Anthropology* (London: Routledge, 2004), 161–202.

⁴⁴ Richard T. Rapp, "Benefits and Costs of Intellectual Property Protection in Developing Countries," *Journal of World Trade* 24, no. Issue 5 (October 1, 1990): 75, <https://doi.org/10.54648/TRAD1990033>.

⁴⁵ Mahmuda Pancawisma Fehrilharini, "Eksistensi Hak Atas Kekayaan Intelektual Terhadap Hakum Siber," *Serat Asipya* 5, no. 1 (2016): 15.

⁴⁶ Carlos M. Correa, "Traditional Knowledge and Intellectual Property: Issues and Options Surrounding the Protection of Traditional Knowledge," *Geneva: The Quaker United Nations Office (QUONO)* 17 (2001).

materialize.⁵⁷

The performance infrastructure and facilities are still insufficient to enable the deployment of community TCEs actualization in places with large existing TCEs wealth, leading to restricted recognition by other countries. Government-imposed inventory and record-keeping requirements can be a significant area of weakness. Because it largely focuses on individual ownership of creations and does not govern collectively held traditional rights by a community, Indonesia's copyright law is not comprehensive in providing protection and appropriate usage for regional communities.⁵⁸ Therefore, strengthening the capacity of communities to manage and enforce their rights, as well as providing government services and legal assistance, is critical for effective TCE protection. Extensive awareness-raising and training programs are needed to ensure that communities and people benefit from laws designed to protect their TCEs. Establishing appropriate legal aid and institutions to help communities manage and enforce their rights is essential for e-TCE. Implementing *sui generis* systems and non-IP options,⁵⁹ such as trade practices and labeling laws, use of contracts, customary and indigenous laws and protocols, cultural heritage preservation laws and programmes, and ordinary remedies, can provide additional protection for TCEs.

Moreover, a prevalent issue concerning TCEs is the lack of understanding among the local population regarding legal protection and the nature of TCEs. The local populace only understands situations where a work of production is widely acknowledged, encounters piracy, or is claimed by an outsider, leading them to believe that the copyrighted work they produced is valuable. As a result, anybody can study and use the material for their goals, including foreign parties or other countries. This difficulty is a typical one for Indonesian cultural growth, which frequently leads to recognition of Indonesian culture by other nations. The Intergovernmental Committee on

⁵⁷ Carolyn Renée Paatz, "Afro-Cuban Folkloric Dance in the Age of Intellectual Property," *International Journal of Cultural Property* 25, no. 2 (May 2018): 179–201, <https://doi.org/10.1017/S0940739118000135>.

⁵⁸ Yulia Yulia, Ashiqin Zinatul, and Jamadiah Jamadiah, "The Preservation of Traditional Cultural Expression in Aceh and Malaysia."

⁵⁹ Appukuttan Damodaran, "Traditional Knowledge, Intellectual Property Rights and Biodiversity Conservation: Critical Issues and Key Challenges," *Journal of Intellectual Property Rights* 13 (September 2008): 509–13.

Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (WIPO IC-GTRKF) of the World Intellectual Property Organization believes that several Indonesian traditional works, such as traditional specialties and traditional architectural art, should be protected as folklore.⁷⁰

The repercussions of policy mechanisms that are ineffective in safeguarding the intellectual property of traditional communities have led to the exploitation of their assets by external entities. The recurrent exploitation of Tribal groups' intellectual property by external parties can be attributed to the insufficiency of legal safeguards in place.⁷¹

Traditional knowledge, expressions, and cultural manifestations can be protected through the legal system in the same way as intellectual property rights are, especially if they have been kept in their original form by individuals. In addition to recognizing an individual's originality, the goal of the intellectual property protection system is to: (1) hasten the dissemination of knowledge about the pertinent creativity (outcome); (2) encourage further development and exploration of the pertinent concepts; (3) prevent the emergence of comparable creativity (outcome); and (4) strengthen the pertinent ingenuity (outcome).⁷² Society must uphold and comprehend the system of intellectual property protection, despite the initial clash between the legal culture of Indonesian society and intellectual property rights.⁷³ The idea of "protection" refers to taking action to stop people from using electronic benefits transfers improperly and without authorization. There are several reasons, it is crucial to preserve TCEs as a part of traditional knowledge. These include the possible financial benefits of utilizing traditional knowledge as it can be monetized through various means, such as licensing, royalties, and sales of traditional products. This can provide economic opportunities

⁷⁰ Reh Bangsa Perangin-angin, "Perlindungan Ekspresi Budaya Tradisional Di Indonesia" (Seminar Nasional Tahunan Fakultas Ilmu Sosial Universitas Negeri Medan, Medan: Universitas Negeri Medan, 2017).

⁷¹ Kholis Roisah, "Legal Politics Of Protection Of Indonesian Traditional Cultural Expressions/Folklore," *Diponegoro Law Review* 2, no. 1 (April 20, 2017): 185, <https://doi.org/10.14710/dilrev.2.1.2017.185-202>.

⁷² Endang Purwaningsih, *Hak kekayaan intelektual (HKI) dan hukum*, Cetakan ke-1 (Bandung: Mandar Maju, 2012).

⁷³ Sulistianingsih et al., "Strengthening Intellectual Property Development Based on Local Wisdom in Indonesia."

for local communities and contribute to their overall development, achieving justice within the framework of international trade as it allows local communities to benefit from their cultural expressions. This can prevent the exploitation of traditional knowledge by external entities, and ensure that the benefits of cultural expressions are shared equitably, and the duty to uphold the rights of local people for recognizing their cultural heritage and the value they place on their traditional practices. This can help maintain cultural diversity promote respect for the rights of indigenous and local communities, and support educational and research objectives.²⁴ TCE can be a valuable resource for educational and research purposes, providing insights into traditional practices, beliefs, and values. It can contribute to a better understanding of human history and culture.

Traditional cultural expressions, such as the Kecak Dance in Bali, the Jember Carnival in East Java, and the Tingkeban Ceremony in Central Java, have become important drivers of economic development in recent years. To support the expansion of the tourism industry in rural areas, collective intellectual property rights (IPRs) that are based on a knowledge-based economy must include intellectual property that is based on regional cultural expressions.²⁵

Developing countries have shown more support for international rights to traditional knowledge than developed countries have. Developing nations have concurrently voiced disapproval of how intellectual property rights affect social issues like the accessibility of healthcare and educational resources. However, developing countries are debating whether intellectual property rights have an impact on social issues such as access to healthcare and educational resources due to their concerns about the negative effects of globalization and the importance of strong intellectual property rights.²⁶

In contemporary times, there has been a persistent prevalence of instances of

²⁴ Agus R. Sarjono, *Hak kekayaan intelektual dan pengetahuan tradisional*, Ed. 2, cet. 1 (Bandung: Alfabeta, 2010).

²⁵ Slamet Yuwanto, "Analisis Pengembangan Usaha Berbasis Kekayaan Intelektual," *Lentera Widjajawana* 4 (2017): 0-24.

²⁶ J. Janewa-OsifTata, "A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law," *Marq. Intell. Prop. L. Rev.* 15 (2013): 147.

infringement upon regional cultures.⁷¹ The World Intellectual Property Organization (WIPO) is an entity that is concerned with the protection of intellectual property.

In light of the aforementioned challenges, it is imperative to implement defensive measures through the conduct of data collection and inventory initiatives. In conjunction with the inventory process, it is crucial to be cognizant of several salient factors, namely:⁷² The preservation of Tribal peoples' rights is a crucial objective that inventories should strive to achieve. This can be accomplished by preventing the theft of their collectively owned intellectual property (KIK) and refraining from sharing any profits derived from it. Additionally, inventories should be designed to facilitate the acquisition of information about the utilization of KIK by relevant parties. Inventory systems must be safeguarded against careless access, as this can result in the exploitation of KIK by third parties, which can be detrimental to the community. It is essential to communicate to Tribal peoples that the documentation of KIK is solely for inventory purposes.

With the implementation of Law No. 5 of 2017, which relates to the Promotion of Culture, the protection of traditional cultural manifestations should improve. Article 1 Point 3⁷³ on Promoting Culture aims to increase Indonesian culture's contribution to world civilization by maintaining, advancing, putting to use, and guiding cultural activities. Additionally, it acts as a tool for safeguarding the textual and contextual cultural treasures unique to each geographical area and emphasizing the key aspects of local culture.⁷⁴ Nevertheless, it is ironic that the optimal implementation of the aforementioned has not been achieved uniformly across all regions.

The Ministry of Law and Human Rights ("Ditjen KI") is in charge of building a particular forum for Indonesian communal intellectual property works,⁷⁵ supplying data

⁷¹ Monia Bastani, "Urgensi Pengaturan Ekspresi Budaya (Folklore) Masyarakat Adat."

⁷² Samet Yuswanto, "Analisis Pengembangan Usaha Berbasis Kekayaan Intelektual."

⁷³ See "Law No. 5 of 2017, article 1 Point 3 which said "Cultural Advancement is an effort to improve cultural resilience and contribution to Indonesian culture in the midst of world civilization through Protection, Development, Utilization and Coaching Culture."

⁷⁴ Amalia Resti Fauzi, "Perlindungan Hukum Terhadap Karya Cipta Ekspresi Budaya Tradisional Di Bidang Seni Tari" (Universitas Muhammadiyah Surakarta, 2018).

⁷⁵ Sonny Sudjar, "Kajian Pembentukan Taman Budaya Terpadu Kabupaten Mahakam Ulu," Laporan Penelitian Kerjasama (Mahakam Ulu: Unit Layanan Strategis Stakeholder Center (ULSSC) Universitas Mulawarman dengan Pemerintah Kabupaten Mahakam Ulu, 2022).

information systems, and publishing inventory data on the Ditjen KI's internet platform. It is noteworthy that municipal governments, the Creative Economy Agency, the Ministry of Tourism, and tribal groups are not subject to this obligation. To achieve the best possible protection of TCEs, it is crucial to consult all pertinent stakeholders. A profit-sharing system is also required to boost local income and support the growth of the national economy. TCEs are legally protected through intellectual property, but numerous steps can be taken to increase public knowledge and awareness of the value of preserving and protecting TCEs. These steps include encouraging communities to uphold their customary laws and local wisdom, enhancing the protection of communal intellectual property databases, and taking part in communal intellectual property registration.

Drawing on the preceding resource, the safeguarding of traditional cultural expressions (TCEs) in promoting regional tourism necessitates a multifaceted approach that extends beyond intellectual property rights (IPR) and legal measures. Specifically, this approach should encompass non-IPR and non-legal strategies, including the following: 1) Developing an appealing website accessible to a broad audience to showcase TCE works and introduce them to the global community, 2) Educating legal practitioners to avoid infringing on TCE protection and establishing a specialized task force to combat communal IPR theft. This task force should comprise an advocacy team for Tribal peoples and a regulatory institution that oversees the benefit-sharing mechanism for foreign parties' utilization of TCEs. It should also have the authority to impose legal sanctions on groups that engage in the theft of traditional cultural expressions, 3) Additionally, the collaboration of efforts among the Central Government, local governments, and autonomous agencies, such as the Creative Economy Agency, the Ministry of Tourism, and Tribal peoples' organizations, is necessary for the optimization of TCE preservation. The goal of this collaboration should be to improve teamwork in the identification and recording of Tribal members who own collective intellectual property.

Also, Numerous potential answers have been put out to deal with these problems.

https://repository.unmul.ac.id/bitstream/handle/123456789/45571/Laporan%20Akhir_Kajian%20Taman%20Budaya%20Terpadu.pdf?sequence=1

Participating communities and those who hold traditional knowledge in the process of discovering and cataloging traditional knowledge and cultural expressions is one strategy. This can make sure that ownership is correctly established and that knowledge and expressions are accurately recorded. Educating IP experts and politicians about the cultural importance and worth of traditional knowledge and cultural expressions is another strategy. This can make it more likely that these interested parties will understand why such knowledge and expressions need to be protected. Lastly, it could be required to use tools like benefit-sharing agreements to strike a balance between the interests of various stakeholders. These agreements can help ensure that communities and those who hold traditional knowledge receive an equitable share of the advantages associated with the utilization of their knowledge and creative expressions.

6. Conclusion

Drawing upon the findings of the aforementioned study, the present researchers wish to assert the outcomes of their investigation. It has been observed that the communal intellectual property of tribal peoples, referred to as TCEs, lacks adequate legal protection. A specific anti-theft task force and the creation of specialized regulations or legislation are urgently required to protect the interests of tribal peoples in the digital age. To govern the method of access profit sharing from use by foreign parties, such steps should include the creation of an advocate team for tribal peoples and specialized institutions. Additionally, for TCEs to be optimized, central, local, and autonomous government agencies as well as tribal peoples' organizations and the Creative Economy Agency must coordinate their efforts to better cooperate in identifying and documenting tribal peoples who own collective intellectual property.

Therefore, it is crucial to improve the regional economy's optimization by utilizing the potential of local tourism and TCEs of tribal peoples. This can be accomplished through working with the film business, building a website to promote digitization, and undertaking other similar projects. To effectively monitor Tribal peoples' TCEs in the context of their territories, it is also required to construct a unique organization that acts as a regional representative. This organization should be situated in a strategically important province. Furthermore, as the current patent law does not go into enough

detail, a separate rule or law about the TCEs of Tribal peoples is necessary. Therefore, a more precise law is urgently required to protect tribal peoples' TCEs.

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