

Public domain as an antidote conception to efforts to protect traditional cultural expressions (TCEs)

Thamrin Arthata Hutajulu
Universitas Indonesia, Jakarta, Indonesia

Article Info

Article history:

Received March, 2024

Revised April, 2024

Accepted April, 2024

Keywords:

Intellectual Property Law, Public Domain, Traditional Cultural Expressions

ABSTRACT

This paper analyzes how *the public domain* conception applied in the provisions of Intellectual Property Rights is used by foreign parties in an attempt to hinder the protection of *Traditional Cultural Expressions (TCEs)* in a country, because of the potential economic benefits resulting from their use, this condition is clearly very vulnerable to *misappropriation* committed by foreign parties, destruction of cultural values, and exploitation. This study also aims to find out how countries, especially Indonesia, provide protection for *Traditional Cultural Expressions*. Because of the importance of protecting *Traditional Cultural Expressions*, doctrinal and comparative research is directed at finding problem solvers. After conducting research, *the public domain* should not be placed on *Traditional Cultural Expressions* because it would violate the secret character of many intangible, sacred, and secret elements that living things have to cultural heritage and would highlight the deterioration and unauthorized appropriation of cultural values. And some countries have regulated the protection of *Traditional Cultural Expressions* in different ways through IPR regimes or *sui generis*. However, there is a need for *a model law* in the form of collective agreements between countries to protect *Traditional Cultural Expressions* owned by indigenous peoples or owning communities.

This is an open access article under the [CC BY-SA](#) license.



Corresponding Author:

Name: Thamrin Arthata Hutajulu

Institution: Universitas Indonesia, Jakarta, Indonesia

e-mail: thamrinhutajulu@gmail.com

1. INTRODUCTION

Protection *Traditional Cultural Expressions (TCEs)* began in the 1960s, with further expansion *folklore* which embodies creativity in developing countries and is part of the cultural identity of indigenous peoples or local communities. It aims to provide

proper protection especially on *folklore* which is increasingly vulnerable to exploitation and abuse. *Revision of the Berne Convention 1967*, literary and artistic works whose protection is based on originality and identifiable authors, are unable to guarantee adequate protection for *Traditional Cultural Expressions*. Member

states of WIPO and UNESCO in 1982 provided a set of model provisions of national laws that can serve as a source of inspiration for interested countries. In 1996, WIPO *Performance and Phonograms* includes protection of players' rights over *Traditional Cultural Expressions*. A number of countries regulate protection [1]*Traditional Cultural Expressions* into the Intellectual Property Rights (IPR) regime in this case Copyright, such as Sri Lanka, Australia, Barbados, Iran, Nigeria, Congo, Ghana and Indonesia. Some other countries regulate into the form of *sui generis*, such as the Philippines, Vietnam, Azerbaijan and Panama. [2]

Traditional Cultural Expressions Having enormous cultural value as a form of cultural heritage that continues to develop even in modern societies around the world, it plays an important role as part of social identity and a form of cultural expression of a local community. *Traditional Cultural Expressions* It has promising economic potential, especially related to the tourism industry and the creative economy industry. In its development, [3]*Traditional Cultural Expressions* which is a wealth of cultural heritage of high value has in fact become an attraction to be utilized because of the potential economic benefits resulting from its use, this condition is clearly very vulnerable to action [4]*misappropriation* carried out by developed countries, exploitation by foreign parties and leads to the destruction of cultural values. [5]

Public domain If defined is something that we enjoy every day without thinking about it and can be freely copied, adapted, and done by anyone. In the understanding of the Japanese delegation, a [6]*Traditional Cultural Expressions* become *public domain* when he loses or is disconnected from the particular society that gave birth to him. However, it is not clear when and how far the use is *Traditional Cultural Expressions* Abroad can be considered enough to give status *public domain* towards *Traditional Cultural Expressions* concerned. In the view of this delegate, denying status *public domain* one *Traditional Cultural Expressions* which has been

used for centuries by others outside the country of origin *Traditional Cultural Expressions* That is unfair, and in turn leads to a denial of the developmental outcomes of cultural exchange. [7]

Aspects *public domain* As stated, however, it is an objective thing to note. On the other hand, such views seem defensive or defensive *self-explanatory*. The delegation of the Russian Federation also stated that *Traditional Cultural Expressions* In particular the expression of non-material folklore, not copyrighted in accordance with the rules of national law is considered to have entered *public domain*. Similarly, the Delegation of the European Union and its Member States said: "a *Traditional Cultural Expressions* What's included in *public domain* It does not hinder its development and on the contrary it will allow the creation of new creations derived from or inspired by it. [8]

Most of the national arrangements are related to *Traditional Cultural Expressions* that does not meet the requirements of existing forms of intellectual property protection, are part of *public domain*. Meanwhile, arts and crafts feature more culture *Traditional Cultural Expressions* mass-produced by non-indigenous entities, often from outside the community or even outside the country of origin. Exploitation tends to obscure the cultural identity situation associated with some *Traditional Cultural Expressions* without compensating communities that create and preserve *Traditional Cultural Expressions*. Conception [9]*public domain* It kind of becomes an antidote for anyone to be able to use even though *Traditional Cultural Expressions* has a communal nature or implications of this right for the dichotomy between private property rights granted by intellectual property law and *public domain* is in the area of intellectual property. Communal rights are attached to *Traditional Cultural Expressions* owned by all members of the community who hold, inherit, utilize, and develop it from generation to generation. In this connection it is also interesting to reflect on which was put forward in the view of the United States delegation. The people of the

United States come from many ethnicities who come from various parts of the world. They come from India, China, Japan, Korea, Ireland, Germany, France, Italy, Spain, Poland, Russia, and others. They lived and then developed with their respective cultures which they nurtured for generations as well as [10] *Traditional Cultural Expressions* which is now discussed. Where it is protected, who is entitled to protection for use *Traditional Cultural Expressions* have yet to be answered. [11] Based on the existing background, the issues discussed in this study are: how is conception *public domain* which is used as an antidote to protection *traditional cultural expressions*? And how the efforts of countries, especially Indonesia, provide protection to *traditional cultural expressions*?

2. METHODS

Research Method in this study is a doctrinal research method that focuses on the synthesis of rules, principles, norms, or interpretation guidelines, and values. Doctrinal research is limited to existing legal regulations and legal materials, also known as document research because it often uses secondary data. In this doctrinal research, all doctrines, principles, values and norms in laws and regulations must have consistency. Inconsistencies in regulations result in a rule being legally void or at least having no binding force. [12] [13]

The type of data used in doctrinal research is secondary data, when viewed in terms of the information provided, then library materials. The secondary data consists of Primary Material, namely as material in the form of binding legal products, in this case the Constitution of the Republic of Indonesia and also other regulations. Secondary materials are library materials that contain information about primary materials. The ones used in this research include textbooks, literature, papers, law journals, reports on research results, seminar and workshop materials and the internet. Tertiary legal materials, namely materials that provide instructions and explanations to primary and secondary legal

materials, namely large Indonesian dictionaries, legal dictionaries, encyclopedias, cumulative indexes, and so on. Data/materials collected through literature research studies ([14] [15] *library research*) about theories that support the analysis of proposed problems and related positive laws and by using documents that support related research.

3. RESULTS AND DISCUSSION

3.1 *The Use of Public Domain Conception as an Antidote to the Protection of Traditional Cultural Expressions*

IPR protection provides exclusive rights for its owners but these rights are not given indefinitely but limited and after that period there are no more rights and become *public domain*. *Public domain* consists of all knowledge, works and information including books, images, audiovisual works that have no copyright protection and can be used without restriction. *Public domain* It is also considered important because it is the raw material for creating something new and creating new works. There is no uniform definition of [16] *public domain*, thing that is *public domain* resides in the recognition of the sovereignty of a country. The Paris and Berne conventions reflect this in principle *axiomatic* that intellectual property rights are territorial. Extraterritorial application of *public domain* It must be subject to the same rules as the application of intellectual property law i.e. subject to a limited set of exceptions, e.g. a state law will not apply to actions occurring in another state. A state may exercise jurisdiction over conduct occurring in its territory or do so that it has a direct and significant influence on its territory. Works in [17] *public domain* It is considered part of the cultural heritage of the community and everyone can use it freely and legally for any purpose without the need to ask permission. [18] In this regard, there are several problems and difficulties that often occur, namely (1) the scope of the concept *public domain*; (2) entry criteria as *public domain* or not signed in as *public domain*; (3) the presence of non-*traditional cultural* that is in scope *public domain*; (4) unclear requirements

to protect parts of *Traditional Cultural Expressions*.

3.1.1 Scope of Public Domain Concept

About the scope of the concept *public domain* is IPR material that is not protected by the IPR regime and is therefore available for use by anyone at no cost also when the right has expired. Since the beginning IPR is an individualistic regime to monopolize, the character of IPR is impossible to apply to *Traditional Cultural Expressions*. [5] An IPR owned individually can be transferred to the commons, and everyone will be free to own/use the IPR that has entered *public domain* when the coverage time/time is due then it will lead to *public domain*. Some countries consider that restrictions *Traditional Cultural Expressions* not included *public domain* will look unfair. Developed countries carry the philosophy of individualism and capitalism, which then manifests in the idea of protecting individual property rights, especially against *property*, good *intellectual property* nor capital (*capital*), for diverse developing countries *Traditional Cultural Expressions* Not oriented to the value of materialism, and refers to the value of togetherness. For community members [5] *Traditional Cultural Expressions* Open to the public, the scope of the word "public" remains on the territory of this community. That is, every member of the community holds, conveys and uses it and people outside the community are not entitled to enjoy the communal rights of *Traditional Cultural Expressions* This is without the consent of the community. [10]

3.1.2 Criteria for Entry in the Public Domain

The question of entry criteria into *public domain* or not must first be understood that *Traditional Cultural Expressions* contains sacred and sacred values that live in a society that has been passed down from generation to generation, *Traditional Cultural Expressions* It also teaches traditions, wisdom, values, communal knowledge that are packaged and passed down to posterity through stories, legends, arts, ceremonies that continue to shape social norms and living systems. There is an argument that "[4]a domain must be public

in the sense of being publicly accessible to be a *public domain*" which means a domain must be public to be *public domain*, Nonetheless the statement has two notes, (1) not all that is accessible is in *public domain*, and (2) not necessarily everything in *public domain* accessible. This is exemplified as paintings hung on the walls of public museums are freely accessible and reproduction through photography is allowed, but that does not mean they are in the *public domain*. The same thing is in looking at a work *Traditional Cultural Expressions* does not mean that the work is in *public domain*. [8] It is interesting to listen to the statement of Darrel Addison Posey that the views of indigenous communities, traditional or local communities view things as spiritual and even sacred. Local communities are communal societies that place common interests above individual interests, even if it means losing their rights. [5] [5]

Utilization of *Traditional Cultural Expressions* A community or society carried out by other parties outside the community will certainly eliminate its cultural values, let alone use it commercially for profit alone. When entering *Traditional Cultural Expressions* as *public domain* This will hurt the owning community *Traditional Cultural Expressions*, and will be vulnerable to exploitation and abuse by profit-seeking parties. [4]

3.1.3 Traditional Cultural Expressions Not Public Domain

About the perception that questions that why *Traditional Cultural Expressions* not included in *public domain*, as for something that is *non-traditional* like the works *Shakespeare*, *Winnie the Pooh*, Greek, Egyptian, and Roman Cultural Heritage is included in *public domain*. This has been answered by *the representative of the Hokotehi Moriori*, that conception *public domain* Western constructs and not recognized by indigenous peoples, the system has had a profound and detrimental impact on traditional culture. Hence the protection *Traditional Cultural Expressions* It is essential for the maintenance, survival and cultural integrity of indigenous peoples and their identity as distinct societies

in modern societies usually. *Representative of the Hokotehi Moriori* it illustrates by reference to the case of Maori Mix and Natural Spirit Cigarettes, which feature an Indian chief wearing a headdress smoking a cigarette, which the Maori company says Natural Spirits has offended their culture, then marketed and sold without Maori knowledge or consent. Indigenous peoples must have control if *Traditional Cultural Expressions* They are used. The same thing was conveyed [7] *the representatice of the Tulalip Tribes* that concept *public domain* unacceptable to indigenous peoples. Laying *Traditional Cultural Expressions* Openly does not mean that it has entered into *public domain*, Because if it is misused by the general public who are not managers, there will be great physical and spiritual losses for each of these knowledge managers.

3.1.4 Requirements for Protecting Traditional Cultural Expressions

Regarding the unclear requirements for protecting *Traditional Cultural Expressions* described comprehensively in *WIPO's Revised Draft Provisions for the Protection of Traditional Cultural Expressions/Expressions of Folklore (Revised Draft Provisions)*, *Traditional Cultural Expressions* include *tangible* and *intangible* forms where traditional culture and knowledge are expressed, emerged or embodied.

In WIPO/GRTKF/1C/6/3 gives the definition of *Traditional Cultural Expressions* as "*handed down from one generation to another, either orally or by imitation; reflect a community's cultural and social indentity consist of characteristic elements of a community's heritage; made by author unknown and/or by communities and/or by individuals communally recognized as having the right, responsibility or permission to dos o; constantly evolving, developing and being recreated within the community*". [19] This means that *Traditional Cultural Expressions* passed down from generation to generation orally or imitation and *Traditional Cultural Expressions* should reflect the cultural and social identity of a community consisting of characteristic elements of heritage, then on *Traditional Cultural Expressions* unknown to its

creator and constantly evolving within society. Range *Traditional Cultural Expressions* expressed as a work that at first glance is the same as the reach of Copyright, which distinguishes that all works have become part of the past and are attached to traditional values and properties, as for works in the form of: [11]

1. Verbal Ekspressions, such as folk tales, folk poetry and riddles; aspects of language such as words, signs, names, symbols, and other indications;
2. Musical expressions, such as folk songs and instrumental music;
3. Expressions by action, such as folk dances, paly and artistic forms or rituals; wether or not reduced to a material forms; and
4. Tangible expressions, such as:
 - a. Production of folk art, in particular, drawings, designs, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket weaving, handicraft, needlework, textiles, carpets, costumes;
 - b. Musical instruments;
 - c. Architectural forms.

The interest and admiration of the international community towards the cultural and ethnic diversity of a country is a matter of course because every country is obliged to respect and preserve world cultural heritage regardless of which country the culture comes from. However, when a nation's cultural heritage is claimed, partially taken, or modified in such a way for economic purposes, then the problem will certainly be different. Conflicts of interest between developed and developing countries regarding [20] *Traditional Cultural Expressions* arises because developed countries prefer that it be considered as *public domain* so that they can access it, this will have a detrimental impact on developing countries, especially Indonesia. On the other hand, developing countries consider that the existing IPR regime has not been able to protect the interests of developing countries over

Traditional Cultural Expressions. Some countries think that traditional knowledge is good, [21] *Traditional Cultural Expressions* and biological resources are *public domain* and hence anyone (individual) is free to exploit and commercialize for one's own benefit.

Developed countries and developing countries certainly have different and clashing interests related to IPR which creates conflicts of interest. Developing countries, such as Indonesia, which carry the values of togetherness and are not oriented towards materialism alone, but also spiritualism that manifests the idea of peaceful coexistence. This is what gives birth to values that are not appropriate *Traditional Cultural Expressions*. The culture of a society is monopolized by a person for individual benefit alone. As already stated, there are many cases of violations of cultural ownership, namely utilization *Traditional Cultural Expressions* by foreign parties also happens in Las Vegas USA, there is a hotel that uses a design with typical Middle Eastern characteristics, especially Egypt, complete with *merchandise* which indicates a particular geography. Also in Seattle USA there are stores that sell products with certain characteristics such as: *boomerang* Indian hats, and products with designs characterized by works of art and certain ethnic groups in various parts of the world. This is what makes the role of the government in a country necessary to protect [22] *Traditional Cultural Expressions* belonging to its people in order to avoid claims from foreign countries, exploitation, *misappropriation* and the destruction of cultural values.

3.2 *Efforts of States to Safeguard Traditional Cultural Expressions from Foreign Use with Public Domain Conceptions*

3.2.1 **Indonesia**

Indonesia will regulate *Traditional Cultural Expressions* or known as Traditional Cultural Expression (EBT) together with Traditional Knowledge in a special regulation. As mentioned above, there has been a Draft Bill on Traditional Knowledge and Traditional Cultural Expressions (RUUPT & EBT). In Article 1 point 2 of this Bill,

EBT is defined as "all forms of expression, both material (material) and immaterial (intangible), or a combination of both that indicates the existence of a culture and Traditional Knowledge, which is hereditary". In addition to special regulations, Indonesia has now also regulated EBT implicitly in Law Number 20 of 2016 concerning Brands and Geographical Indications, Law Number 13 of 2016 concerning Patents, Law Number 29 of 2000 concerning Protection of Plant Varieties and explicitly in Law Number 28 of 2014 concerning Copyright (UUHC). [23] [24] [25] [26] [27] *Traditional Cultural Expressions* is clearly protected in the UUHC by specifying its holder, the state. As the copyright holder of such traditional works, the State shall inventory, maintain and protect them. Although the UUHC does not contain provisions regarding obligations *benefit sharing* as in the Patent Law, but the UUHC contains LMK facilities that can be utilized in order to determine the conditions for its use. [23]

Protection *Traditional Cultural Expressions* in Indonesia it is implemented through Copyright which is the most relevant form of protection in the principles of intellectual property law. However, protection through Copyright does not mean that there are no problems when the terms and principles of Copyright protection will be applied. [28] *Traditional Cultural Expressions* It is known as a form of tradition of belonging together without anyone being able to decipher who the real creator is. This is a legal reason *Traditional Cultural Expressions* obtain legal protection indefinitely as stipulated in Article 60 paragraph (1) of the UUHC "Copyright on traditional cultural expressions held by the state as referred to in Article 38 paragraph (1) **Valid indefinitely**". Without lasting protection, *Traditional Cultural Expressions* will be *public domain* and vulnerable to exploitation and abuse by foreign parties. Ownership claims over *Traditional Cultural Expressions* What foreigners have done has hurt the owning community *Traditional Cultural Expressions*.

Furthermore, for society, *Traditional Cultural Expressions* has become their way of life.

The Law on the Promotion of Culture was passed on May 24, 2017 with the aim that the enactment of the law must certainly be used as a benchmark for the Government and citizens as a whole in an effort to develop, utilize, promote, and preserve Indonesian culture. The object of cultural promotion is the intellectual work of the wider community groups that characterize or identify the group or can be referred to as communal IPR. The diversity of tribes, languages, customary & religious procedures found in Indonesia, resulting in Indonesia being a country rich in traditional culture. Indonesia has 1,128 tribes circulating in all regions Indonesia has more than 300 local dialects, 3000 original dances and various other arts. Due to the many traditional cultural expressions owned, the Government of Indonesia has not been able to protect [5] [29] *Traditional Cultural Expressions* in his country, this is because there are 33 types of Indonesian culture that are claimed to belong to other countries, two of which are Dance *Reog Ponorogo* and Dance *Kuda Lumping* from East Java. [30]

3.2.2 United States

Cultural pluralism in the United States has its roots in its foundations from earlier times. The British and Spaniards settled in America, immigrants in America increasingly added to their cultural diversity, they came from countries such as Germany, Italy, Ireland, and Japan. Therefore, it is necessary to know the significant and refined Native American population to American culture today. In early 2012, the Navajo Nation filed a lawsuit in [31] *District Court in New Mexico* oppose *retailer* famous clothing Urban Outfitters that use the Navajo name without seeking valid permission from Navajo tradition. The dispute is part of an ongoing concern involving dispossession *Traditional Cultural Expressions* by western culture. [32]

In indigenous communities, *Traditional Cultural Expressions* often protected by the norms of that community. In some cases, only individuals trained and approved

by the elders in the community are allowed to reproduce various *Traditional Cultural Expressions*, and some expressions of a sacred nature are sometimes only allowed to be seen by certain individuals or at certain ceremonies. According to the country of America most *Traditional Cultural Expressions* has been around for generations, *Traditional Cultural Expressions* may be protected through the U.S. *Copyright law* However, copyright law only exists for original works in tangible form and has met the requirements and limited period of time. Learn More U.S [9] *Trademark law* can also fill gaps in some protection *traditional cultural expressions* that recognizes the existing trademark rights of the community.

Some national laws specifically regulate certain ethnic communities, namely: *the Native American Graves Protection and Repatriation Act. Bangui Agreement* [33] The revised 1999 contains part of the rules attributed to the protection and promotion of cultural heritage. *The Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations* (known as the San Salvador Convention) adopted by the Organization of America, and protects the cultural heritage assets of the American nation by means of registration, control, and prevention of unauthorized exports or unauthorized imports. [10] *Bangui Agreement* Introducing a payment system for use *traditional cultural expressions* or works inspired by *traditional cultural expressions* that already exists in the public domain. However, countries that insist that works in the public domain be freely used without payment oppose such protections.

3.2.3 Australia

Australia's legal system provides protection *Traditional Cultural Expressions* given the indigenous communities in the country, there are difficulties in linking Australia's legal system with its indigenous people. Australia regulates *Traditional Cultural Expressions* into national law relating to cultural heritage or cultural assets in *Islander Heritage Protection Act*. In 2000, the National Indigenous Arts Advocacy

Association (NIAA) developed an Australian indigenous arts certification system to enable consumers to know exactly what authentic Aboriginal products are. The certification mark consists of: [34] *Label of Authenticity* and *Collaboration Mark*. This aims to prevent labeling of designs of indigenous art by artists outside the community and damage the indigenous culture of the indigenous community. In Australia, "under Aboriginal law, rights to artwork are collectively owned. Only certain artists get permission within a tribe to paint designs. [10] [10]

Community representatives in Australia can oppose the use *traditional cultural expressions* they are in Court. The Federal Court of Australia has previously ruled in favour of Aboriginal artists against non-indigenous entities producing wool carpets with images of "Aboriginal artists." *dreaming* belongs to the Aboriginal community. Among the Aboriginal communities in Australia, "*dreaming*" used to pass on important knowledge, cultural values and belief systems to the next generation. Because there is a strong resemblance to the visual comparison of the artwork to the carpet, the reproduction of the artwork in the carpet is a violation of ownership. The Federal Court of Australia strengthens people's affirmative right to control use [10] *traditional cultural expressions* them and prevent others from using them. The court's ruling is an example of how positive protection for society can be. [9]

3.2.4 Panama

Panama's culture is a blend of African, American Indian, North American and Spanish influences expressed in traditional arts and crafts, music, religion, sports and cuisine. Panamanian music is popular throughout Latin America, and the country is also famous for its many festivals. Other aspects of traditional culture are well preserved, especially by the Indian community of the country. Panama is a melting pot of cultures, adapting elements from different sources and valuing innovation just as much as the good things of the past. [35]

Panama regulates the protection of *Traditional Cultural Expressions* into *sui generis* referring to "the collective knowledge of indigenous peoples based on tangible and intangible oral traditions, expressions that include science, technology and culture, including genetic resources, medicines, seeds, knowledge of the attributes of fauna and flora, oral traditions, design, and visual and performing arts. The main objective of this *sui generis arrangement* is to recognize the collective rights of indigenous peoples by highlighting socio-cultural values and social justice for them.

Panama's *sui generis law* recognizes indigenous peoples' traditional knowledge and collective expression, but nevertheless the record-keeping, law enforcement and authority to license its collective rights rests with the indigenous peoples' traditional authority (*Indigenous General Congress*) of each indigenous community. In Panama, indigenous peoples have for decades demanded a form of protection appropriate to their moral and economic needs for cultural heritage and knowledge systems. IPR is seen as inappropriate to protect their collective rights and rightly does not recognize the importance of their worldview or traditional authority.

View in case *There is the Truth*, The Kuna general congress saw copyright protection as woefully inadequate and rejected the collective trademark system as it would only benefit women who were associates and not society as a whole. This inspired Panamanian Law No. 20,125, when the General Assembly of Panamanian legislature had an indigenous president, thus the regime *sui generis* seriously considered and finally enacted after strong negotiations between various stakeholders and comments from WIPO and the legislation covers a very wide range of material, the criteria for which protection qualifies for protection (1) constitute tradition; (2) collective; (3) capable of commercial use; and (4) able to conform to the established classification system, although the law does not define important terms such as "tradition" or "indigenous community in

Panama" but in practice to date there has been no problem determining whether *Traditional Cultural Expressions* certain need protection *sui generis*. [36] Panama also grants indigenous peoples exclusive rights over *Traditional Cultural Expressions* registered for good.

4. CONCLUSION

Questions often arise about *the public domain* in *Traditional Cultural Expressions*, this can be seen from the various problems faced by countries in protecting *the Traditional Cultural Expressions* of their people. However, it is unclear when and to what extent the use of *Traditional Cultural Expressions* abroad can be considered sufficient to give *the Traditional Cultural Expressions* public domain status in question. Placing TCE in *the public domain* would violate the secret character of many intangible, sacred, and secret elements that living things possess to cultural heritage and would accentuate the deterioration and unlawful appropriation of cultural values. The conception of *public domain* is a western construct and is not recognized by indigenous peoples, the system has had a major and detrimental impact on traditional culture. A

number of countries have given directions to improve regulations for the protection of *Traditional Cultural Expressions*, especially Indonesia, but because there is no international collective agreement or *uniform model law* due to the distribution map of a very diverse culture, this makes arrangements regulated within a country difficult to implement, and will be vulnerable to *misappropriation*, exploitation, and destruction of cultural values in *Traditional Cultural Expressions* between countries.

Each country has provided protection for *traditional cultural expressions* in its country, either placing it under intellectual property i.e. copyright such as Indonesia, brands such as the United States and Australia or into *sui generis* such as Panama. A number of arrangements were made in order to meet the protection of the society of owners of *traditional cultural expressions*. It is necessary to have an inventory by the government of a country on *traditional cultural expressions* owned by its indigenous people. There is a difference between rights holders, for states that place under IPR more towards the government for their rights holders while those that regulate *sui generis* leave to indigenous peoples traditional authority.

REFERENCES

- [1] *The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, 2023.
- [2] P. H. Purwandoko, "The Implementation of the Traditional Cultural Expressions (TCE) Protection in Indonesia Based on Article 38 Law Number 28 of 2014 regarding Copyright," *Indonesian Journal of International Law*, vol. 18, no. 4, pp. 550-551, 2021.
- [3] K. Roisah, "Perlindungan Ekspresi Budaya Tradisional Dalam Sistem Hukum Kekayaan Intelektual," *Masalah-Masalah Hukum E-Journal UNZIP*, vol. 43, no. 3, p. 373, 2014.
- [4] Y. E. Widyanti, "Perlindungan Ekspresi Budaya Tradisional Indonesia dalam Sistem yang *sui generis*," *Arena Hukum*, vol. 13, no. 3, p. 389, 2020.
- [5] A. Sardjono, *Hak Kekayaan Intelektual & Pengetahuan Tradisional : Suatu Telaah Teoritis*, Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2021.
- [6] T. T. Ochoa, "Origins and Meaning of the Public Domain," *University of Dayton Law Review*, vol. 28, no. 2, p. 216, 2022.
- [7] *World Intellectual Property Organization, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, Geneva: Eleventh Sessions, July 3 to 12 2007/WIPO/GRTKF/1C/11/15.
- [8] I. C. o. I. P. a. G. R. T. K. a. F. *World Intellectual Property Organization*, Geneva, 2010. WIPO/GRTKF/IC/17/INF/8.
- [9] R. Awopetu, "In Defense of Culture: Protection Traditional Cultural Expressions in Intellectual Property," *Emory Law Journal*, vol. 69, no. 4, p. 754, 2020.
- [10] D. I. Susanti, R. I. M. Sudhiarsa dan R. Susrijani, *Ekspresi Budaya Tradisional & Hak Kekayaan Intelektual*, Malang: Sinar Grafika, 2019.

- [11] B. Kesowo, *Pengantar Pemahaman Konsepsi Dasar Sekitar Hak Atas Kekayaan Intelektual (HAKI)*, Jakarta: Sinar Grafika, 2021.
- [12] Muhaimin, *Metode Penelitian Hukum*, Mataram: Mataram University Press, 2020.
- [13] Suteki dan G. Taufani, *Metodologi Penelitian Hukum: Filsafat Teori dan Praktik*, Depok: Rajawali Press, 2020.
- [14] S. Soekanto dan S. Mamudji, *Penelitian Hukum Normatif*, Jakarta: CV. Rajawali, 1986.
- [15] S. Soekanto dan S. Mamudji, *Penelitian Hukum Normatif*, Jakarta: UI Press, 2007, p. 52.
- [16] T. E. Union, "Piagam Ranah Public (public domain) Europeana," 2010. [Online]. Available: https://pro.europeana.eu/files/Europeana_Professional/IPR/Public%20Domain%20Charter/BAHASA%20INDO. [Diakses 11 November 2023].
- [17] R. L. Okediji, "Traditional Knowledge and the Public Domain," 2018.
- [18] M. A. D. Putra, "Perlindungan Hak Cipta Penerbit terhadap Buku Ciptaan yang telah Menjadi Public Domain," *Journal of Intellectual Property*, vol. 3, no. 2, p. 87, 2020.
- [19] *World Intellectual Property Organization, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, Geneva: Eleventh Sessions, March 15 to 19 2004.
- [20] T. H. Simatupang, "Initiating the Concept of Sui Generis of the Legal Protection of Communal Intellectual Property in the Philosophy of Science Perspective," *Jurnal Penelitian Hukum De Jure*, vol. 22, no. 2, p. 245, 2022.
- [21] A. 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," *Jurnal Law Reform*, vol. 13, no. 2, p. 285, 2017.
- [22] D. P. B. Asri, "Perlindungan Hukum Terhadap Kebudayaan Melalui World Heritage Centre UNESCO," *Jurnal Hukum Ius Quia Iustum*, vol. 25, no. 2, pp. 257-258, 2018.
- [23] M. Hawin dan B. A. Riswandi, *Isu-Isu Penting Hak Kekayaan Intelektual di Indonesia*, Yogyakarta: Gadjah Mada University Press, 2018.
- [24] *Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis*, Lembaran Negara Republik Indonesia Tahun 2016 Nomor 252, Tambahan Lembaran Negara Republik Indonesia.
- [25] *Undang-Undang Republik Indonesia Nomor 13 Tahun 2016 tentang Paten*, Lembaran Negara Republik Indonesia Tahun 2016 Nomor 176, Tambahan Lembaran Negara Republik Indonesia Nomor 5922.
- [26] *Undang-Undang Republik Indonesia Nomor 29 Tahun 2000 tentang Perlindungan Varietas Tanaman*, Lembaran Negara Republik Indonesia Tahun 2000 Nomor 241, Tambahan Lembaran Negara Republik Indonesia Nomor 4043.
- [27] *Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipta*, Lembaran Negara Republik Indonesia Tahun 2014 Nomor 266, Tambahan Lembaran Negara Republik Indonesia Nomor 5599.
- [28] D. P. Asri, "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta," *Journal of Intellectual Property*, vol. 1, no. 1, p. 17, 2018.
- [29] K. D. Febriantini, "Perlindungan Hukum Internasional Terhadap Warisan Budaya Indonesia yang di Klaim oleh Negara Lain," *Jurnal Pendidikan Kewarganegaraan Undiksha*, vol. 10, no. 3, p. 206, 2022.
- [30] I. N. Cahyana dan A. Sabirin, "Optimizing of the Protection of Cultural Expressions of Indigenous People in Indonesia," *Jurnal Kebijakan Hukum*, vol. 17, no. 2, p. 214, 2023.
- [31] C. i. T. US, "Language, Traditions, People, Customs & Etiquettes," 2023. [Online]. Available: <https://leapscholar.com/blog/culture-in-us-language-traditions-people-customs-etiquettes/>. [Diakses 06 November 2023].
- [32] A. Bussey, "Traditional Cultural Expressions and the U.S Constitution," *Buffalo Intellectual Property Law Journal*, vol. 10, no. 1, p. 3, 2014.
- [33] B. o. Reclamation, "The Native American Graves Protection and Repatriation Act," 2021. [Online]. Available: <https://www.usbr.gov/nagpra/>. [Diakses 11 November 2023].
- [34] A. a. T. S. I. H. P. Act, "Australian Government ComLaw," 1984. [Online]. Available: <https://www.legislation.gov.au/Details/C2010C00807>. [Diakses 10 November 2023].
- [35] *Britanica, "Culture Life"*, 2023. [Online]. Available: <https://www.britannica.com/place/Panama/Cultural-life>. [Diakses 12 November 2023].
- [36] P. Figueroa, "When Imitation is Not Flattery: Addressing Cultural Exploitation in Guatemala Through a Sui Generis Model," *Bringham Young University Law Review*, vol. 46, no. 4, pp. 1003-1006, 2021.