

EMPOWERING CULTURAL COMMUNITIES IN PROTECTING TRADITIONAL EXPRESSIONS: LEGAL CHALLENGES IN THE DIGITAL AGE

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Abstract

Protecting Traditional Cultural Expressions (TCEs) is essential for safeguarding national identity and the values of communities that inherit and transmit cultural knowledge. This doctrinal study, grounded in comprehensive literature analysis, examines Indonesia's regulatory framework and the practical challenges of TCEs protection. Research demonstrates that the limited positive influence on cultural holder communities' welfare stems from a noticeable dearth of clear technical policies outlining the institutions and systems for equitable benefit-sharing. The protection afforded to traditional cultural expressions (TCEs) is inherently twofold: it substantiates the importance of cultural diversity, spirituality, and religious practice while also functioning as an essential tool to preclude cultural plagiarism and inappropriate exploitation. The custodial communities remain essential bearing the primary responsibility for maintaining, revitalizing, and transmitting local knowledge, artistic forms, and ritual practices. Concurrently, the digital era amplifies risks of misuse; specifically, the ease of digitization and rapid dissemination increase vulnerability to unauthorized appropriation and misrepresentation. To confront these risks, a combined approach is required, including positive and defensive measures within intellectual property regimes—such as tailored sui generis protections—alongside complementary policy instruments that emphasize community rights. Indonesia's legislative efforts, including the 2014 Copyright Law and the 2022 Government Regulation on Communal Intellectual Property (KIK), are compromised by major implementation deficits that undermine effective practical enforcement. The core argument here is for clearer, highly specific legal tools and stronger institutional arrangements that actively facilitate benefit-sharing and protect community interests. Ultimately, the study calls for a cohesive strategy that integrates protection with cultural-based economic growth and community empowerment to guarantee sustainable, intergenerational outcomes that preserve heritage while simultaneously lifting local welfare.

Keywords: *Traditional Cultural Expressions; Communal Intellectual Property; Cultural Law; Community Participation; Cultural-based Creative Economy.*

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1. Introduction

The Protection of Traditional Cultural Expressions (TCEs) presents an important urgency in the context of cultural defense¹ as it reflects the nation's identity² and maintains the values of a group or community.³ The fundamental intent of TCEs protection is to ensure the sustained vitality and intergenerational preservation of cultural heritage,⁴ thereby preventing its obsolescence, particularly in the context of globalization of cultural identity.⁵ Furthermore, TCEs protection serves as an affirmation of cultural diversity,⁶ spiritual life, and religious practices of the holder community.⁷ This safeguarding mechanism is also critical for preventing inappropriate exploitation⁸ and cultural plagiarism,⁹ while simultaneously developing innovation and creative industries.¹⁰

The custodians of cultural communities play a pivotal role in safeguarding TCEs. These guardian communities consists of groups actively engaged in the preservation, development, and transmission of traditional cultural heritage across generations.¹¹ As the primary stewards of the practices, knowledge, arts, and rituals that embody their cultural identity, they hold a vital responsibility for sustaining the vitality and relevance of TCEs amid ongoing global

¹ N. Gaitenidis, "Indigenous Peoples, Cultural Heritage, and Traditional Knowledge: Untying the Gordian Knot of Human Rights and Intellectual Property in International Law," *International Journal on Minority and Group Rights*, ahead of print, 2025, Scopus, <https://doi.org/10.1163/15718115-bja10226>.

² N. K. S. Dharmawan, "Quo Vadis Traditional Cultural Expressions Protection: Threats from Personal Intellectual Property and Artificial Intelligence," *Law Reform* 19, no. 2 (2024): 321–43, <https://doi.org/10.14710/lr.v19i2.58639>.

³ Benedetta Ubertazzi, "Intellectual Property Rights and Intangible Cultural Heritage," in *Intangible Cultural Heritage, Sustainable Development and Intellectual Property: International and European Perspectives*, ed. Benedetta Ubertazzi (Cham: Springer International Publishing, 2022), 119–85, https://doi.org/10.1007/978-3-031-08104-0_4.

⁴ Hokky Situngkir, "From Data to Celebration of Cultural Heritages: Preservations, Acquisitions, and Intellectual Property Regulations," paper presented at Workshop "Intellectual Property and the Documentation and Establishment of Database of Traditional Knowledge, Folklore, and Intangible Cultural Heritage," November 22, 2010.

⁵ Athikho Kaisii, "Globalization, Hybridization and Cultural Invasion: Korean Wave in India's North East," *Asian Communication Research* 14, no. 1 (2017): 10–35, <https://doi.org/10.20879/acr.2017.14.1.10>; Simon Ozer, Vladimer Lado Gamsakhurdia, and Seth J. Schwartz, "Investigating the Complexity of Cultural Identities in Globalizing Societies," *Journal of Cross-Cultural Psychology* 55, no. 7 (October 2024): 723–49, <https://doi.org/10.1177/00220221241258382>.

⁶ Miranda Risang Ayu, Rika Ratna Permata, and Laina Rafianti, "Independent Cultural Resource Protection System in Palembang, South Sumatera, Indonesia System," *Mimbar Hukum* 29, no. 2 (2017): 205–20, <https://doi.org/10.22146/jmh.16671>.

⁷ Cleopatriza Thonia Ruhulessin, "Fi Ra Wali: Revitalization of 'Saguku Hidupku' Folklor as Cultural Identity in the Cosmology of Sentani-Papua Community," *Journal of Philosophy* 30, no. 2 (2020): 181–201, <https://doi.org/10.22146/jf.54207>.

⁸ Y. E. Widyanti, "Protection of Indonesian Traditional Cultural Expressions in a Sui Generis System," *Arena Hukum* 13, no. 3 (2020): 388–415, <https://doi.org/10.21776/ub.arenahukum.2020.01303.1>.

⁹ C. Musiza, "Weaving Gender in Open Collaborative Innovation, Traditional Cultural Expressions, and Intellectual Property: The Case of the Tonga Baskets of Zambia," *International Journal of Cultural Property* 29, no. 1 (2022): 45–62, <https://doi.org/10.1017/S0940739122000042>.

¹⁰ Desak Putu Dewi Kasih et al., "Policies Concerning Sacred And Open Traditional Cultural Expressions: Tourism And Creative Economy In Bali Context," *JATISWARA* 38, no. 1 (2023): 14–27, <https://doi.org/10.29303/jtsw.v38i1.475>.

¹¹ 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 (2017): 284–99, <https://doi.org/10.14710/lr.v13i2.16162>.

transformations.^{12,13} In the digital era, TCEs face heightened risks of misuse, as technological advancements enable individuals to easily digitize and disseminate these cultural expressions across online platform. Numerous examples of Traditional Cultural Expressions misuse have been reported repeatedly, such as the creation of music and rhythms using music from indigenous peoples by Deep Forest CD¹⁴. Moreover, unauthorized reuse of TCEs is also found in digital piracy and audio mashups, where traditional cultural elements are incorporated into new digital creations without consent.¹⁵

In terms of traditional culture and knowledge – whether tangible or intangible, or a combination of both – TCEs represents inherited forms of creativity passed down through generation to generation of their custodians. These expressions encompass: (a) phonetic or oral expressions, including stories, epics, legends, poems, riddles, and other narratives, as well as words, sign or names, and symbols; (b) musical or sound expressions, such as songs, rhythms, and instrumental music, sounds used in ritual expressions; (c) expression through action, including dances, dramas, ceremonies, rituals, sacred processions and *peregrinations*, sports and traditional, games, puppet shows, performances and others, whether fixed or dynamic; as well as (d) tangible expressions, such as visual art forms, handicrafts, sculpture, architecture, architectural works, and sacred or spiritually significant sites.¹⁶ TCEs refers to any form of expression of creative work, whether in the form of objects or intangible, or a combination of both that shows the existence of a traditional culture that is held communally and across generations.

Conceptually, two approaches of TCEs protection are positive and defensive protection.¹⁷ Positive protection aims to provide full and comprehensive protection of the rights and ownership of Intellectual Property Rights over traditional cultural heritage¹⁸ to support economic growth and prevent unexpected use by outside from traditional communities.¹⁹ The defensive approach is designed to prevent the implementation of IPR regimes to traditional cultural heritage, thereby preserving diverse forms within the public domain as shared cultural assets and preventing any single entity for asserting exclusive ownership.²⁰

The regulation of TCEs' protection internationally through the intellectual property rights approach was pursued by WIPO in collaboration with UNESCO adopting the Tunis Model Law

¹² B. A. Tegar Prabawa and N. K. Sutriyanti, "The Role of Hindu Communication on the Behavior of Youth Ajeg Bali in the Middle of the Whirlpool of Globalization," *Ganaya: Journal of Social Sciences and Humanities* 3, no. 1 (2020): 101–11, <https://doi.org/10.37329/ganaya.v3i1.425>.

¹³ Prasetyo Hadi and Sulistiyono Purwandoko Adi and Hawin, M., "The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 of Law Number 28 of 2014 Regarding Copyright," *Indonesian Journal of International Law* 18, no. 4 (2021), <https://doi.org/10.17304/ijil.vol18.4.823>.

¹⁴ Aparna Sajeev et al., "Protection of Ritualistic Performances and Challenges of Copyright Law in the Digital World: A Case Study of Theyyam," 2523 (2021): 030008, <https://doi.org/10.1063/5.012359>.

¹⁵ David Gunkel, *Transgression 2.0: Media, Culture, and the Politics of a Digital Age* (2011), <https://doi.org/10.5040/9781628928457>.

¹⁶ World Intellectual Property Organization (WIPO), *The Protection of Traditional Cultural Expressions: Draft Articles*, WIPO/GRTKF/IC/19/4, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Nineteenth Session (Geneva, 2011), https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_19/wipo_grtkf_ic_19_4.pdf.

¹⁷ Kholis Roisah, *Protection of Traditional Cultural Expressions: International Law and International Law Perspectives* (Semarang: Yoga Pratama Publisher, 2021).

¹⁸ Muhammad T. Adhiyatma and Kholis Roisah, "Legal Protection for Traditional Medicine Knowledge of Paliasa Leaves in Traditional Community of South Sulawesi Through Intellectual Property Regime," *Law Reform* 16, no. 2 (2020): 290–306, <https://doi.org/10.14710/lr.v16i2.33782>.

¹⁹ Biswajit Dhar, "India's Position in the Intergovernmental Committee for the Protection of Traditional Knowledge," in *Protecting Traditional Knowledge: The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (Routledge, 2027), 12, <https://doi.org/10.4324/9781315666358>.

²⁰ Antony and Leistner Taubman Matthias, "Analysis of Different Areas of Indigenous Resources, Section 1 Traditional Knowledge," in *Indigenous Heritage and Intellectual Property*, ed. Silke von Lewinski (Netherlands: Wolters Kluwer, Law and Business, 2007), 83.

on Copyright for Developing Countries 1976.²¹ The Tunis Model Law helps developing countries that will make national copyright law based on existing international conventions and provide space for the protection of TCEs. This law was developed through The Model Provisions for National Law on the Protection of the Expression of Folklore against Illicit Exploitation and Other Prejudicial Acts 1982. The model provision is intended to encourage national regulation in the field of legal protection of folklore or TCEs, which aims to provide protection from all forms of illicit exploitation and other forms of violations (other prejudicial actions) committed by both related citizens and foreign parties.²² In the Regional Area, Model Law on the protection of TCEs is also adopted, such as the Bangui Agreement 1999 and Swakopmund Protocol 2010 for the African countries, and South Pacific Model Law 2002 for the Asia Pacific countries.²³

TCEs protection efforts are stronger through the *sui-generis* intellectual property rights approach by World Intellectual Property Organization (WIPO) with the establishment of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC-GRTKF) in 2000. Several IGC-GRTKF sessions resulted in the draft articles of protection for Traditional Cultural Expression in 2003. The *sui-generis* approach aims to establish comprehensive protection for TCEs by preventing and controlling unauthorized uses outside of their traditional context. Furthermore, this mechanism aims to ensure equitable benefit-sharing derived from both the TCEs and their derivative works,²⁴ thereby supporting the sustainable maintenance of community cultural practices in a sustainable manner.²⁵ Despite these well-defined objectives, WIPO have not yet resulted in legally binding regulations for such protection. This lack of progress stems from ongoing legal divergences among member states, leaving the issue unresolved and still under negotiation.²⁶

In Indonesia, the protection of TCEs is regulated in two laws, namely the legal system of intellectual property and culture.²⁷ Recognition of TCEs protection is achieved in Article 38 of the 2014 Copyright Law, which designates state authority over the associated copyright. This legislative control is crucially conditioned by the requirement that the utilization of these expressions must not contradict the underlying value system integral to the society from which they originate. Therefore, legal policy in this case is based on a defensive strategy, focusing on the protection of TCEs moral rights that are inclusive, meaning that everyone can access and use it as long as the source of origin is mentioned, must not conflict with the value system in society and its development through translation, adaptation arrangement, transformation and modification, as well as compilation of its original works as the objects of copyright protection. In addition, TCEs is further regulated in Government Regulation No. 56 of 2022 concerning Communal Intellectual Property (KIK). The protection of TCEs as an Object of Cultural Promotion (OCP) is regulated by Law Number 28 of 2014 on Copyright regarding the preservation, protection, development, and utilization mechanism of TCEs as one of the objects of cultural promotion.

Although TCEs protection has been regulated in both Laws and Government Regulations, more comprehensive and sustainable protection becomes still a challenge, especially in the era

²¹ Janet Blake, "From Traditional Culture and Folklore to Intangible Cultural Heritage: Evolution of a Treaty," *Santander Art and Culture Law Review* 2, no. 3 (2017): 41–60, <https://doi.org/10.4467/2450050XSNR.17.017.8422>.

²² Chih-Chieh Yang, "Is the Registration System a Prerequisite for the Protection of Traditional Cultural Expressions," *Queen Mary Journal of Intellectual Property*, 2022, 350–75, <https://doi.org/10.4337/qmjip.2022.03.03>.

²³ Roisah, *Protection of Traditional Cultural Expressions: International Law and International Law Perspectives*.

²⁴ Widyanti, "Protection of Indonesian Traditional Cultural Expressions in a Sui Generis System."

²⁵ World Intellectual Property Organization (WIPO), *Comparative Study on the Protection of Traditional Knowledge and Traditional Cultural Expressions: The Oma Case Study in the Lao People's Democratic Republic* (Geneva: World Intellectual Property Organization (WIPO), 2021).

²⁶ Rachel Hamilton, "For Us, By Us, Protect Us: An Argument for Better Intellectual Protection of Indigenous Fashion," *Seattle Journal for Social Justice* 20, no. 1 (2021): 23–56.

²⁷ Agus Sardjono, "IPR and the Cultural Promotion Law," *JIPRO-Journal of Intellectual Property Rights* 2, no. 2 (2019), <https://doi.org/10.20885/jipro.vol2.iss2.art5>.

of technological advancement. This effort is carried out by enhancing the participation and empowerment of the holder communities, ensuring that Traditional Cultural Expressions (TCEs) continue to evolve and be transmitted to future generations. Moreover, the appropriate utilization of TCEs can contribute to the welfare and prosperity of these communities. This study examines the regulatory framework governing the protection of TCEs within both the intellectual property rights (IPR) system and the cultural law system. In addition, it explores strategies to strengthen the participation and empowerment of cultural guardian communities in safeguarding and sustaining TCEs.

For comparison, several other studies related to this research have been conducted. First, a study was conducted by Sreenath K. P. and Anson C. J. in 2023, discussing how the geographical indication (GI) system in Indonesia and India can be used to protect traditional cultural expressions (TCEs). However, its legal implementation is still ineffective due to narrow legal definitions, complicated registration procedures, and weak benefit distribution for local communities.²⁸ Second, a study was conducted by Nenny Dwi Ariani in 2025, which concluded that legal protection for TCEs should be complemented by fair and locally based commercialization policies to create a tangible contribution to improving community welfare.²⁹ Finally, a study conducted by Fithriatus Shalihah, Ali Hakim, and Fithriatus Shalihah (2019) revealed that the copyright protection of Traditional Cultural Expressions (TCEs) in Indonesia continues to face significant challenges arising from value conflicts between international law—founded on individual rights—and local cultural values, which are inherently collective in nature. Although Indonesia's national regulations have been harmonized with international standards, their implementation remains weak, largely due to cultural barriers, limited public awareness, and the lack of an integrated data management system.

2. Method

This is doctrinal in nature research and was conducted through a literature review to uncover the underlying philosophy, thinking patterns, official standards, and structures that govern specific legal issues. The study involved collecting relevant legal materials, including statutes, judicial decisions, and other legal sources related to the topic at hand. This literature review aims to explore the background of the regulations and understand the philosophical aspects that underpin the formation of these laws, which enables to delve deeper into the thought processes that shape legal policies and the issues being studied.

Legal materials were gathered and analyzed descriptively to provide a comprehensive and detailed account of the collected primary, secondary, and tertiary sources. Categorized as descriptive-analytical, this research seeks to collect accurate data and provide an in-depth explanation of the subject matter under analysis. This approach ensures the study not only presents data but also explains the regulatory evolution and anticipated of its implementation in achieving the expected legal objectives.

3. Results and Discussion

In numerous jurisdictions, including Indonesia, the primary holders in the protection and management of Traditional Cultural Expressions (TCEs) and associated knowledge systems are indigenous peoples, traditional cultural communities, local communities, and, in certain contexts, individuals who possess rights or bear responsibilities based on customary law or traditional normative frameworks. These rights arise from long-standing ancestral practices and customary ownership principles, which form the foundation of communal legal identity and cultural continuity.

²⁸ K. P. Sreenath and C. J. Anson, "Geographical Indications and Traditional Cultural Expressions: A Comparative Legal Analysis of the GI Laws of Indonesia and India and a Case Study Analysis," *The Journal of World Intellectual Property*, ahead of print, 2023, <https://doi.org/10.1111/jwip.12274>.

²⁹ Nenny Dwi Ariani, "The Protection of Traditional Cultural Expression to Enhance Community Welfare in Lampung Province," *Jurnal Meta-Yuridis* 8, no. 1 (March 2025): 74–80, <https://doi.org/10.26877/m-y.v8i1.20753>.

Holders may also include individuals or groups to maintain legal, social, or cultural affiliations with such indigenous or traditional communities.

Under constitutional and international human rights obligations, the State bears a dual responsibility in relation to cultural development. First, it must actively support and promote the development of national culture as an essential element of state identity and sovereignty. Second, and equally critical, the State is obliged to guarantee the autonomy and freedom of all societal components to maintain, develop, and transmit their cultural heritage in accordance with their own values, systems, and traditions.

Addressing this dual obligation requires a legal framework that supports state-led cultural development, while securing communal rights derived from customary law. Thus, the State must adopt an inclusive, participatory legal approach that acknowledges customary legal systems as valid sources of law and safeguards the cultural rights, aligning with constitutional mandates and international legal standards, particularly those enshrined in instruments such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).³⁰ This commitment ensures that all components of society, including TCEs holder communities, can pursue their collective rights, thereby contributing the progress and broader welfare of Indonesian society.

This state obligation is as stated in Article 28 C paragraphs (1 and 2) of the 1945 Constitution of the Republic of Indonesia that people have the right to develop themselves through the fulfillment of their basic needs, and get education and benefit from science and technology, arts and culture to improve the quality of their lives and for human welfare, the right to advance in fighting for their rights collectively to build community, nation and country. The state also recognizes the existence of indigenous peoples who have been maintaining and preserving the existence of TCEs/folklore. All forms of cultural expression from indigenous peoples are part of human rights that must be respected by anyone, including the state. The recognition of indigenous peoples' right by the State is explicitly affirmed in the 1945 Constitution of the Republic of Indonesia. Article 18B paragraph (2) stipulates that "The state recognizes and respects the units of customary law communities and their traditional rights as long as they are remain alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law." Furthermore, Article 28I, paragraph (3) of the Indonesia's Constitution provides that "The cultural identity and rights of traditional communities are to be respected in accordance with the evolving times". Together, Articles 32 and 18I establish a constitutional basis that the State is responsible for cultural development, cultural openness, recognition of community cultural rights; recognition of the existence of indigenous peoples, guaranteeing freedom or discretion to all components of society to maintain and develop culture including in TCEs/folklore. The State's recognition extends to indigenous peoples who have sustained and safeguarded the existence of TCEs/folklore, emphasizing that all forms of traditional cultural expression constitute an integral part of human rights that must be respected by all, including the State itself.

State obligations, when associated with a welfare (Alinea IV Preamble of the Indonesia's Constitution), functions to realize welfare and prosperity as much as possible for the people,³¹ including TCEs holder communities. The obligations of the state can be elaborated in several key points. First, the State is responsible for maintaining, preserving, and ensuring the existence of Traditional Cultural Expressions (TCEs) in all their forms of use and utilization, in alignment with the value systems of the communities from which these TCEs originate. Second, the state guarantees that all uses and benefits derived from TCEs and the cultural products of the nation must significantly contribute to the prosperity and welfare of the communities holding these TCEs. Additionally, the State is tasked with protecting and safeguarding the rights of individuals related to TCEs, folklore, and other forms of national cultural wealth, ensuring that these can be directly

³⁰ I. Nyoman Temon Astawa, "The Existence of Education and Culture in the Globalization Era," *Journal of Advanced Research in Dynamical and Control Systems* 12, no. 6 (2020): 731–39, <https://doi.org/10.5373/JARDCS/V12I6/S20201087>.

³¹ Radosław Kurach, "(No) Country for Old Men? Intergenerational Welfare Distribution across Welfare State Regimes," *International Journal of Sociology and Social Policy* 43, no. 5/6 (2020), <https://doi-org.proxy.undip.ac.id/10.1108/IJSSP-11-2021-0282>.

produced or enjoyed by the communities. Last, the State is committed to preventing any actions by other parties that could hinder the TCEs holder communities or the broader Indonesian population from having the opportunity to enjoy or lose their rights to TCEs and national cultural assets. These state obligations are enforced through the Copyright Laws and Regulations from 1982 to 2014 and the Law on the Promotion of Culture.

3.1. Existence of Cultural Holder Community in TCEs Protection Policy

While the Intellectual Property Rights (IPR) system may not offer a complete philosophical justification for the protection of TCEs – as not all TCEs characteristics meet the requirements, such as originality, novelty, or authorship³² – it still presents viable opportunities for application.³³ As long as the embodiment of TCEs persists, protection is afforded by recognizing the State as the copyright holder of TCEs³⁴ as stipulated in Article 38 of Copyright Law Number 28 of 2014. However, the State's role as the TCEs/folklore copyright holder does not imply ownership or exclusive proprietary control over the work itself. The State in this case only has the authority to formulate policies, regulate, manage, and supervise.³⁵ The State referred to here can be interpreted not only as being represented to the Government, but also including the Regional Government as the embodiment of the state in the regions.³⁶

In connection with this, the State obliged to inventory, safeguard, and maintain Traditional Cultural Expressions and the use of Traditional Cultural Expressions must pay attention to the values that live in the community of TCEs holders (Article 38 of Copyright Law Number 28 of 2014 concerning Copyright). In this case, the State must guarantee and provide facilities to holder communities as the guardians of the TCEs value system to maintain and use in life. In the Copyright Law of 2024, it also regulates Rights consisting of performer rights, phonogram rights, and broadcast rights. Traditional artists of TCEs holders as performers of traditional art performances also obtain the protection of Moral Rights of Performers without time limit and Economic Rights of Performers for 50 years since the performance is realized in *phonograms* or *audiovisuals*.³⁷ The community of traditional culture holders (TCEs) can utilize technological advances to create a platform or internet provider (IP), or metaverse that contains information content of Traditional Cultural Expressions, allowing broadcast rights protection.

The TCEs protection is still possible through the provisions of collective Trademark Rights and geographical indication rights regulated in Trademark Law Number 20 of 2016. Its potential works, such as signs derived from traditional characters (symbols, pictures, paintings, words in fairy tales or songs), can be used as product identities or collective trademarks.³⁸ Signs with traditional characters are utilized in trading activities for goods and services with the same

³² Alberto Vargas, "WIPO's Proposed Treatment of Sacred Traditional Cultural Expressions as a Distinct Form of Intellectual Property," *Chicago Journal of International Law* 23, no. 1 (2022), <https://chicagounbound.uchicago.edu/cjil/vol23/iss1/14>.

³³ S. Murthy, "The Exploited yet Legally Underappreciated Apparel Domain of Indigenous Communities: Tracing WIPO's Efforts and Ongoing Challenges," *Journal of World Intellectual Property*, July 1, 2023, <https://doi.org/10.1111/jwip.12266>.

³⁴ G. Rastika, "Implementation of Legal Protection of Intellectual Property Rights (IPR) Against Traditional Cultural Expressions (EBT) in Review of Law Number 28 of 2014 Concerning Copyright," *Journal of Pacta Sunt Servanda* 2, no. 1 (2021): 36–47, <https://doi.org/10.23887/jpss.v2i1.460>.

³⁵ D. Edward, *Regulatory Governance: Policy Making, Legislative Drafting and Law Reform*, Regulatory Governance: Policy Making, Legislative Drafting and Law Reform (2022), 362, Scopus, <https://doi.org/10.1007/978-3-030-96351-4>.

³⁶ Ida Ayu Sukihana and I Gede Agus Kurniawan, "Karya Cipta Ekspresi Budaya Tradisional: Studi Empiris Perlindungan Tari Tradisional Bali Di Kabupaten Bangli," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*; Vol 7 No 1 (2018), ahead of print, 2018, <https://doi.org/10.24843/JMHU.2018.v07.i01.p05>.

³⁷ Maharsidewi Kusharyani, Budi Santoso, and Fifiiana Wisnaeni, "Eksistensi Dan Perlindungan Wayang Orang Sriwedari Surakarta Ditinjau Dari Aspek Hukum Hak Cipta," *Law Reform* 12, no. 1 (2016): 60–72, <https://doi.org/10.14710/lr.v12i1.15841>.

³⁸ Mira Burri, "The Protection of Cultural Heritage by Trademark," in *Research Handbook on Intellectual Property and Cultural Heritage* (Cheltenham: Edward Elgar Publishing, 2022), 56–71.

characteristics or commercial activities by associations or communities.³⁹ The requirements involve the implementation of collective marks for traditionally characterized products that share uniform attributes, necessitating clear provisions governing the use of such marks (Article 46 - 51 Trademark Law 2016).

TCEs holder communities may have exclusive rights over their traditional expressions when TCEs is formally registered as a geographical indication, provided it meets the stipulated requirements outlined in the Trademark Law Number 20 of 2016. The provision of geographical indication protection is possible to provide protection to TCEs because its characteristics have ties to knowledge or cultural traditions that are inseparable from the nature of their geographical origin.⁴⁰⁴¹ For example, the word "*Minang*" indicates West Sumatera, the picture of "*Toraja traditional house*" indicates the origin of goods from the Toraja region in South Sulawesi, "*Gudeg*" indicates the city of Yogyakarta, "*Reog*" indicates the Ponorogo region, and "*Pendhet*" dance indicates the island of Bali.

TCEs protection as a collective brand or geographical indication⁴² will have an impact on the ownership of exclusive rights. It can be defended by the community of cultural holders as the community of TCEs origin when used by other parties without permission. For the community, this protection becomes one of the strategies to compete with the products of global capital owners. However, implementing this protection becomes difficult when consumer preferences are overwhelmingly aligned with brand identity rather than the TCEs product's source of origin.⁴³ The requirements for TCEs protection through the principle of geographical indications protection are subject to the provisions of Articles 56 - 71 of the Trademark Law 2016. In addition, the Trademark Law 2016 regulates the authority of the Director General of Intellectual Property ex-officio to conduct trademark abolition in the event of registered trademarks containing overall similarities with TCEs characters (Article 72 paragraph 7 letter c). This provision contains the context of the state's obligation to prevent the use of TCEs trademarks that are individually owned by unauthorized parties and in this case the community of cultural holders can participate to provide information to the Ministry of Law.

TCEs, as communal intellectual property, is further regulated by Government Regulation Number 56 of 2022 concerning Communal Intellectual Property (PP on KIK). This PP obliges the state to conduct an inventory not only of TCEs, but all communal intellectual property consisting of TCEs, traditional knowledge, genetic resources, indications of origin and potential geographical indications (Article 4 of PP on KIK).⁴⁴ Communal Intellectual Property is defined as intellectual property whose ownership is communal and has economic value while upholding the moral, social and cultural values of the nation (Article 1 of PP on KIK). The legal policy on KIK recognizes the existence of Cultural Holder Communities consisting of indigenous communities or local communities as guardians, developers, shapers, value systems, perspectives attached to TCEs as a response to the environment, nature, and history. The Cultural Community as the community of origin of TCEs is recognized as a community of developers of TCEs value systems that are carried out collectively, continuously, and transmitted across generations. Besides, this provides awareness of identity, sustainability, and promotes respect for cultural diversity and creativity.

³⁹ P. H. Kusuma and K. Roisah, "Protection of Traditional Cultural Expressions and Geographical Indications: An Intellectual Property with Communal Ownership," *Journal of Indonesian Legal Development* 4, no. 1 (2022): 107–20, <https://doi.org/10.14710/jphi.v4i1.107-120>.

⁴⁰ Sreenath and Anson, "Geographical Indications and Traditional Cultural Expressions: A Comparative Legal Analysis of the GI Laws of Indonesia and India and a Case Study Analysis."

⁴¹ Michelle Okyere and Janice Denoncourt, "Protecting Ghana's Intellectual Property Rights in Kente Textiles: The Case for Geographical Indications," *Journal of Intellectual Property Law & Practice* 16, nos. 4–5 (2021): 415–26, <https://doi.org/10.1093/jiplp/jpab010>.

⁴² Sreenath and Anson, "Geographical Indications and Traditional Cultural Expressions: A Comparative Legal Analysis of the GI Laws of Indonesia and India and a Case Study Analysis."

⁴³ G. Hull, "Cultural Branding, Geographic Source Indicators and Commodification," *Theory, Culture & Society* 33, no. 2 (2016): 125–45, <https://doi.org/10.1177/0263276415583140>.

⁴⁴ R. F. Kusmaningtyas et al., "Traditional Cultural Expression as an Embodiment of Indigenous Communities and Regional Identity (Semarang Indonesia Case)," *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 45–92, <https://doi.org/10.15294/jils.v8i1.63191>.

Government Regulation on KIK regulates the TCEs protection as an inclusive moral right, which is held and/or carried by the Community of Origin, with economic benefits, and is valid indefinitely.⁴⁵ In this case, the TCEs holder community, as a party with the right to maintain the right of attribution and the TCEs integrity, when TCEs is used and utilized by other parties without mentioning the source of origin, and when TCEs is used not in accordance with the value system of cultural traditions. However, the copyright system does not regulate legal remedies against violations of attribution rights and TCEs integrity rights.

As a consequence of the inclusive protection system, people can utilize TCEs with the provisions of mentioning the KIK Community of Origin, maintaining the value, meaning, and identity of KIK, as well as concerning to the values that live in the Community. For TCEs categorized sacred, secret, or deeply held, any utilization must first secure permission from the Community of Origin or its development community. This regulatory approach employs the defensive protection, placing TCEs within the public domain while stipulating that their maintenance, preservation and development remain open and inclusive to all committed parties.

In the context of culture, TCEs is basically part of the form of cultural heritage⁴⁶ because it is a form of ideas, values, norms, regulations, and so on. TCEs is also a form of patterned behavioral activities of humans in certain community communities and culture as objects of human work. These three forms are inseparable from each other. As part of ideal culture and customs, TCEs regulates and gives direction to human actions and works. Both of them produce objects and physical culture.⁴⁷

Tangible TCEs works such as architectural works, sculptures, temples or paintings, receive special protection for conservation and preservation under the 1972 *UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage* 1972.⁴⁸ Complementary, the *UNESCO Convention for the Safeguarding of Intangible Cultural Heritage* governs intangible TCEs. Within this latter instrument, “safeguarding” actions refers to comprehensive actions – including documentation, identification, research, preservation, protection, promotion, guidance, dissemination through formal and non-formal education including revitalization actions against some aspects of cultural heritage.⁴⁹ Crucially, this security measure is not only the task of the government, but also mandates a prominent and collaborative role for communities and other relevant stakeholders.⁵⁰ Indonesia as one of the participating countries in this case is obliged to strive to ensure the widest possible participation of communities, individual groups where they create and maintain intangible cultural heritage, and actively involves in managing intangible cultural heritage.⁵¹ The implementation of this obligation is carried out with the issuance of the Law on the Promotion of Culture in 2017.

Indonesia is also part of the 2005 UNESCO Convention on Cultural Diversity, which states that respect for cultural diversity is an ethical imperative that cannot be separated from respect for human dignity. This implies a commitment to human rights and fundamental freedoms, particularly the rights of traditional or indigenous peoples. Cultural diversity can be protected and

⁴⁵ Yenny Eta Widyanti, “Human Rights and Indonesian Legal Protection of Traditional Cultural Expressions: A Comparative Study in Kenya and South Africa,” *Jurisdictie: Jurnal Hukum Dan Syariah*; Vol 14, No 2 (2023): *Jurisdictie* DO - 10.18860/j.V14i2.24318, January 10, 2024, <https://ejournal.uin-malang.ac.id/index.php/jurisdictie/article/view/24318>.

⁴⁶ Purwandoko, “The Implementation of the Traditional Cultural Expression (TCE) Protection in Indonesia Based on Article 38 of Law Number 28 of 2014 Regarding Copyright.”

⁴⁷ Koentjaraningrat, *Mentalitet and Development*, 7th ed. (Jakarta: PT Gramedia, 1974).

⁴⁸ D. Rodwell, “Inhabited Historic Cities, Urban Heritage, and Dissonances at the Heart of the World Heritage System,” *European Journal of Post-Classical Archaeologies* 12 (2022): 291–352.

⁴⁹ UNESCO, *Basic Texts: Of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage* (Paris: UNESCO, 2020), 115.

⁵⁰ Eva Juliana Purba, Akbar Kurnia Putra, and Budi Ardianto, “Perlindungan Hukum Warisan Budaya Takbenda Dan Penerapannya Di Indonesia,” *Uti Possidetis: Journal of International Law* 1, no. 1 (2022): 90–117, <https://doi.org/10.22437/up.v1i1.8431>.

⁵¹ A. Gkana, “Peoples’ Heritage or States’ Heritage? Sovereignty in the UNESCO Mechanism for the Safeguarding of Intangible Cultural Heritage,” *Brazilian Journal of International Law* 17, no. 3 (2020): 40–59, <https://doi.org/10.5102/rdi.v17i3.7192>.

promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, and the ability of individuals to choose cultural expression, are guaranteed.⁵² Therefore, based on international standards and adhering to the values of equality, human rights, and freedoms, their constitution are established on the principle that every person has the right to self-determination and the respectful practice of their culture and traditions.⁵³ Moreover, in some states, concerning for the preservation of historical and cultural heritage, careful attitude to historical and cultural monuments is the constitutional duty of citizens.⁵⁴ There is a strong consensus that the protection of cultural values prevents social discord and actively support the entrenchment of peaceful ideals across society.⁵⁵ The reorientation of CTEs introduces a paradigm shift in heritage discourse, treating cultural heritage not just as practice, but as a critical human rights issue integral to international humanitarian heritage.⁵⁶

TCEs are cultural expressions of traditional communities and are guaranteed in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Culture Rights (ICESCR) 1966 instruments. This means that everyone to participate in cultural life, enjoy the benefits of scientific progress and its applications, and benefit from the protection of moral and material interests arising from scientific, literary, or artistic works (Article 15 ICESCR). This article is also interpreted for communal interests.⁵⁷ This provision becomes relevant to be used as the basis of claims by traditional communities, which aim to obtain recognition of their communal rights to compensation related to the use of their traditional knowledge and discrimination against the neglect of TCEs protection.⁵⁸

This TCEs protection is recognized in the Declaration on the Rights of Indigenous Peoples in Article 31, which states that Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and cultural expressions, as well as manifestations of their science, technology and culture, including human and other genetic resources, medicinal seeds, traditional games and performing arts. They also have the right to maintain, control, protect and develop their intellectual property, cultural heritage, traditional knowledge, and cultural expressions. Together with indigenous peoples, States will take effective measures to recognize and protect the exercise of these rights.

As part of culture in the Indonesian constitution, TCEs protection mention that the State has the responsibility of developing the country's culture and must guarantee freedom or flexibility to all components of society to maintain and develop culture and enjoy cultural products, including in maintaining and developing culture (Article 32 of the Indonesia's Constitution).⁵⁹ Furthermore, the State also guarantees all components of society, including the TCEs community to fight for

⁵² M. J. O. Jiménez, "Protecting Traditional Knowledge and Traditional Cultural Expressions through Cultural Heritage and Human Rights Norms in Colombia," *International Journal of Human Rights and Constitutional Studies* 6, no. 3 (2019): 227, <https://doi.org/10.1504/ijhracs.2019.10019222>.

⁵³ E. Mitskaya, "Provision of the Human and Civil Rights under Integration Processes Conditions," *Eurasian Integration: Economy, Law, Politics* 7 (2010): 110–15, https://elibrary.ru/download/elibrary_15166962_95812508.pdf.

⁵⁴ *Constitution of the Republic of Kazakhstan*, 1995, <https://online.zakon.kz/>.

⁵⁵ P. Ishwara Bhat, "Protection of Cultural Property under International Humanitarian Law: Some Emerging Trends," *ISIL Year Book of International Humanitarian and Refugee Law*, 2001, 1–34.

⁵⁶ W. Logan, "Cultural Diversity, Cultural Heritage and Human Rights: Towards Heritage Management as Human Rights-Based Cultural Practice," *International Journal of Heritage Studies* 18, no. 3 (2012): 231–44, <https://doi.org/10.1080/13527258.2011.637573>.

⁵⁷ Social and Cultural Rights (CESCR) United Nations Committee on Economic, *General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary or Artistic Production of Which He or She Is the Author (Art. 15, Para. 1(c) of the Covenant)*, UN Doc. E/C.12/GC/17 (2006), <https://www.refworld.org/legal/general/cescr/2006/en/39826>.

⁵⁸ M. Storey, "The Right to Enjoy Cultural Heritage and Australian Indigenous Cultural Heritage Legislation," *Nordic Journal of Human Rights* 41, no. 1 (2023): 49–69, <https://doi.org/10.1080/18918131.2022.2150410>.

⁵⁹ M. R. A. Palar and R. Rasiah, "Universalization of Indonesian Cultural and Scientific Regulations," *African Journal of Science, Technology, Innovation and Development* 11, no. 7 (2019): 873–82, <https://doi.org/10.1080/20421338.2019.1588510>.

their collective rights for the progress and welfare of the community concerned or the overall welfare of the Indonesian people (Article 28 of the Indonesia's Constitution).⁶⁰

Recognition of the existence of cultural communities is clearly recognized constitutionally. In Indonesia, the State recognizes the rights of indigenous peoples as seen in the Article 18B paragraph (2) Indonesia's Constitution, which stipulated that "The State recognizes and respects the unity of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law" and Article 28I, paragraph (3) of the Indonesia's Constitution, that "Cultural identity and traditional community rights are respected in line with the times". Thus, the Constitution, which is the highest normative-legal document and the basis for interpersonal and interethnic relations, focuses attention on the traditions and customs of indigenous peoples as consolidators of the cultural and spiritual values of the State. The Constitution does not diminish the role of intangible values; rather, it accords them significant importance for maintaining domestic political and social stability. As the cultural identity of indigenous peoples, TCEs is part of human rights, so in this case the State has an obligation to respect, protect and fulfill it, as stated in Article 6 of Law Number 39 of 1999 concerning Human Rights which reads "In the context of upholding human rights, differences and needs in customary law communities must be considered and protected by community law, and the Government. The cultural identity of customary law communities, including customary land rights, is protected, in line with the times."

Law Number 5 of 2017 concerning Objects of Cultural Advancement and Government Regulation Number 87 of 2021 concerning the Implementation of Law Number 5 of 2017 regulate in detail the preservation, protection, development, and utilization mechanisms of TCEs, and places its inclusive existence. Beyond protecting the individual custodians/guardians), the framework also addresses the cultural ecosystem, encompassing aspects of existence, value systems, human resources, institutions, , and TCEs' infrastructure. However, the full impact of these regulations remains unrealized due to the absence of technical implementing regulations, especially those concerning benefit-sharing, which has consequently limited their ability to deliver substantial welfare benefits to the cultural communities.

3.2. Role of the Cultural Community Holder for TCEs' Protection

TCEs holder communities are groups of people who are recognized as custodians of traditional knowledge and practices. Such group of people can be local community or indigenous people. This TCEs holder community plays an important role in preserving, managing, and passing on TCEs across generations in a sustainable manner, including skills, innovations, and practices that are an integral part of a community's cultural heritage.⁶¹

The role of the holder is not just about maintaining cultural continuity, it also includes emotional and experiential dimensions, such as re-enchantment and ritualization, which are critical to the cultural dynamics of the community.⁶² TCEs holders are involved in local strategies to label traditions as cultural property, which helps in maintaining and managing these traditions within the community⁶³ and understanding the complexities of cultural property, adapting traditions to modern contexts, and ensuring legal protection against exploitation without

⁶⁰ R. Njatrijani, "Defensive Protection of Traditional Cultural Expressions (TCEs) of Communities in Blora Regency," *Law, Development and Justice Review* 1, no. 1 (2018): 39–68, <https://doi.org/10.14710/ldjr.v1i1.3572>.

⁶¹ Chidi Oguamanam, "Wandering Footloose: Traditional Knowledge and the 'Public Domain' Revisited," *The Journal of World Intellectual Property* 21, nos. 5–6 (2018): 306–25, <https://doi.org/10.1111/jwip.12096>.

⁶² Alessandro Testa and Cyril Isnart, "Reconfiguring Tradition(s) in Europe: An Introduction to the Special Issue," *Ethnologia Europaea* 50, no. 1 (2020), <https://doi.org/10.16995/ee.1917>.

⁶³ M. Tauschek, "Cultural Property as Strategy: The Carnival of Binche, the Creation of Cultural Heritage and Cultural Property," *Ethnologia Europaea*, ahead of print, 2009, <https://doi.org/10.16995/ee.1056>.

community consent.⁶⁴ TCEs holders have the capacity to negotiate with interested parties in order to identity and adapt traditions to contemporary contexts, ensuring that traditions remain relevant and dynamic rather than static.⁶⁵

TCEs holder communities have a role in the existence of TCEs itself because the traditional knowledge possessed by TCEs holders is fundamental in developing personal and communal identity. Such traditional knowledge connects past, present, and future generations, thus becoming the basis for a strong national identity and reducing social problems, such as poverty and inequality.⁶⁶ TCEs Holder communities and institutions is also has an important role in preserving and promoting TCEs, ensuring its transmission to future generations and its integration into modern practices. Despite modernization, TCEs remain important in identity formation and community building. It serves as a resource for individuals to build their identity and maintain a sense of belonging, even in the context of globalization.

TCEs' holders as cultural custodians have rights that cover various aspects, including cultural rights and human rights, which ensure the protection and promotion of their cultural heritage and expression. TCEs' holder communities as custodians of culture have the right to participate in cultural life without discrimination, access and enjoy cultural heritage, as well as freedom of expression in the arts which are referred to as cultural rights. These rights are an integral part of the universal human rights framework and are essential to maintaining a peaceful and just society.⁶⁷ In addition, this *sui generis* TCEs protection enables respect for the moral rights and cultural integrity of indigenous peoples.⁶⁸

In particular, human rights treaties, customary international law, and humanitarian law have evolved to obligate host states and protect indigenous people property rights.⁶⁹ Certain treaty obligations, in particular, call on host states to protect indigenous cultural goods and grant preferential trade treatment to indigenous cultural industries. Legal frameworks at the national and international human rights level affirm the right of communities, ensuring that these expressions are available for further innovation and creativity, so this is important for cultural identity and the rights of indigenous peoples.⁷⁰ In fact, there is often a tension between protecting traditional cultures and safeguarding the public domain. Holders are placed on the defensive with the assumption that effective protection of TCEs will undermine the public domain. However, communities of cultural traditions often have their own conceptions of the public domain, which need to be considered in developing an inclusive and multicultural legal framework.⁷¹

The role of cultural holder communities faces several challenges on global culture promoted through media, technology, and international trade flows. Global culture often encourages a more generally accepted dominance and this brings a strong external cultural influence, often leading

⁶⁴ C. Isnart and A. Testa, "Reconfiguring Tradition(s) in Europe: An Introduction to the Special Issue," *Ethnologia Europaea*, ahead of print, Open Library of Humanities, 2020, <https://doi.org/10.16995/ee.1917>.

⁶⁵ C. Cocq, "Traditionalization for Revitalization: Tradition as a Concept and Practice in Contemporary Sámi Contexts," *Folklore (Estonia)* 57 (2014): 79–100, <https://doi.org/10.7592/FEJF2014.57.cocq>.

⁶⁶ Razifah Othman et al., "Aligning Cultural Heritage Preservation and Knowledge Transfer in Digital Era Between Champions and Agencies," in *Advances on Intelligent Computing and Data Science*, ed. Faisal Saeed et al. (Cham: Springer International Publishing, 2023), 533–43.

⁶⁷ Karima Bennoune, "Dignifying, Restoring, and Reimagining International Law and Justice Through Connections with Arts and Culture," *AJIL Unbound* 114 (2020): 108–10, Cambridge Core, <https://doi.org/10.1017/aju.2020.23>.

⁶⁸ Chun-Chi Hung, "Protection of Sacred Traditional Cultural Expressions: A Perspective from Taiwan," *Queen Mary Journal of Intellectual Property* 14, no. 2 (2024): 208–31, <https://doi.org/10.4337/qmjip.2024.02.05>.

⁶⁹ A. Sajeev et al., "Protection of Ritualistic Performances and Challenges of Copyright Law in the Digital World: A Case Study of Theyyam," 2523 (2023), Scopus, <https://doi.org/10.1063/5.0123590>.

⁷⁰ Enyinna Nwauche, "Traditional Cultural Expressions in Africa," in *The Protection of Traditional Cultural Expressions in Africa*, ed. Enyinna Nwauche (Cham: Springer International Publishing, 2017), 11–51, https://doi.org/10.1007/978-3-319-57231-4_2.

⁷¹ Oguamanam, "Wandering Footloose: Traditional Knowledge and the 'Public Domain' Revisited."

to the erosion of local culture.⁷² Traditional cultural communities also face pressure to follow global trends in lifestyle, fashion, and technology. This can reduce the younger generation's interest in the preservation of traditional culture,⁷³ which is considered less relevant or left behind compared to the more modern global culture. The intergenerational gap, marked by the failure of older generations to transmit skills and knowledge, poses a direct threat to the continuity of cultural traditions,⁷⁴ thereby endangering traditional cultural skills and knowledge due to inadequate succession planning.

This condition makes the holder community faced with a social dimension, namely the phenomenon and dilemma of cultural hybridization.⁷⁵ Cultural hybridization involves the merging of various cultural elements, creating new interconnected cultural forms.⁷⁶ Meanwhile, global cultural influences mix local traditions, giving rise to ambivalence in individual and group identity. On the one hand, a relatively positive effect of globalization, promoting cultural diversity, and intercultural interaction has the potential to establish or strengthen a dialogue between representatives of different cultures.⁷⁷ But on the other hand, there is a threat of loss of cultural identity, especially among young people, who are more susceptible to communicate in social networks and modern messengers. This creates an increasingly connected and plural society, as well as cultural differences are often a source of conflict or misunderstanding. The erosion of local cultural traditions and values is often driven by a pressure toward uniformity, heavily influenced by Western media and the emerging culture of the modern generation. This marginalizes and generates disrespect toward traditional cultural communities within the broader cultural framework. Therefore, effective intercultural communication becomes a major challenge for ensuring the sustainability of traditional cultures amidst diversity.⁷⁸ Despite these challenges, cultural hybridity offers a positive dimension by challenging traditional notions of identity, promoting flexibility and diversity, as well as encouraging the re-evaluation of identity dynamics and to support a more inclusive society through cultural integration.⁷⁹

The TCEs'-holding community faces several significant challenges in this era of technological advancement. Digital technologies are feared to have a complex impact on the protection of traditional cultural expressions, especially the convenience of digital media, such as instant access to information. Besides, easy reproduction has raised concerns about the risk of misuse and commercialization of TCEs.⁸⁰ The Internet and the World Wide Web have had a profound impact on the creation, dissemination, access, and consumption of cultural content,

⁷² P. N. Jones, "Identity through Fishing: A Preliminary Analysis of Impacts to the Nez Perce as a Result of the Damming of the Clearwater and Snake Rivers," *Cultural Dynamics*, ahead of print, July 2005, <https://doi.org/10.1177/0921374005058584>.

⁷³ Supratim Bhattacharya, "Understanding Religious Beliefs and Practices of the Tai-Ahoms: A Study in Moranjan Gaon," in *The Routledge Handbook of Tribe and Religions in India: Contemporary Readings on Spirituality, Belief and Identity* (Abingdon: Taylor and Francis, 2024), 261–70, <https://doi.org/10.4324/9781003510826-23>.

⁷⁴ Indra Fibiona et al., "Heritage in Motion: Safeguarding the Cultural Legacy of Wayang Kulit Kedu, Indonesia," *Trames Journal of the Humanities and Social Sciences* 28 (June 2024): 189–208, <https://doi.org/10.3176/tr.2024.2.06>.

⁷⁵ P. Shetty and R. Samant, "From 'Vulgar' to 'Progressive': The Curious Case of Shorts as an Outfit among Young Indian Girls," *International Journal of Critical Cultural Studies* 18, no. 2 (2020): 1–10, <https://doi.org/10.18848/2327-0055/CGP/V18I02/1-10>.

⁷⁶ Linyi Zhao et al., "The Effect of Safety Leadership on Safety Participation of Employee: A Meta-Analysis," *Frontiers in Psychology* 13 (2022), <https://doi.org/10.3389/fpsyg.2022.827694>.

⁷⁷ F. F. Tuncer, "Discussing Globalization and Cultural Hybridization," *Universal Journal of History and Culture* 5, no. 2 (2023): 85–103, <https://doi.org/10.52613/ujhc.1279438>.

⁷⁸ Munzhedzi James Mafela, "Translating Literature: An Alternative Tool for Teaching Foreign Culture," in *Trends and Tropes: Some Aspects of African Indigenous Literatures of South Africa* (London: Routledge, 2024), 17–30, <https://doi.org/10.4324/9781003476856-2>.

⁷⁹ Wang Yi, "Philosophical Perspectives on Cultural Hybridity: The Dynamics of Identity and Alterity," *European Journal for Philosophy of Religion* 15, no. 4 (2023): 403–18, <https://doi.org/10.24204/ejpr.2023.4325>.

⁸⁰ Mira Burri, "Digital Technologies and Traditional Cultural Expressions: A Positive Look at a Difficult Relationship," *International Journal of Cultural Property* 17, no. 1 (2010): 33–63.

offering both challenges and opportunities to better accommodate TCEs, especially in the dynamic sense of human creativity. The advancement of artificial intelligence will also inevitably impact the issue of originality of TCEs works because many artificial intelligence (AI) applications can generate TCEs copyrighted works with very similar to the original.

This condition becomes a challenge faced by the community of holders in protecting Indonesian cultural expressions. Although the government has regulated the protection of TCEs as part of intellectual property rights through the Copyright Law since 1982 until the 2014 Copyright Law, and Government Regulation Number 56 of 2022 concerning Communal Intellectual Property (KIK), TCEs as part of culture is regulated in the Law on the Promotion of Culture as explained above. Then, it has also been regulated about cultural rights for holder communities as part of human rights. The government has attempted to conduct documentation and inventory of TCEs by the Ministry of Law and the Ministry of Culture. However, the existing legal regulations are currently deficient in establishing a functional mechanism for access, benefit-sharing, and dispute resolution concerning the commercial use or use outside of traditional context or digitized TCEs, particularly regarding the relevant controlling institutions and value systems. In addition, there is an urgency to establish a special legal regime that recognizes and protects TCEs as a form of communal intellectual property, while considering the unique elements that make up TCEs and overcoming normative conflicts in existing regulations. In addition, the regulation of the AI utilization related to copyright protection including KIK has also not been specifically regulated. In fact, regulation is crucial for the participation of holder communities to continue to maintain the authenticity and develop the existence of TCEs and at the same time provide welfare for the entire holder community.

3.3. Community Holder Participation in Sustainable TCEs Protection Strategy

In the digital age and advances in AI technology, community participation in the protection of traditional cultural expressions is crucial as cultural communities because it has the direct holders of such cultural knowledge, practices, and heritage. Involving communities in the protection process helps ensure that the approach taken is sensitive to their cultural values, needs, and aspirations.⁸¹ In the government's TCEs inventory program, Article 38 of Copyright Law, the involvement of holder communities is necessary as holders have in-depth knowledge of the practices and meanings behind traditional cultural expressions. The community can provide invaluable information about the history, context, and cultural values associated with the TCEs.

Any policy decision-making by the government related to TCEs protection should involve the participation of interested parties including the holder community. The policy-making process provides opportunities for initiation and public participation. This will influence the focus and outcome of public policies. When people feel involved, they tend to trust and support the resulting policies and transparent. Moreover, inclusive participation processes can increase the legitimacy and accountability of government decisions.⁸² Community holders consider that decisions reflect their aspirations and needs. The government can conduct consultations, open discussions with interested parties, including holder communities about the protection plan, its implications, and impacts on holder communities.

Involvement of holder communities in policies for the use, development, and management of TCEs can be done through holder community participation mechanisms, such as cultural councils or committees and can also ensure that the policies adopted accurately reflect the views and needs of the community. It is important to recognize that culture is something that lives and

⁸¹ Nguyen Thanh Nam and Nguyen Nghi Thanh, "The Role of Local Communities in the Conservation of Cultural Heritage Sites: A Case Study of Vietnam," *Journal of Asian Scientific Research* 14, no. 2 (2024): 179–96, <https://doi.org/10.55493/5003.V14I2.5057>.

⁸² K. M. Rest, "The Public Policymaking Process and the Power of Participation," in *Climate Change and Public Health* (New York: Oxford University Press, 2024), 225–50, <https://doi.org/10.1093/oso/9780197683293.003.0011>.

changes over time. Community participation can help in formulating policies that are done through an adaptive approach,⁸³ thus allowing for appropriate changes as the culture evolves.

The inclusive nature of TCEs protection and the use of TCEs in the era of digital technology advancement are prone to conflict or ethics, especially when TCEs is used by parties outside the community or foreign parties. The participation of holder communities can help overcome conflicts or ethical issues that may arise in the context of protecting cultural expressions.⁸⁴ As a result, a deeper understanding of the holder community about the order of values and the sensitivity of the use of sacred TCEs can avoid controversy both in the context of cultural heritage and intellectual property rights.⁸⁵ Holder community participation is not only about giving them space in the process, but also about empowering them to become the guardians and successors of traditional culture. In this regard, it is necessary to develop a strategy for continuity in the TCEs protection, so that it can be enjoyed and transformed for future generations.

The strategy of a sustainable approach to TCEs protection requires several efforts to maintain, preserve, and promote such cultural heritage with due regard to social and economic. The main objective is to ensure that protection efforts do not only focus on cultural aspects, but also consider the impact on holder communities, the environment, and long-term sustainability.⁸⁶ TCEs protection must be integrated in sustainable development and not damage the environment or resources, as mandated by Article 13 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005 emphasizing the integration of culture into development policies to foster sustainable development.⁸⁷ A sustainable approach should also focus on the maintenance of cultural identity, involving the preservation of traditional cultural practices, values and knowledge that provide TCEs its unique character. Local knowledge or local wisdom owned by the community of holders is a valuable asset, so protection efforts with a sustainable approach must respect every use or utilize the knowledge owned by the community.

Sustainable protection includes how the use of resources, such as land, water, and natural materials in traditional cultural expressions should be managed wisely. Protection should involve sustainable practices that maintain ecological balance.⁸⁸ This requires increased awareness, support and stronger participation from communities on the importance of TCEs protection and its implications for sustainable development. It is no coincidence that some States recognize cultural and historical heritage sites as tourism objects with the function of integrating the country into the global space of cultural communications, but while ensuring their cultural and humanitarian security.⁸⁹ Sustainable approaches should also consider how TCEs protection can contribute to the economy of holder communities, such as through responsible cultural tourism. Attention should be paid to support representatives of culture and art who are in a vulnerable socio-economic position, expressed in their low level of wages. In this regard, support from

⁸³ Nam and Thanh, "The Role of Local Communities in the Conservation of Cultural Heritage Sites: A Case Study of Vietnam."

⁸⁴ Aida Al Hosni, "Cultural Heritage Preservation in the Digital Age: Balancing Tradition and Innovation in Mediterranean Smart Cities," paper presented at Proceedings of the 2024 1st Edition of the Mediterranean Smart Cities Conference (MSCC 2024), Martil-Tetuan, 2024, <https://doi.org/10.1109/MSCC62288.2024.10697065>.

⁸⁵ Arup Kumar Poddar, "Impact of Global Digitalization on Traditional Cultures," *International Journal of Interdisciplinary Social and Community Studies* 20, no. 1 (2025): 209–32, <https://doi.org/10.18848/2324-7576/CGP/v20i01/209-232>.

⁸⁶ F. F. Paulino and T. Cruz, "Cultural Heritage, Tourism and Sustainable Development: The Model of the Cultural Heritage Digital Media Lab," in *Advances in Science, Technology and Innovation* (Cham: Springer Nature, 2024), 139–49, https://doi.org/10.1007/978-3-031-49536-6_15.

⁸⁷ V. Guévremont, "La Reconnaissance Du Pilier Culturel Du Développement Durable: Vers Un Nouveau Mode de Diffusion Des Valeurs Culturelles Au Sein de l'ordre Juridique Mondial," *Canadian Yearbook of International Law*, ahead of print, Cambridge University Press, 2013, <https://doi.org/10.1017/S0069005800010833>.

⁸⁸ G. Dyrset, L. Margaryan, and S. Stensland, "Local Knowledge, Social Identity and Conflicts around Traditional Marine Salmon Fisheries - A Case from Mid-Norway," *Fisheries Management and Ecology* 29, no. 2 (2022): 131–42, <https://doi.org/10.1111/fme.12522>.

⁸⁹ Government of the Republic of Kazakhstan, *The Concept of Cultural Policy of the Republic of Kazakhstan for 2023–2029* (2023), <https://adilet.zan.kz/rus/docs/P2300000250>.

various holders is required to enhance the necessary skills for holder communities in order to maintain traditional cultural practices and helps to ensure the viability and relevance of TCEs in the current context.⁹⁰

Utilization of TCEs for community economic development can be a significant opportunity to increase community income and welfare, while still maintaining and promoting rich cultural heritage.⁹¹ Cultural tourism can be an option for community holders by utilizing TCEs dance, music, fine arts, and handicrafts. These can be the attraction for tourists who are interested in enjoying local cultural experiences. Some local governments in Indonesia have established culture-based tourism policies, among others, the Bali Government established an integrated tourism village policy combining economic, social and cultural aspects,⁹² In Mahakam Ulu, East Kalimantan, the Hudoq Pekayang Festival has been integrated with the Nugal tradition of the Dayak Bahau tribe.⁹³

Holder communities can generate income from cultural tourism by managing cultural trips, cultural events, providing traditional handicrafts, and other activities that engage tourists. Holder communities can also develop a creative economy by engaging in photography activities, making videos or short films of their TCEs. Empowering holder communities to further improve their knowledge and skills on how to protect, preserve and develop their own culture as an important step. This training can include cultural heritage management, documentation, and traditional practices. Holder communities have access to resources needed to maintain and preserve their cultural expressions, including funds for preservation programs, infrastructure, or technology training to support TCEs product innovation and to strengthen the capacity of holder communities. Increased understanding of intellectual property rights aspects by holder communities is also crucial, so that the development and utilization of TCEs can bring economic impact to holder communities and can stimulate the growth of TCEs creativity and innovation. The implementation of sustainable protection development strategies, collaboration between the government, non-governmental organizations, academics, and cultural communities as a key to ensuring the long-term and sustainable success of these efforts.

4. Conclusion

The protection of Traditional Cultural Expressions (TCEs) in Indonesia requires the integration of legal frameworks and the empowerment of cultural stakeholder communities to maintain identity, sustainability, and community welfare. Legally, Indonesia has adopted the Copyright Law, Government Regulation on Communal Intellectual Property, and Cultural Advancement Law that recognize the role of the State in the inventory, monitoring, and moral protection. However, these regulations have not been fully implemented as there is currently no legal policy governing their technical implementing regulations, particularly regarding the institutions and mechanisms for implementing the benefit-sharing principle. Therefore, these regulations have not yet significantly benefited the welfare of cultural communities and not fully provided significant benefits to the welfare of the cultural community. Furthermore, regulations regarding the use of AI related to copyright protection, including communal intellectual property, have not yet been specifically regulated. In fact, regulations are crucial for stakeholder community participation to continue maintaining the authenticity and developing the existence of TCEs, while

⁹⁰ Guanlan Xue, Jinglian Chen, and Zhuozhuang Lin, "Cultural Sustainable Development Strategies of Chinese Traditional Furniture: Taking Ming-Style Furniture for Example," *Sustainability (Switzerland)* 16, no. 17 (2024): 744.

⁹¹ Roberta Paltrinieri, "Cultural Welfare," in *Elgar Encyclopedia of Global Migration: New Mobilities and Activism* (Cheltenham: Edward Elgar, 2025), 159–60, <https://doi.org/10.4337/9781035300389.ch44>.

⁹² S. Pickel-Chevalier, I. K. G. Bendesa, and I. N. Darma Putra, "The Integrated Tourist Villages: An Indonesian Model of Sustainable Tourism?," in *Island Tourism Sustainability and Resiliency* (Abingdon: Routledge, 2022), 262–86, <https://doi.org/10.4324/9781003280521-14>.

⁹³ A. Hanief Saha Ghafur, "Tourism Policy Impact on Transforming Religious Traditions of Dayak: A Case Study of the Hudoq Ceremony Tradition of the Dayak Bahau Tribe in Tourism Development, East Kalimantan, Indonesia," *Cogent Arts and Humanities* 11, no. 1 (2024): 2429938, <https://doi.org/10.1080/23311983.2024.2429938>.

simultaneously ensuring the welfare of the entire cultural community holder. This situation necessitates the establishment of a special (*sui-generis*) legal regime that strengthens the recognition and protection of TCEs as a form of communal intellectual property and traditional cultural communities, while also considering the unique elements that constitute TCEs and addressing normative conflicts within existing regulations.

Regulations are important part for cultural community participation to continue maintaining the authenticity and developing the existence of TCEs, ensuring the welfare of the entire cultural community. The main challenges include the risk of digital misappropriation, globalization that erodes the interest of the younger generation, and cultural hybridization that blurs the context of tradition. These force the people to reconsider the legal norms for the protection of cultural values. For this reason, sustainable protection should involve the active participation of communities in the policy process, the development of an TCEs-based creative economy (such as cultural tourism), and capacity building through training in cultural heritage documentation and management. On the other hand, the government needs to update regulations to recognize communal rights, prevent unauthorized exploitation, and integrate sustainable development principles that combine preservation of traditional values with adaptive innovation. The participation of cultural community holder in the sustainable protection of TCEs not only legitimizes accountable legal policies, but also ensures that legal policies can have a sustainable impact on the existence of TCEs, social, economic, and the welfare of the cultural stakeholder community or society at large. Implementing a sustainable protection development strategy requires collaboration between the government, non-governmental organizations, academics, corporations, and cultural communities to create an ecosystem that supports the existence of TCEs as a cultural asset and socio-economic driver, ensuring its sustainability amidst global dynamics without sacrificing local identity.

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