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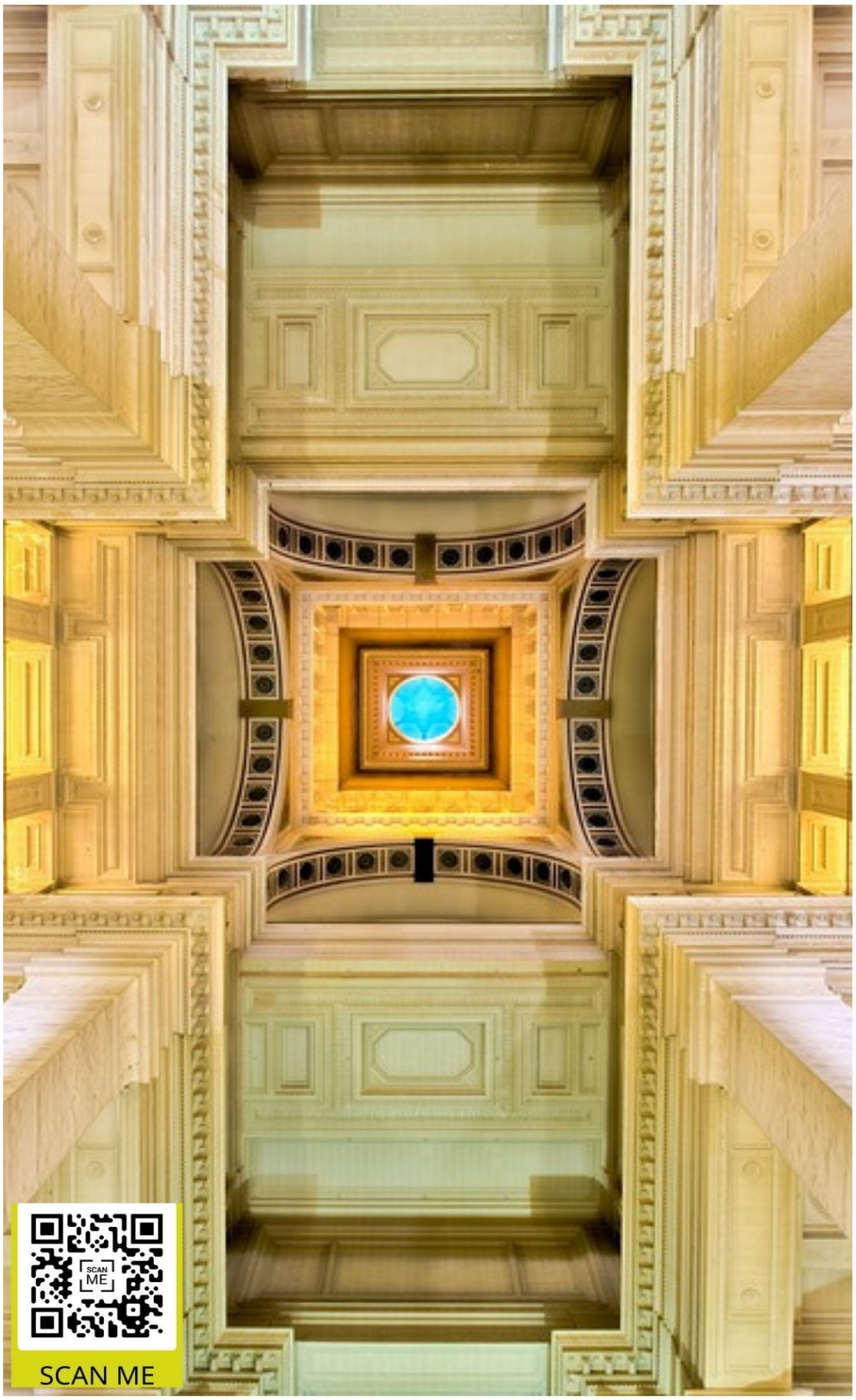

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Interpreting "Held by the State": Article 38 (1) Copyright Law and Traditional Cultural Expression Protection

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Abstract

General Background Traditional cultural expressions constitute communal cultural heritage embodying identity, philosophy, and collective memory, requiring legal protection aligned with their communal and sacred nature. **Specific Background** In Indonesia, traditional batik motifs—particularly the sacred Parang motifs of the Yogyakarta Sultanate—are classified as traditional cultural expressions whose copyright is declared "held by the state" under Article 38 paragraph (1) of Law No. 28 of 2014 on Copyright. **Knowledge Gap** This formulation contains normative ambiguity, as it does not clearly define whether state authority represents ownership, public trusteeship, or mere administrative control, resulting in weak legal certainty for indigenous custodians. **Aims** This study examines the legal meaning of the phrase "held by the state" in relation to the protection of sacred Parang batik motifs within the framework of traditional cultural expressions. **Results** The analysis shows that the provision functions as a declarative norm lacking substantive mechanisms, failing to recognize customary authority, community consent, or benefit-sharing, and thereby permitting desacralization and misuse of sacred motifs. **Novelty** This research clarifies that state control over traditional cultural expressions should be interpreted as public trusteeship rather than ownership,drawing comparative insights from community-centered protection models in India and Thailand. **Implications** The findings support the development of a sui generis legal framework integrating customary law, community participation, and administrative facilitation to ensure sustainable and culturally respectful protection of sacred batik motifs.

Highlights:

- Article 38 paragraph (1) operates as a declarative norm without concrete protective mechanisms
- Legal ambiguity weakens recognition of indigenous custodianship over sacred motifs
- Comparative models support community-based rights with state administrative roles

Keywords: Batik, Traditional Cultural Expression, Copyright, State Held

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Introduction

The expression of Traditional Culture (EBT) which was originally referred to as folklore or folklore is a cultural heritage owned by indigenous peoples whose existence must be protected, because for Indigenous people folklore is one of the most valuable assets as a giver of identity to some people from a country. [1] With the promulgation of Law No. 28 of 2014 on copyright (UUHC 2014) the term folklore or folklore is replaced by the term traditional cultural expression (EBT). Indonesia, which is rich in renewable energy, has a promising economic potential, especially one of which is related to the art of batik. Batik is a non-material cultural heritage that has been recognized worldwide as a brand identity for Indonesia.[2] United Nations Educational, Scientific and Cultural Organization (UNESCO) 2009 Etymologically, word "batik "is formed from the combination of the word which means writing on a wide or wide field, and "tik " or" nitik " which refers to the act of making a point. Every region in Indonesia, from Java to Sumatra, Kalimantan, and Sulawesi, has a distinctive style and motif of batik, which represents the identity, history, and local wisdom of the area. These motifs not only serve as decoration, but also serve as a medium of cultural expression and representation, where each line, shape and color stores a certain message that is passed on from generation to generation.[3]

At the national level, the legal protection of batik art is regulated in Article 28 paragraph (3) of the Constitution of the Republic of Indonesia, [4] Law Number 19 of 2002 on copyright which is revoked by Law Number 28 of 2014 on copyright, and Law Number 5 of 2017 on Cultural Promotion. Article 28 of the Constitution of the Republic of Indonesia states that the cultural identity and rights of traditional communities are respected in accordance with the Times and civilization", therefore batik art as a cultural identity and rights of traditional communities are respected by the state. In Article 40 letter j of Law No. 28 of 2014 on copyright, states that batik artwork or other motif art is a protected creation, but in the explanation of Article 40 letter j of Law No. 28 of 2014 on copyright, states that batik artwork is a batik motif that is contemporary without innovative elements, so it must have elements of the present and not traditional. And another motif artwork is a motif that has elements of Indonesian culture in various regions.[5]

Indonesia has traditional batik motifs that are considered sacred such as broken Parang Barong, broken Parang Gendreh, Parang Klithik, Semen Gede Sawat Gurdha, Semen Gede Sawat Lar, Ulan Liris, Rujak Senthe, Parang-parangan, Cemukiran, Kawung, and Huk are believed to have spiritual power and high philosophical meaning contained in the batik motifs. Sacred motifs in batik are believed to create a mystical atmosphere that conveys an aura of nobility in the wearer.[6] Regulations regarding the prohibition of the use of batik motifs are also outlined in a written regulation before Indonesia gained independence, namely in the Rijk Van Djokjakarta in 1927 on the Order of the Chapter Dalem, named Pangungo Keprabon ing Kraton Nagari Yogyakarta, which broadly regulates the Prohibition of dress; this rule remains applied until now. Regulations issued by the Palace of Yogyakarta is only applicable to the environment of the Palace of Yogyakarta alone, so it does not bind the general public, whereas the use of batik motifs in the general public is very sacred for the people of Yogyakarta.[7]

In its development, batik parang has several types of motifs, namely *parang, parang barong, parang klitik, parang kusumo, parang tuding, parang curigo, parang centung, parang pamor*, and others. Each of these batiks has a pretty striking difference, both in form and in the meaning contained therein, and for whom the motif will be used. Motifs have their own characteristics and have various meanings contained within them. Its use can also distinguish the status of the wearer and also give more meaning where the wearer is expected to get a trait similar to the batik motif used. However, the user is now experiencing a change. Where in the past parang batik was only used by members of the royal family for special events, now it has begun to be used by the broader community for various purposes. This action resulted in a lot of criticism from the people of Yogyakarta as the owner of the local indigenous identity because the philosophy of the sacred parang batik motif does not seem to be protected by the state.

Related to this, this study aims to analyze the role of the state in protecting the parang batik motif as copyright, international cultural expression and communal intellectual property. With legal provisions stating that the right to EBT *" held by the state"* as stated in Article 38 paragraph (1) of Law No.28 of 2014 on does not provide quate legal protection against abuse of the parang batik motif and has not been able to protect traditional cultural expressions intact because of legal ambiguity in the phrase *"held by the state"* which means,whether the state acts as the exclusive copyright owner eksklusive (as befits an individual creator) or only administrator/manager in the public interest. The phrase is potentially at odds with claims of communal ownership or Indigenous peoples customary rights to their cultural expression. The arrangement that such rights are automatically"vested in the state" may override the recognition and protection of indigenous peoples indigenous rights, which are precisely the main source of such cultural expression. This indicates the ambiguity of the norm, since there "State" is an unclear meaning of "State". Based on the description of the above background, the researcher intends to elaborate and explain the formulation of the problem, namely what is the meaning in the phrase "held by the state" in Article 38 paragraph (1) of Law Number 28 of 2014 on copyright in the concept of Traditional Cultural Expression in the form of traditional batik motifs?

Method

An analysis of legal materials in this study uses the interpretation of law to better explain the ambiguity of the norm (vague norm) contained in Article 38, paragraph 1 of Law No. 28 of 2014 on copyright, which states that the state holds copyright in the form of traditional cultural expressions.[8] Furthermore, Mertokusumo and Pitlo identified six commonly used methods of legal interpretation. First, grammatical or linguistic interpretation is a method that emphasizes the role of language in giving meaning to cultural expressions traditionally held by the state. Second, teleological or sociological interpretation is a method of legal interpretation that establishes the meaning of laws by reference to the societal purposes

of cultural expressions traditionally held by the state. With this method, laws that are still valid but outdated are applied to the needs or interests of the present, regardless of whether the right was known at the time of being invoked or not. Regulations adapted to the new social situation in other words, the old (still valid) legal regulations are adapted to the new situation or actualized. Third, systematic or logical interpretation is a method of legal interpretation that interprets Article 38 paragraph (1) of Law No. 28 of 2014 concerning copyright which states that the state holds copyright in the form of Traditional Cultural Expressions as part of the overall system of legislation by linking it with other laws. This interpretation is done because, in fact, the law is always related to other laws and regulations; there is nothing that stands alone.

Result and Discussion

Batik is one of the traditional fabrics of the archipelago that has unique characteristics and full of meaning. The process of creating batik motifs is not done carelessly. Each motif has a deep symbolism and reflects the philosophy or cultural values that developed in the local community. Every region in Indonesia, from Java to Sumatra, Kalimantan, and Sulawesi, has a distinctive style and motif of batik, which represents the identity, history, and local wisdom of the area. These motifs not only serve as decoration, but also serve as a medium of cultural expression and representation, where each line, shape and color stores a certain message that is passed on from generation to generation.[3]

Indonesia has traditional batik motifs that are considered sacred such as broken Parang Barong, broken Parang Gendreh, Parang Klithik, Semen Gede Sawat Gurdha, Semen Gede Sawat Lar, Udan Liris, Rujak Senthe, Parang-parangan, Cemukiran, Kawung, and Huk are believed to have spiritual power and high philosophical meaning contained in the batik motifs. Sacred motifs in batik are believed to be able to create a mystical atmosphere that exudes an aura of authority from the wearer's nobles. Traditional batik motifs are part ofthe internationally recognized Traditional Cultural Expressions (TCEs). As a creative manifestation that is passed down across generations, batik reflects the traditions, cultural values, and philosophies of the people who made it. Intangible Cultural Heritage of Humanity. Traditional cultural expressions represent one of four categories of communal intellectual property. As a multicultural country, Indonesia has diverse communal intellectual property.[9]

Traditional batik motifs reflect local wisdom, aesthetic values, and symbolism passed down across generations. Batik motifs and techniques often contain philosophical, social, or spiritual meanings unique to the community that developed them.[10] In a global sense, batik meets the criteria of traditional cultural expression because it is the result of collective creativity, is used in various social functions, and has a close relationship with cultural identity. The international recognition of batik not only as an art product but also as part of the traditions and values of society makes it an important element in the preservation of World Cultural Heritage. WIPO Update of the Technical Review of Key Intellectual Property-Related Issues of the WIPO Draft Instruments on Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions within the Framework of Indigenous Human Rights Jenewa 2-6 December 2024. In point 14 of the document it is stated that:

"Indigenous peoples' right to redress for the unauthorised utilisation and exploitation of their Traditional Knowledge (TK), Traditional Cultural Expressions (TCEs), Genetic Resources (GRs) and associated TK is affirmed by the Declaration on the rights of Indigeneous Peoples (UNDRIP), requiring States to provide redress through effective mechanisms including restitution for cultural and intellectual property taken without Principle Of Free Prior And Informed Consent (FPIC), and that may involve adopting special concrete measures. State parties are thus obliged to adopt concrete measures to ensure the full enjoyment of human rights by indigenous peoples through effective mechanisms that provide restitution for cultural heritage and intellectual property taken without FPIC."

"The Protection of Traditional Cultural Expressions: Draft Articles" (WIPO/GRTKF/IC/18/4 Rev.),[11] the protection of traditional cultural expressions should be aimed at the benefit of Indigenous communities, local groups, and individuals who are owners or custodians (custodians) of such cultural heritage. This article affirms that traditional cultural expressions are an integral part of the cultural and social identity of the community, and are inherited and developed in accordance with customary law, community practices, and applicable protocols. This, custodians-be they indigenous communities, local groups or individuals—are the ones who are supposed to hold the right and responsibility for traditional cultural expressions, since they are the ones who have a historical, philosophical and emotional connection with said Heritage. States are required to provide effective mechanisms, including restitution, to ensure that the rights of indigenous peoples are protected, especially in the case of the use of intellectual and cultural property without the principle of Free, Prior, and Informed Consent (FPIC).[12]

At the national level, the legal protection of batik art is regulated in Article 28 paragraph (3) of the Constitution of the Republic of Indonesia, Law No. 19 of 2002 on copyright which is revoked by Law No. 28 of 2014 on copyright, and Law No. 5 of 2017 on Cultural Promotion. Article 28 i of the Constitution of the Republic of Indonesia states that "the cultural identity and rights of traditional communities are respected in accordance with the Times and civilization", therefore, batik art as a cultural identity and rights of traditional communities are respected by the state. In Article 40 letter j of Law Number 28 of 2014 concerning copyright, states that batik artwork or other motif art is a protected creation, but in the explanation of Article 40 letter j of Law Number 28 of 2014 concerning copyright, states that batik artwork is a batik motif that is contemporary without innovative elements, so it must have elements of the present and not traditionals and seniother motifs are motifs that have elements of Indonesian culture in various regions. Reasons traditional batik cannot get copyright, among others: first, there are difficulties in proving that traditional batik has the nature of originality. Second, because traditional batik. Indonesian cultural heritage that has existed since Mataram the ancient. Mataram era (732-910 ad) so it is not known who the creator and ownership are held communally. Therefore, based on Article 38 and Article 39 Of Law No. 28 of 2014 on copyright, because traditional batik is classified as an expression of traditional culture and a creation that is not

known to its creator, the copyright on traditional batik is held by the state. Based on Article 5 and Section considerans letter A of Law No. 5 of 2017 concerning the promotion of Culture batik art as an art is an object of cultural promotion, and the state has an obligation to promote Indonesian culture.

In the use of machete batik motif is currently experiencing .Where in the old days batik parang was only used by royal members for special occasions. In its history , the regulation on the use of prohibited batik motifs larangan was also outlined in written regulation before Indonesia gained independence, namely in Rijk Van Djokjakarta in 1927 on the Order of the Dalem Pangungo Keprabon Ing Kraton Nagari Yogyakarta, which broadly regulates the Prohibition of clothing, this rule ini remains applied until now. Regulations issued by the Palace of Yogyakarta is only applicable to the environment of the Palace of Yogyakarta alone, so it does not bind the general public, whereas the use of batik motifs ban in the general public is very sacred for the people of Yogyakarta.[7] There are people , especially the people of Yogyakarta who feel that the Prohibition of batik motifs must be respected. This is because the ban batik motif has sacredness in the philosophy it contains, such as: Parang Rusak Barong batik motif that has a philosophy that describes the relationship tanggung jawabof Sultan Agung's responsibility as a king to Godthecreator, Parang batik motif that has a philosophy as a symbol of human struggle with evil, and Kawung batik motif that symbolizes power and. Therefore , the protection of prohibited batik motifs as a sacred cultural heritage in Yogyakarta must obtain legal certainty. The art of batik is an art that has a sacred meaning in it, so to maintain the sacred meaning batik of batik art, Keraton the Yogyakarta Palace issued a regulation called Awisan Dalem. Awisan Awisan Dalem regulation only applies to Keraton the Yogyakarta Palace environment the people of Yogyakarta accept this regulation by avoiding the use of prohibited batik in everyday life. This shows that rules Awisan the Awisan Dalem regulation has become a living law in Yogyakarta society.

Protectionin batik motif prohibition as a sacred cultural heritage has been regulated in several laws and regulations in Indonesia such as: Article 38 Article 38 Paragraph (1) of Law No. 28 of 2014 on copyright, which states that the copyright on traditional cultural expressions (EBT) "held by the state". it can be analyzed that the meaning of the phrase "held by the state" in this case the state is proven, that the state here only "holds" the copyright on traditional cultural expressions. The meaning of the phrase "in the grasp of the state" is not as a (public trusteeship) mastering power or (dominium) possession. The legal provisions stating that the rights to EBT are "held by the state" as stated in Article 38 paragraph (1) of Law Number 28 of 2014 concerning copyright prove that there are no legal consequences and state liability for the loss of local identity and the sacred meaning of art. So the phrase" in the grasp of the state " does not provide a definite legal protection for the environment Keraton of the Yogyakarta Palace.

It can be analyzed in the phrase "in the hands of the state " as stipulated in Article 38 of the UUHC that the State holds the copyright on EBT. This copyright expropriation is carried out by an automatic mechanism carried out directly by the state without then discussing it with the indigenous people first. This gives the impression that the protection provided is only focused on protecting EBT and leaving aside the position of indigenous peoples as parties who continuously conserve EBT. In the UUHC there is no formulation at all about the existence of indigenous peoples and their protection. For example, so far , there is no concept in this law that regulates the regulation of the distribution of economic benefits between the state and indigenous peoples when the culture controlled by the state obtains economic benefits. This is an effort to protect the rights of Indigenous Peoples. The before position of Indigenous Peoples is very necessary to obtains arrangements regarding EBT. The following regulations regulate the state recognition of the position of Indigenous Peoples, namely in the provisions of Article 28 C paragraph (1), Article 28 I paragraph (3), Article 32 paragraph (1) of the 1945 Indonesian constitution, Article 23 paragraph (2) of law No18 of 2002 on the National System Of Research, Development and application of Science and Technology, Law No. 11 International Convenant on Economic, Social and Cultural Rights).

The Theory of authority (Bevoegdheidstheorie) is a major foundation in state administrative law that explains how state organs obtain and use their authority. In the context of traditional cultural expressions that are "held by the state", this theory provides a framework for understanding the legal basis as well as the legitimacy of the state's actions in taking over, managing, and protecting batik motifs as part of national cultural property. In this case, it is important to distinguish between attributive (granted by law), delegative and mandate powers. This theory is used in this study to analyze whether the state has a legitimate legal basis in holding the right to such cultural expression, and how that authority is used administratively.[13] In this theory the copyright on EBT held by the state is the absence of implementing institutions as a representation of the word "state" contained in the formulation of Article 38 UUHC. So far, there has not been a implementing agency to carry out all matters related to the regulation of EBT.

The UUHC remains overly abstract, referring to the state without explaining who legally has the authority to make arrangements regarding EBT protection. Since the state is an abstract entity, in order to exercise its more concrete Authority, the word "State" in Article 38 of the UUHC must be further elaborated by referring the government agency that carries out these responsibilities. With current condition, it becomes unclear, whether only the Directorate General of IPR is authorized to administer EBT, or other institutions are also authorized. This is very important to overcome considering that EBT protection can be related to government agencies such as the Ministry of Law and Human Rights, the Ministry of Culture and Tourism, the Ministry of Industry, and local governments. Then it can be analyzed using the theory of protection by Amil Banapon who views legal protection as an effort made by the state to provide protection to citizens or subjects of law, which is based on legal provisions, in order to prevent arbitrariness and keep an interest protected from threats or interference from other parties.[14] If the provisions of Article 38 are observed, it will appear that in the phrase "held by the state," it is clear that, in implementing institutions, the state is obligated to fulfill the rights of legal subjects, and the results of traditional cultural expressions can protect the results of their works of art.

Compared to other countries such as India and Thailand, the protection of communal cultural heritage—such as the use of batik motifs—in Indonesia is still not adequately accommodated in the absence of a sui generis framework, namely a special

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legal system outside existing regimes (such as copyright or patents) to protect cultural assets that cannot be addressed by conventional systems. India demonstrates the most systematic and comprehensive model of protection. Its legal framework consists of the Biological Diversity Act 2002, the Rules of 2004, the Patent Act Amendment 2005, and the Traditional Knowledge Digital Library (TKDL). TKDL is a large digital database that documents thousands of Ayurveda, Unani, and Siddha formulas in Indian and biomedical-language readable international patent examiners. Although TKDL is not directly contained in the law, it is treated as an administrative instrument supporting the Patents Act. The Handbook on IPR emphasizes that TKDL is used as a reference to prove that a patent claim is pre-existing knowledge. [15] TKDL functions as a "defensive weapon" to prevent patents being granted to foreign parties over India's traditional knowledge, since all such data are used as prior art by international patent offices.

In terms of positive protection, India applies mandatory ABS mechanisms, formal access permits, and benefit-sharing agreements that must be approved by the National Biodiversity Authority (NBA) and the State Biodiversity Boards as instruments of a sui generis approach. India also regulates FPIC and the rights of indigenous communities over their knowledge more clearly than other countries. Cultural heritage is communally owned, while the State acts as facilitator and trustee over public knowledge (a custodianship model). Consequently, India is positioned within an integrated defensive–positive protection stage, combining legal safeguards, strong documentation, and community-based commercial control. However, if examined, the legal protection model for Traditional Cultural Expression (NRE) in India shows a complex and comprehensive character because it is built through a multi-regulatory approach that moves from copyright systems, patent bans, geographical indications, to benefit-sharing mechanisms for traditional knowledge. The preparation of this protection framework is not carried out through a special law, but through a number of complementary regulations. The first regulation on which this system was founded was the Copyright Act 1957,[16] which provided protection for works of art and cultural expression through provisions on "artistic works." Section 2(c) of the Copyright Act states that "artistic work" includes paintings, sculptures, carvings, drawings, illustrations, designs, and other works of art of a visual nature.[14] This provision allows for the protection of traditional forms of expression such as Madhubani paintings, Warli art, traditional textile patterns, and Tribal wood carvings. Although NRE is often unable to meet the element of "originality" in a modern sense due to its communal and cross-generational character, India interprets this element flexibly, i.e. in concrete forms of works documented or reproduced by indigenous communities.

The next regulation that plays a key role in the Traditional Cultural Expression protection model in India is The Geographical Indications of Goods (Registration and Protection) Act 1999,[17] which provides legal protection based on geographical indications (IG). Although the GI manuscript is not available, official guidelines in the Handbook on Intellectual Property Rights in India indicate that the GI serves as a protection against the reputation, quality, and unique characteristics of a product associated with a particular geographical area. The GI Act 1999 provides protection to cultural products that have long been developed by local communities, including textiles, handicrafts, traditional weaving, and ritual arts. Having discussed the GI Act, the next regulation that is very important in the protection of NRE is the Biological Diversity Act 2002, which provides the most comprehensive protection model for traditional knowledge related to biological resources. The Biological Diversity Act (BDA) is built on the principle of sovereign state rights over biological resources, but is implemented through mechanisms that guarantee indigenous communities' rights to their traditional knowledge.[18] The 2002 BDA was part of India's efforts to implement the 1992 Convention on Biological Diversity (CBD) and the 2010 Nagoya Protocol on benefit-sharing.

With the combination of the GI Act and the Biological Diversity Act, India developed a protection framework that not only prevents the exploitation of NRE by foreign parties, but also provides an economic basis for the sustainability of local culture. Location-based (GI) and knowledge-based (BDA) protection form the two main pillars of traditional protection that complement each other. The GI protects the reputation and cultural identity, while the BDA protects the technical knowledge and rituals directly related to the biological resource. The combination of the two results in an integrated protection system for NRE in India. The Indian model shows that NRE protection is not enough with one law alone. Only by combining various legal tools—copyright, patents, geographical indications, and biodiversity—can the protection of traditions work effectively. Ultimately, the Indian model illustrates that NRE should be seen as a multidimensional entity: it is not just a work of art, but also technical knowledge, cultural identity, and economic resources. Therefore, India's model of protection reflects the understanding that law alone is not enough; There must be community involvement, administrative policies, benefit-sharing mechanisms, and supporting digital technologies.

Other than India, in Thailand, the law on Traditional Cultural Expressions is built through a comprehensive legal framework, namely the Promotion and Preservation of Intangible Cultural Heritage Act B.E. 2559 (2016). These laws are explicitly established to ensure that knowledge, practices, traditions, arts, and skills passed down across generations are recognized, protected, and a structured preservation mechanism. Thailand's approach places the state as a facilitator and guardian, but the primary control remains with indigenous communities, in accordance with the original definition of NRE. The Promotion and Preservation of Intangible Cultural Heritage Act B.E. 2559 defines Intangible Cultural Heritage (ICH) as "cultural knowledge, expression, conduct or skill... passed on from generation to generation", emphasizing the communal nature and sustainability of the traditions that live in the community.[19]

Thailand provides community-based protection of traditional knowledge through the Protection and Promotion of Traditional Thai Knowledge Act B.E. 2542 (1999).[20] This regulation offers a strong legal foundation for creating a national registry, registering local knowledge, and granting exclusive rights for communities to control its utilization. Thailand applies compulsory commercial licensing accompanied by benefit-sharing mechanisms verified by local and national authorities. Its protection regime focuses more strongly on positive protection, whereby the government provides legal instruments enabling communities to litigate, restrict, or manage licensing of their knowledge. Furthermore, Thailand has established the National Committee on Thai Traditional Knowledge—another sui generis instrument—which oversees local heritage and

builds the Thai Traditional Knowledge Database (TTKD), although still not as extensive as TKDL in India. Cultural heritage is communally—and where creators are identifiable, personally—owned, with the state acting as protector and licensing authority. Thus, Thailand represents community-based positive protection that centers on community rights and state-supervised commercialization.

As a complement, the 2017 Regulations of the Committee for the Safeguarding of Intangible Cultural Heritage provide technical guidelines for the survey and initial list of EBTs. Clause 4 of these regulations stipulates the obligation of provincial and Bangkok committees to work with communities on the EBT survey.[21] In addition to formal legal mechanisms, Thailand also publishes a Ministry of Culture Notification regarding a list of national renewable energy sources. For example, the 2011 list contains 30 renewable energy sources, including traditional music (krachappi, pin pia), performances (lakhon nok), crafts (indigo dyed cloth, bamboo basketry), traditional houses, traditional boats, legends, folk sports, ritual ceremonies, traditional foods, and Thai massage (Nuad Thai).[22]

Both countries demonstrate that a sui generis approach to maintaining and protecting communal cultural heritage can provide more certain protection. Violations may even be subject to criminal penalties. Effective protection of traditional cultural expressions requires at least three elements: legal certainty through a lex specialis, integrative institutional mechanisms, and fair benefit-sharing for communities. The regulatory patterns observed in India and Thailand indicate that protecting traditional cultural expressions cannot rely on conventional intellectual property rights regimes; instead, it requires a legal approach that positions indigenous communities as primary subjects while ensuring the state functions as a responsible steward. Customary law has the potential to serve as a normative foundation for forming sui generis regulations governing the rights of traditional communities.[14] The current intellectual property framework has proven inadequate to protect traditional knowledge and cultural expressions, especially in confronting foreign misappropriation.[23] IP law not only remains insufficient but may even hinder equity-oriented outcomes for traditional communities,[24] as it is built upon an individualistic and market-oriented paradigm that does not reflect the communal, spiritual, and transgenerational nature of traditional knowledge and cultural expressions.[25]

Within this context, the role of the state becomes crucial as a representative of the public interest responsible for bridging the gap between formal legal protection and social realities at the community level. The state acts on behalf of the public to protect cultural heritage from foreign claims while ensuring that economic and social benefits return to the communities that created them. This aligns with the concept of beheersdaad, in which the state exercises authority for public interest rather than for economic ownership. Thus, the phrase “held by the state” in Article 38(1) of Law No. 28/2014 on Copyright must be understood as administrative management and public protection, not as a transfer of economic ownership.

The sui generis approach proposed in this research as a model of state protection of cultural heritage such as batik and its use consists of three complementary components forming an integrated system. First, defensive protection aims to prevent the misuse of communal intellectual property (CIP), particularly traditional knowledge and genetic resources, especially in medicinal practices derived from local wisdom.[26] This approach is proactive, meaning that the state anticipates potential infringements rather than merely reacting to them. By directly involving batik communities in cultural registration and protection, law functions not merely as an administrative tool but also as a participatory mechanism ensuring justice and cultural sustainability. One concrete form of this approach is the establishment of a national registry of traditional cultural expressions.

Second, enabling protection focuses on empowering and creating welfare for indigenous groups and batik-making communities to avoid stagnation in utilizing their cultural assets. In the case of batik, enabling protection is implemented through Access and Benefit-Sharing (ABS), ensuring fair distribution of benefits among communities, the state, and industry. This principle is essential for balancing cultural preservation and equitable economic utilization.

Third, an adaptive legal mechanism stresses the need for law to be flexible and responsive to social, economic, and technological dynamics. Law must be sensitive to changing needs rather than enforcing rigid provisions detached from human and social contexts. In a global and dynamic world, protection of batik must be adaptive without sacrificing its traditional and spiritual values. Law as an instrument of social change should adjust while remaining rooted in human dignity and social welfare.[27]

This concept is implemented by harmonizing three legal layers: customary law, national law, and international law. Under the first layer, royal courts and customary institutions retain substantive authority to determine moral and spiritual boundaries concerning sacred motifs. Under the second, the state functions as a legal facilitator, formulating regulations that recognize customary legitimacy while providing formal legal protection. In the third layer, international diplomacy serves as a tool for advocating for global recognition and protection through institutions such as WIPO, UNESCO, and the ASEAN Cultural Heritage Council.

One concrete instrument of this adaptive mechanism is the use of Memoranda of Understanding (MoUs) between the Directorate General of Intellectual Property and royal courts. Such agreements may regulate authority-sharing, licensing procedures, and recognition of indigenous moral rights to control cultural values. Likewise, formal recognition of royal decrees as valid customary law norms reinforces the legal status of living customary systems. Furthermore, adaptive law must also consider global economic contexts such as trade. Within the TRIPs framework, *sui generis* models may function as alternative legal systems under the principle of national policy space. This enables Indonesia to advocate batik protection globally without being fully bound by Western individualistic legal standards.

This model is expected to foster a symbiotic relationship between the state and indigenous communities, enabling law to

mediate between protective responsibilities and social realities. Culture is not static but a continuously developing heritage. A *sui generis* model for protecting traditional knowledge and cultural expressions, therefore, functions as a legal framework complementary to conventional intellectual property systems, since it must encompass collective, communal, customary, and hereditary cultural rights.

Conclusion

This study concludes that Article 38 paragraph (1) of Law No. 28 of 2014 on Copyright, which states that Traditional Cultural Expressions (TCEs) are "held by the state," contains significant normative ambiguity that weakens substantive protection for indigenous communities as cultural custodians. Through a normative juridical and comparative analysis, the study demonstrates that the phrase fails to clearly define whether the state acts as an owner, a public trustee, or merely an administrator, thereby enabling misappropriation and desacralization of sacred cultural expressions, particularly the Parang batik motifs of the Yogyakarta Sultanate. The findings reveal that state control over TCEs operates largely as a declaratory norm, lacking effective mechanisms such as recognition of customary authority, community consent, and benefit-sharing arrangements. As a result, indigenous communities bear cultural responsibility without corresponding legal standing to safeguard sacred values. Comparative analysis with India and Thailand shows that effective protection of TCEs requires a sui generis framework that positions communities as primary rights holders, while the state functions as a facilitator and guardian. Accordingly, the phrase "held by the state" should be interpreted as a mandate of public trusteeship rather than state ownership. Indonesia therefore needs to develop a sui generis protection model integrating customary law, community participation, and preventive mechanisms against cultural misuse. Such an approach would transform batik protection—especially for sacred motifs—from symbolic state control into a sustainable and equitable system of cultural guardianship.

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