

Legal Protection Of Ulos Batak Toba Traditional Motifs As Communal Intellectual Property In The Development Of National Law

Parlaungan Gabriel Siahaan ^{1*}, Ahmad M Ramli ², U. Sudjana ³, Rika Ratna Permata ⁴

¹ Doctoral Program Students Law Studies, Faculty of Law, Padjadjaran University, Indonesia

^{2, 3, 4} Lecturer Faculty of Law, Padjadjaran University, Indonesia.

Email: ¹ parlaungansiahaan@unimed.ac.id, ² ahmad.ramli@unpad.ac.id, ³ sudjana@unpad.ac.id, ⁴ rika.ratna@unpad.ac.id

*corresponding author: ¹ parlaungansiahaan@unimed.ac.id

ABSTRACT

The protection of traditional Batak Toba ulos motifs as communal intellectual property is the responsibility of the state. The traditional motif of Toba Batak ulos is a traditional cultural expression (TCEs) that needs to require a much deeper regulation, both in the form of its regulations and implementing regulations to complement existing regulations. In supporting the protection of communal rights in indigenous peoples, there is a need for in-depth regulation of traditional motifs as traditional cultural expressions (TCEs) as well as provisions for the scope of protection of traditional intellectual property, such as traditional motifs that already existed in indigenous peoples. Traditional motifs as traditional cultural expressions (TCEs) as well as provisions for the scope of protection of traditional intellectual property, such as traditional motifs that already existed in indigenous peoples, are needed to support the protection of communal rights in indigenous peoples. The system for protecting intellectual property rights (IPR) on traditional cultural expressions, as regulated by Law Number 28 of 2014 concerning Copyrights, is still unable to protect indigenous peoples' (custodians') interests regarding the importance of special arrangements (Sui Generis) regarding traditional cultural expressions. Several countries have enacted a specific law (Sui Generis) to address the issue that much existing intellectual property (IP) systems do not conform to the specific qualities of traditional cultural expression (TCEs).

Keywords: traditional cultural expressions, traditional motifs, Toba Batak ulos, Sui Generis.

INTRODUCTION

The wider development of copyrighted works has led to the need to protect them even if they cross national borders. England is the main country in the common law system; France and Germany are big countries in the civil law system and several other countries, so they agreed to formulate a convention that is expected to form a system that can be applied on a global scale. The resulting system is the result of a compromise between the two existing systems. Compromise or agreement by peaceful means in these two different legal systems is difficult, but it was realized in the Berne Convention of 1886 (Djumhana and Djubaedillah, 2014: 53).

The State of Indonesia has various types of customs from various regions, from Sabang to Merauke which are integrated within the framework of the Negara Kesatuan Republik Indonesia (NKRI). The cultural values of the Indonesian people have existed since the time of their ancestors. Each ethnic group of Indonesia has a regional language and traditional clothing that is different from the others. Groups of people who live in a certain area, that one community must have a clear and concrete culture. Various traditional cultures that are owned by the Indonesian people are of intellectual works that need to be preserved and protected through applicable laws and regulations. In 2003, the Indonesian state ratified the Convention for the Safeguarding of

Intangible Cultural Heritage through Presidential Decree No. 78 of 2007 concerning Ratification of the Convention for the Safeguarding of Intangible Cultural Heritage (Hetami, 2019).

The cultural value system consists of ideas that live in the minds of most people in society and these ideas involve things that they think are valuable for life. Therefore, the cultural value system is usually the highest guideline for human behavior. Protecting cultural heritage or cultural heritage is a conscious effort of one generation to maintain its historical relationship with the previous generation. History records the existence of a civilization milestone that connects all aspects of modern life from ancient times to the present. Through efforts to protect culture, people living in the 21st century can fully understand prehistoric, historical, and present life (Soelistyo, 2014: 251-255).

Recognizing the value of cultural legacy, we must make serious efforts to count and tally all the cultural treasures inherited from earlier generations as an introduction, historical study, and depiction of inspiration. Several artistically significant cultural heritages have been designated as lasting global heritages. Efforts to conserve cultural heritage can be carried out through national legal institutions in addition to utilizing local expertise. One of the key attempts in this area is the Law on the Protection of Cultural Conservation and the Tourism Law. Efforts to conserve cultural heritage are linked to intellectual property laws and regulations within this legal framework (Soelistyo, 2014: 256).

Increased protection of the value of traditional cultural expressions (TCEs) can be accomplished in the age of globalization not only through effective legal restrictions but also through legal instruments that can carry out these regulations (Bustani, 2018: 321). Traditional knowledge, traditional cultural expressions, genetic resources, and prospective geographical indicators are all examples of collective intellectual property, according to Article 2 of the Minister of Law and Human Rights of the Republic of Indonesia's Regulation No. 13 of 2017.

The various products made by the Indonesian people with traditional cultural expressions are extremely precious assets that demonstrate the Indonesian people's

distinctiveness (Nugroho, 2017:92). Traditional motifs as traditional cultural expressions (TCEs) as well as requirements for the extent of protection of traditional intellectual property, such as traditional motifs that already existed in indigenous peoples, are needed to promote the preservation of community rights in indigenous peoples. TCEs is both a living and significant expression of human civilization and a form of human intellectual innovation. Different ethnic groups have distinct cultures that reflect the diversity of the population. Furthermore, numerous cultural images eventually shape TCEs, and culture continues to affect its growth. The community can create a relationship with their culture through this cultural image. As a result, TCEs becomes a sign/symbol of a community's ethnic identity, reflecting the group and distinguishing it from others (Susanti, et.al, 2019:12-13)

Interpersonal interactions have become detached as a result of globalization. To boost exposure and competitiveness, various new products with features and distinctiveness, including TCEs items, will continue to be marketed. As a result, the competition is becoming more intense. Many items today feature new patterns that incorporate TCEs (for example, batik, and weaving), as well as new tunes (for example, ethnic music). This is not surprising, given TCEs' vast cultural diversity, which serves as a unique source of inspiration for new ideas. Shoes with woven or batik themes, t-shirts with batik motifs, and rugs with particular tribal artworks that have become fashionable are examples of "ethnic" products (Susanti, et.al, 2019, p. 13-14).

The World Intellectual Property Organization (WIPO) defines intellectual property as "creations in the form of artistic or scientific works, performances, inventions, scientific discoveries, designs, brands, names and symbols, trade secrets, and innovation in the form of culture and creativity is the result of intellectual activities in the fields of industry, science, and technology." The traditional designs on Ulos have been poured into varieties of batik and songket sarongs, as well as being utilized as shawls in traditional Batak Toba celebrations. The origins of the Toba Batak Ulos motif are unknown, as the Batak civilization has existed for almost 4000 years. The state's commitment to conserving the traditional themes of Ulos Batak Toba is based

on the Preamble to the 1945 Constitution since one of the state's tasks is "to protect the entire Indonesian nation and the entire territory of Indonesia and to promote public welfare."

The Decree of the Minister of Education and Culture of the Republic of Indonesia Number 270/P/2014 concerning the Determination of the Indonesian Intangible Cultural Legacy of 2014 declared Ulos Batak Toba as an intangible cultural heritage of Indonesia on October 8, 2014. One year later, on October 17, 2015, the Republic of Indonesia's Ministry of Education and Culture declared October 17 to be National Ulos Day. The motif on Ulos Batak Toba is not only beautiful; it also has artistic, historical, religious, and cultural significance. Every traditional design on Ulos Batak Toba has a variety of colors and varieties to choose from when it comes to how to utilize and give Ulos.

Since the Toba Batak people lack a catalog (list) of traditional Ulos Batak Toba motif designs for weaving Ulos Batak Toba fabrics, craftsmen and weavers are intimidated when asked about the varieties of traditional patterns on this Toba Batak Ulos. The community of Ulos Batak Toba fabric craftsmen or weavers is afraid that if many people are familiar with traditional motifs of various types on Toba Batak Ulos fabric, they will lose their livelihood. Even if the artisans or Ulos Batak Toba weavers do not have legal protection for the commercial rights of traditional motifs on Ulos Batak Toba that have existed since time immemorial, they can finally be mass-produced by others without the authorization of the connected parties (Ratnasi, 2020).

At this time, the development of fashion (style of clothes) looked at numerous traditional motifs from diverse civilizations in society. Furthermore, many fashion designers are beginning to consider the forms of traditional motifs employed in one particular style of clothing model.

Designers of clothing models competed to "claim" (recognize) the earliest traditional motifs that used these themes. The issue emerges when traditional motifs are combined with creative motifs on a songket fabric, resulting in a business competition dispute with considerable commercial value. According to Article 38 (3) of the Law of the Republic of Indonesia, Number 28 of 2014 about copyright, designers of clothing models or songket

weavers who employ traditional motifs must give regard to the values that exist in society.

Songket weavers or craftsmen, as well as designer clothing models, continue to use historic motifs on Ulos Batak Toba, despite not knowing who created the motif. The capacity of craftsmen or weavers and underwear designers to integrate or combine creative themes with traditional Ulos Batak Toba motifs results in high commercial value. In general, people are more familiar with Palembang and Minangkabau songket cloth with motifs from these locations. Following advances in technology advancements and the fashion industry (styles of clothes), not only the ancient Palembang and Minangkabau themes, but also the traditional Ulos Batak Toba motifs used on songket fabric began to be studied by artisans or weavers and fashion designers. People are familiar with the name Toba songket because the traditional motifs on Ulos Batak Toba are taken to be woven on songket cloth. The motif on the Toba songket is a combination of elements from the Toba Batak Ulos and other innovative motifs, giving it a high economic value.

The protection of Indonesian traditional cultural expressions against the use of traditional motifs without a country's permission necessitates the creation of a special regulation (*Sui Generis*) for traditional motifs with economic value. Traditional cultural expressions (abbreviated as TCEs) are considered state assets since they have a high economic value and can help the country flourish. However, foreign countries and people have extensively acknowledged (claimed) their own without any benefit-sharing, resulting in a conflict of interest between developed and developing countries.

The state owns the copyright for traditional cultural expressions, and their use must take into account the values that exist in the community in which they are used (Custodian). There is no explicit Government Regulation (abbreviated as GR) that regulates copyright in traditional cultural expression in this circumstance. It is critical to protect and preserve traditional cultural expressions because if they are lost, the identity of the community that carries them would be lost as well (Perangin-angin, 2017:65).

Based on the aforementioned argument, the WPPT's protection of traditional cultural expressions focuses solely on the right of

appearance (performer's right), but the protection of traditional cultural expressions is inextricably linked to the appearance of works of art. Then, in contrast to traditional cultural expression, WPPT protection necessitates a sort of "fixation," which is not required due to the nature of an oral tradition that exists in society. Furthermore, the WPPT only protects the sound element and does not protect visuals (pictures).

Traditional cultural expressions cannot persist without indigenous (communal) communities developing and preserving these cultural assets, because traditional cultural expressions were created by local communities. Indigenous peoples in this scenario have both material and non-material rights to traditional cultural resources, which are administered collaboratively under communal ownership. As a result, no one person can have a monopoly on the administration of traditional cultural expressions to profit from the outcomes of their use without first receiving permission from the traditional cultural expressions' owner.

The intellectual property rights (IPR) protection system for traditional cultural expressions, as regulated in Law Number 28 of 2014 concerning Copyright, is still unable to protect indigenous peoples' (custodians') interests regarding the importance of special arrangements (*Sui Generis*) regarding traditional cultural expressions. Because there are still fundamental distinctions between IPR and traditional cultural expressions, fully protecting against the preservation of traditional cultural expressions is insufficient. The term individual ownership of a copyrighted work in the domains of science, literature, and art is not recognized by the local community's cultural values.

Another issue with copyright protection for traditional cultural expressions is that the period for traditional cultural expressions differs significantly from the period for copyright protection. As a result, the Copyright Law continues to be ineffective in protecting traditional cultural works created through traditional cultural expressions passed down from generation to generation. Intangible cultural resources, according to Miranda Risang Ayu, are more diverse than the categories outlined in the Copyright Law (Ayu, et.al, 2017: 214).

When examining the possibilities for copyright protection (Arnesen, 2014:392), the disparity between intellectual property law

(IPR) and traditional cultural expressions (TCEs) becomes obvious, such as:

1. Copyright is an individualized concept, not a collective (communal) one.
2. When copyright law is enforced, the concept of demonstrated originality becomes an impediment.
3. Fixing requirements should be taken into account. According to Article 2 (2) of the Berne Convention, the fixing requirement is a subject of national law of the European Union country.
4. The limited duration of protection afforded under the Copyright legislation is one of the key hurdles when directing traditional cultural expressions (TCEs). If you read Article 7 (1) of the Berne Convention carefully, you'll notice that it states that the creator will be protected for fifty years after his death.

Furthermore, according to Article 38 paragraph 3 of the Copyright Law (CL) 2014, the use of traditional cultural expressions must take into account the values that exist in the community that bears it (Custodian). According to Hendra Djaja, the conservation of traditional cultural expression is linked to three crucial factors (Djaja, 2016:22), as discussed in Article 38 CL 2014:

- a. Foreign parties misappropriate Traditional Cultural Expressions (TCEs) through the intellectual property rights system;
- b. The state is required to develop an Intellectual Property Rights (IPR) protection system;
- c. Traditional Cultural Expressions are poorly protected.

Traditional cultural expressions (TCEs) are a type of intellectual property that encompasses a wide range of indigenous peoples' works, including dances, traditional motifs or designs, tales, and traditional remedies (Simatupang, 2015:212).

METHODS

According to the research's title, the researchers employed a qualitative descriptive methodology to conduct doctrinal legal research. The law, which is regarded as a norm or rule, is the topic of study in normative legal

research, whereas the norms studied include laws, government regulations, and others. This study used empirical legal research to explore the workings of the law or the efficacy of the law in society concerning the legal protection of Ulos Batak Toba traditional motifs as traditional cultural expressions (TCEs) and communal intellectual property.

The specifications employed in this study are analytical descriptive, which means that they are related to the positive legal theory of the problems to be researched based on the research title in research that provides an overview of the applicable laws and regulations. The goal of this analytical descriptive method is to explain the form of a description of traditional motifs' legal protection in Ulos Batak Toba, which is a traditional cultural expression (TCEs) as a communal intellectual property that is specifically regulated (*Sui Generis*) reviewed based on national law and international agreements.

RESULTS AND DISCUSSION

Legal Protection of Toba Batak Ulos Traditional Motifs as Traditional cultural expressions is Communal Intellectual Property

Protection law is protection provided to subject law in the form of device law that is preventive and repressive. Protection law preventive is protection provided by the government designed to prevent the happening violation. This thing poured in designed laws and regulations to prevent disobedience and to give a sign or ban when fulfilling an obligation. Furthermore, protection law repressive is shape ultimate protection, such as fines, imprisonment, and punishment addition if occur dispute or violation. In other words, protection law is an example of function law, that is law could give draft justice, order, certainty, interests, and peace.

According to international law, studies on the protection of traditional cultural expressions (TCEs) have long been addressed, and there are four fundamental recommendations for the protection of TCEs (Reh Bungana PA, 2012:124), namely:

- a. The Bern Convention for the Protection of Literary and Artistic Works ("Bern Convention");

- b. The Tunis Model Law on Copyright ("Model Law");
- c. The Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions ("Model Provisions") and;
- d. The United Nations Declaration on the Rights of Indigenous Peoples.

The United Nations General Assembly adopted a declaration on the rights of indigenous peoples on September 13, 2007, that this declaration was adopted non-bindingly in setting out the individual and collective rights of 370 million indigenous peoples worldwide and recognizing the importance of cultural identity and continued development. This means that these indigenous peoples have collective (communal) rights, which are critical for indigenous peoples' survival (survival), well-being, and integral development as a country.

Intangible cultural works that exist on the Indonesian state's territory, such as traditions and oral expressions, including language, performing arts, community customs, rites, and celebrations, knowledge and behavioral habits about the universe, and traditional craft skills, have all been designated as intangible cultural heritage by the UNESCO convention of 2003. The Indonesian government has registered 2,644 intangible cultural works (intangible), but only 77 of them have been designated as intangible cultural assets by the Ministry of Education and Culture (abbreviated Kemendikbud) (intangible). Intangible cultural heritage is split into five categories, according to the 2003 UNESCO Convention on the Safeguarding of Intangible Cultural Heritage:

1. oral traditions and expressions;
2. performing arts;
3. communal norms, rituals, and festivals;
4. cosmological knowledge and behavior; and/or
5. traditional artisan skills and expertise.

Traditional cultural expressions (TCEs) are a type of intellectual property that encompasses a wide range of indigenous peoples' works, including dances, traditional motifs or designs, tales, and traditional remedies (Simatupang, 2015:212). The UNESCO regime defines numerous criteria that

are used to classify culture as intangible cultural heritage (ICH) (Hetami, 2019), including:

- a. practices, representations, expressions, knowledge, skills, instruments, artifacts, and cultural spaces associated with them, where manifestations can take the form of stories and traditional cultural expressions (TCEs) passed down from generation to generation; performing arts; social practices, rituals, and seasonal celebrations; knowledge and practice related to the wisdom of the universe; and expertise (craftmanship).
- b. recognized as part of one's cultural legacy by communities, groups, and (in some situations) individuals.
- c. handed down through generations and is constantly re-created (practiced/created/preserved) by communities and organizations as a response to their environment, their relationship with nature, and its history, to give them a sense of identity and sustainability.

The Republic of Indonesia's Constitution (UUD NKRI 1945) recognizes the existence of traditional rights, which include cultural rights, customs, and physical and intangible moveable

assets. Indigenous peoples' traditional intellectual property is tangible transportable goods. There are obstacles to protecting indigenous peoples' communal rights against traditional intellectual works that have existed since time immemorial because of differences in concepts between indigenous peoples and industrial communities, which result in intellectual property rights regulations. As a result, there are obstacles to protecting indigenous peoples' communal rights against traditional intellectual works that have existed since time immemorial (Bustani, 2018:306).

Creativity in blending traditional themes with other motifs to change the value and meaning of the traditional motif itself. Each Ulos Batak Toba traditional motif has its unique significance and meaning, which is passed down from generation to generation at traditional events. Other countries, such as Malaysia, have claimed Toba Batak Ulos. Many aspects of traditional Indonesian culture have also been claimed by other countries, and even exploited on a massive scale for the sake of profit through various means.


This can be seen in the following assets of traditional cultural expression (TCEs) that other countries have claimed:


No.	Types of Cultural Assets and Area of Origin	Claimant Country/Company
1	Batik, Java	Adidas
2	Ancient Manuscripts, Riau	Malaysia
3	Ancient Manuscripts, West Sumatra	Malaysia
4	Ancient Manuscripts, South Sulawesi	Malaysia
5	Ancient Manuscripts, North Sulawesi	Malaysia
6	Rendang, West Sumatra	Malaysian citizen
7	Sambal Bajak, Central Java	Dutch citizen
8	Sambal Petai, Riau	Dutch citizen
9	Pineapple Sambal, Riau	Dutch citizen
10	Tempe, Java	Several Foreign Companies
11	The song "Rasa Sayang-sayange", Maluku	Malaysia
12	Reog Dance, Ponorogo, East Java	Malaysia
13	The Song "Soleram", Riau	Malaysia
14	The Song "Injit-Injit Semut", Jambi	Malaysia
15	Gamelan Instruments, Java	Malaysia
16	Kuda Lumping Dance, East Java	Malaysia
17	Tari Piring, West Sumatra	Malaysia
18	The Song "Kakak Tua", Maluku	Malaysia
19	The Song "Anak Kambing Saya", Southeast Nusa	Malaysia
20	Jepara Carved Ornament Garden Chairs, Central Java	French citizen
21	Jepara Carved Ornament Figures, Central Java	British Citizen
22	Batik Parang Motif, Yogyakarta	Malaysia
23	Suwarti Village Silver Craft Design, Bali	American citizen

24	Products Made from Spices and Medicinal Plants Native to Indonesia	Shiseido Co. Ltd, Japan
25	Badik Tumbuk Lado, Karo, North Sumatra	Malaysia
26	Gayo Coffee, Central Aceh, Aceh	Dutch Multi-National Company (MNC/Multi-National Corporate)
27	Toraja Coffee, South Sulawesi	Japan Company
28	Musik Indang Sungai Garingging, West Sumatra	Malaysia
29	Toba Batak Ulos Fabric, North Sumatra	Malaysia
30	Angklung Musical Instrument, West Java	Malaysia
31	Jali-Jali song, Jakarta	Malaysia
32	Pendet Dance, Bali	Malaysia


Source: Legal Assessment Team Report about Protection of Regional Cultural Law, National Legal Development Agency, Ministry of Law and Human Rights RI 2009.


The following are some examples of Toba Batak Ulos motifs and their characteristics (Sitorus, 2021):

No.	Ulos Motifs	Characteristics	Material	Techniques	Images
1	Ulos TuturTutur	Eleven full warp lines (threads running along the length of the fabric) and one partial warp contain blue-and-white ikat stripes, white complementary warp stripes, and plain magenta stripes fill the body of this ulos. It would be used as a shawl, or as a gift from grandparents to a new grandchild to use as a sling, parompa. The aspect that most distinguishes the Batak shawl from the rest of North Sumatra is the vertical tri-partition: the pattern is concentrated in a long central plane and this	handspun (knitted yarn) and another cotton, organic and synthetic dyes, commercial fringe.	tie warp, auxiliary warp, machine sewing.	


		is flanked on each side by a rather wide border. The ends of the Ulos Tutar-Tutar are often finished with a long commercial fringe, as in this example.			
2	Ulos Pinar Suksang/Pinor Sungsang	<p>Pinar Suksang is characterized by a field filled with rows of arrowhead motifs arranged in opposite directions (up, down, up, etc.) which is the meaning of the word suksang (or breech): 'turn around. The arrows appear in white bands on midnight blue stripes on a maroon base which is the same color used to create the side borders. Separating the two are long, brightly colored stripes. At the end there is an inner border of the weft work (thread that is threaded across the warp/when weaving the fabric) additional white, orange, and red; they are asymmetrical</p>	cotton knitted yarn and synthetic dyes.	warp tie, plain weave, auxiliary weft, and terminal spun yarn.	

		<p>as usual, to symbolize the antithetical part of the perceived universe. Neatly woven ribbon with rolled motifs completes the fabric. Like a scarf that can be worn by men and women when attending traditional ceremonies.</p>			
3	Ulos Antak-Antak	<p>The antak-antak consists of three obligatory sections: two side borders (dark brown-red) plus a wide center area which is usually red-blue striped in the direction of the arc. The blue stripes contain white ikat arrows, all pointing in the same direction, arranged in narrow rows along the weft with wider rows at each end. At the ends there are large areas of complementary feeding patterns of the species seen in many high-quality Toba Batak ulos; the ends end in spun ribbons, commonly</p>	cotton knitting yarn and unspecified dye.	warp tie, plain weave, warp, auxiliary weft, and terminal spun yarn.	

		called sirat. Separating the side borders from the center plane are long stripes of simple complementary warp work, called jughia with white cotton thread.			
4	Ulos Runjat/Ulos Runjat Sangkarsangkar	The center of this Runjat is filled with ikat warp woven yarn (white lines, red arrowheads) while the ends are decorated with many parts in the weft work (threads threaded across the warp/when weaving the fabric), especially white with red highlights. At each of these ends is a 2 cm wide end wound tape, the ribs, and beyond this, the non-woven warp ends are twisted into a solid fringe. Separating the white border and the dark brown side border is a narrow strip of warp weave (the thread that runs along the length of the fabric) complementing the white color.	benang rajutan katun, pewarna organik, sutra merah. cotton knitting yarn, organic dye, red silk.	warp tie, plain weave, warp, auxiliary weft, terminal spun yarn.	

		Two more identical lines mark the boundary between the side border and the center plane. Runjat means 'not tightly bound'; The cage is a tree and refers to the large size fabric that makes this textile suitable for men's clothing.			
5	Ulos Padang-Padang	<p>The border of the side is not separated by a narrow band of white warp stripes from the center plane which presents a row of arrows arranged tightly in white on top of the blue-red stripes (tie motif on blue stripes) of this Ulos. At the ends, there is a border in a thick additional weft pattern of the typical Toba Batak textile style, finished off with a very fine wrapped ribbon, called sirat.</p> <p>According to the Ulos expert, Dr. Sandra Niessen, Padang-Padang is another name for Antak-antak; There</p>	cotton knitting yarn, unspecified dye	warp weave, plain weave, auxiliary weft, and terminal spun	

		are several variations based on the color play. Padang-Padang will be used as a women's shoulder cloth at traditional events.			
6	Ulos Padang-Rusak	<p>Padang-Rusak is the name of Aceh's high-value silk textiles. It has a red-and-white striped base and tie-in red stripes, as well as a plain white stripe between the centerline and the red side border. This Ulos bears no resemblance to the original Padang-Rusak (Plang Rutha' in Acehnese). The middle part does have a woven arrowhead pattern, like PadangRusak, but is presented in a bright blue color on a black base. The side borders are also black, while a long line of additional warp floats through the sides separated from the center plane and the white edges. The ends are decorated asymmetrically with additional</p>	cotton knitting yarn, organic dyes.	warp ikat weave, plain weave, warp, and supplementary weft, terminal spun yarn.	

		<p>weft work and a skillfully crafted weave band separates the woven web from the edges. These large and heavy ulos will most likely be worn as a shawl when visiting family and friends.</p>			
7	Ulos Bintang Maratur	<p>The Maratur Star can be translated as 'organized star', the areas of white ikat along the width of this textile are thought to resemble a star shimmering in a dark sky. A burgundy color border frames the 'star field' and a few additional simple weft pattern lines and contemporary brushes close the edges. The weave is light and flexible because it uses modern threads. It will be used as a shoulder cloth worn with traditional festive outfits.</p>	cotton thread, synthetic dye.	warp weave, plain weave, auxiliary weft, and terminal spun.	

8	<p>Ulos Sadum/Ulos Sadum Angkola</p>	<p>Sadum kecil is a relatively small cloth that appears to have originated in the southern Batak area, in Angkola Sipirok, but was adopted more than a century ago in the north, especially in the Tarutung area. In the south, it is often used as a festive baby carrier; in the north, it served as a shawl for common wear. In the south Sadum means 'shawl'; Ulos is a term used in the north. In the north, his name may include the word Angkola in recognition of his original inspiration. In both regions, Sadum is a popular gift given to distinguished VIP guests. The generally black textile is covered with colorful additional weft ornaments, while beads are strung on the weft near the ends to create simple ornaments. The floral motif in the center plane</p>	<p>cotton threads, synthetic dyes, beads.</p>	<p>tenunan polos, pakan tambahan, tenun manik, dan sulaman tangan. plain weave, additional weft, bead weave, and hand embroidery.</p>	
---	--	---	---	---	---

		is arranged to produce a vertical zigzag pattern.			
--	--	---	--	--	--

Draft protection of traditional cultural expression by Sui Generis.

What is needed (Susanti, et al, 2019:203-204), in terms of legal protection against traditional cultural expressions (TCEs):

1. Ensure the identification, nomination, protection, preservation, display, and transmission of Indonesian cultural heritage to future generations;
2. Broad policies to promote the significance of cultural heritage in people's lives, including religious tourism and ecotourism that benefits the local community (benefit sharing);
3. Incorporate cultural heritage preservation into a comprehensive national planning scheme;
4. Conduct scientific and technical research to identify numerous acts that violate and jeopardize the long-term viability of cultural heritage;
5. Develop legal, scientific, technical, administrative, and financial safeguards for heritage;
6. Create training facilities to protect and maintain cultural assets and to encourage scientific study in this field.

The draft Article on the Protection of Traditional Cultural Expressions is an international treaty that has been studied and negotiated by representatives from a variety of countries. Based on the interests of their countries, each member makes recommendations for the standards for the design of traditional cultural expressions (TCEs). All member countries' interests must be balanced and reflected in the draft TCEs articles; hence member country suggestions will be incorporated into the draft. The good news is that this is not a problem for national laws. National laws are created in response to the country's present requirements and circumstances (2019:204).

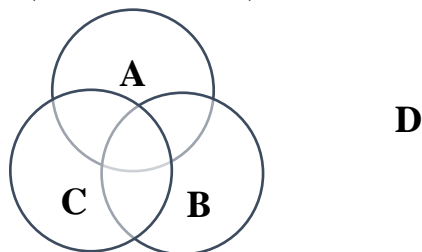
While countries are concerned with protecting traditional knowledge/traditional cultural expressions' intellectual property and commercial value, local/traditional people are

more concerned with preserving and promoting their traditional knowledge/traditional cultural expressions as national cultural heritage. Traditional knowledge/traditional cultural expressions are rarely viewed through the lens of intellectual property (IP) and business in these societies, instead emphasizing spiritual values, life philosophy, cultural identity, and the significance of social bonds. Indonesia needs to establish a law that addresses all of the unique demands of indigenous Indonesians to effectively conserve traditional knowledge and cultural manifestations (Susanti, et.al, 2020:268).

According to Susanti (2020:268-269), there are four key reasons why a draft protection law can fail:

- a. The proposed bill focuses solely on traditional knowledge/traditional cultural expressions' intellectual property and commercial value;
- b. There is a lack of official documentation regarding traditional knowledge/traditional Indonesian cultural expressions, so the object of protection is unclear;
- c. Many laws enforcement and judicial officers in Indonesia still do not understand the concept of protecting traditional knowledge/traditional cultural expressions;
- d. Indigenous peoples' existence and rights as people who preserve and develop traditional knowledge/traditional cultural expressions are frequently exaggerated;
- e. Customary law is not included in the design of traditional knowledge/traditional cultural expressions protection, even though customary law communities generally use customary law in managing their traditional knowledge/traditional cultural expressions;
- f. Despite being the largest users of traditional knowledge/traditional Indonesian cultural expressions, Indonesian users are exempt from benefit-sharing provisions; and
- g. There are no legal sanctions against radical groups that threaten traditional knowledge products/traditional cultural expressions and the community of practice.

The Draft Government Regulation (RPP) on copyrights held by the state for traditional cultural expressions also protects tangible and intangible traditional cultural expressions (TCEs). The majority of indigenous peoples take a holistic perspective on life, understanding it as including both material and intangible objects. Traditional cultural expressions, according to the draft government regulation on TCEs, include all forms of expression of copyrighted works, both material (objects) and intangible (intangible) or a combination of both, that demonstrate the existence of traditional culture from communal, hereditary, and intergenerational perspectives, including TCEs. Mapping can be depicted as a Venn diagram or a set diagram to explain this relationship. The relationship between the two and the three related ones is depicted in the Venn diagram below (Susanti, 2018:112):



Description: (Susanti, 2018:113)

A: is Constitution Number 28 of 2014 concerning Right Copyright ;

B: is Constitution Number 11 of 2010 concerning Reserve Culture; and

C: is Constitution Number 5 of 2017 concerning Advancement Culture.

D: is slice Among third Constitution the is Traditional cultural expressions, especially concerning traditional motifs.

The following issues will develop if you pay attention to the equation above: Are traditional cultural expressions or cultural heritage goods crafts passed down from generation to generation, such as the Toba Batak ulos motif? If it is defined as a traditional cultural expression protected by the Law of the Republic of Indonesia no. 28 of 2014 concerning copyright, and the copyright is owned by the state, the legal effects of the regulation will be different. As a result, moral and economic rights to these historic cultural expressions will be granted to the state. When arts and crafts are passed down from generation to generation and classed as cultural heritage objects, things are different. Of course, the legal

consequences are as follows: (1) if there are no heirs, the ownership will be taken over by the state; (2) everyone can own and/or control based on their social functions, as long as they do not conflict with the law; and (3) the conservation fund is borne by the government (2018:113-114).

If the law prohibits the destruction of objects that unlawfully damage, destroy, eliminate, or cause the use of unusable facilities and infrastructure for the promotion of culture, the presence of Law of the Republic of Indonesia 5 of 2017 concerning the Promotion of Culture has not been able to harmonize the overlapping of the two provisions. The question of whether there is still a relationship between forms of traditional cultural expression (most of which are intangible cultural heritage) regulated in the copyright law and objects of traditional cultural expression regulated in the law of cultural heritage has been raised in recent events related to the issuance of the Law on the Advancement of Culture (UUPK) (cultural heritage). There are at least two reasons for this (2018:114), namely:

1. Traditional cultural expressions and cultural heritage are both "legacy" or heritage, hence the distinction between intangible and tangible cultural heritage has no legal significance. The international instrument WIPO UNESCO Model Provisions, which dates from 1982, backs this up:

Production consists of characteristic elements of the traditional artistic heritage developed and maintained by a community of a country or by individuals reflecting the traditional artistic expectations of such a community, in particular: (i) verbal expressions, such as folk tales, folk poetry, and riddles ; (ii) musical expressions, such as folk songs and instrumental music; (iii) expressions by action, such as folk dances, plays, and artistic forms or rituals; whether or not reduced to a material form; and (iv) tangible expressions.

Cultural legacy is also an "inheritance," as defined by the Cultural Conservation Act (UUCB), and it is recognized as "tangible cultural heritage," also known as tangible cultural heritage. If both are national treasures, why are they written in two distinct regulations with differing legal

implications? It has been 35 years since Indonesia established a national CL, which recognized traditional cultural expressions as national heritage under the Copyright Law (CL). Although it has changed four times, no government regulation has yet been published to implement the rights mandate. Presumably, the government is struggling with the concept of "the state as the copyright holder of traditional cultural expressions" based on the Copyright Law (CL), as the draft government regulation only reads: "The right to traditional forms of traditional cultural expression is held by the state to protect the interests of the custodian and the Indonesian people".

2. Since both constitute national assets and are controlled in the same law, there is currently a trend to not distinguish between tangible and intangible cultural heritage on a global scale. Malaysia, for example, has the National Heritage Act of 2005. There is presently a trend among culturalists and environmentalists to use the term "saujana" to integrate the concepts of tangible and intangible cultural property. According to the Indonesian dictionary, this infrequently heard phrase means "as far as the eye can see." Saujana is a single broad space and time representation of human relations with culture and their natural surroundings.

Some countries have passed special laws (Sui Generis) to reflect the reality that many existing IP systems do not conform to the distinctive characteristics of traditional cultural expressions (TCEs) because of the gaps in the current intellectual property (IP) system. This specific step protects traditional cultural expression and traditional knowledge by ensuring that they meet all of their unique characteristics. Countries' diverse efforts to protect traditional cultural expressions (TCEs), whether through special legislation (Sui Generis) or modifications of their existing intellectual property regimes, are worthy of consideration (Awopetu, 2020:753).

Existing intellectual property laws were created and changed within the context of a capitalist system that prioritizes individual rights. The fundamental requirements of intellectual property law hamper efforts to protect the representation of intellectual property from folklore. There is a need to rethink intellectual property and develop

approaches to protect folklore, including by embracing communal property rights ideas. While it is hoped that the Sui Generis system for safeguarding community property, benefit-sharing, and protection is not limited, India has not explored complete Sui Generis protection for folkloric expression. Some existing Sui Generis models produced at the international (Model Provisions, IGC), regional (Model Law), and national levels (Peru, Panama, Kenya, Brazil, and the Philippines) are worth studying (Varah, 2021:8-9).

Several essential issues are reflected in all international statutes, Panamanian regional law, and the Draft Articles on TCEs (Susanti, et al, 2019:207), namely:

1. Traditional cultural expressions (TCE) are covered by specific legislation (Sui Generis) based on intellectual property law.
2. This sort of intellectual property is embodied in the special draft law.
3. The purpose of this special law is to complement intellectual property law and provide a comprehensive system for protecting personal rights.

The United Nations Educational, Scientific, and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO) issued a set of Model Provisions for national legislation in 1992 to safeguard folk expressions against illegal exploitation and other forms of damaging activities. The Model Provisions have essentially created a distinct system (Sui Generis) for the total protection of folklore and have established a legal model for the state to refer to and consider in the national legal system. The paradigm safeguards folklore expression from exploitation and other destructive practices. The holder of folklore in this paradigm is either an authorized official or a concerned community, depending on each country's preference. The authorized official must be appointed by the state or community in question, and the authorized official must provide a permit for the commercial use of folklore and art (Varah, 2021:9).

TCE is also linked to a specific group of people. In general, TCE is co-created by members of the community, is unique, and is influenced by the long-term impact of living situations, environment, community results and conditions, and technological advancement.

Every culture has its own set of values and is irreplaceable. Without prejudice, all cultures must be recognized and enjoy equal rights. Everyone has the right to keep their way of life, language, customs, and culture. As a result, the main purpose of TCEs protection must be to recognize the value of TCEs. This also serves as the foundation for the safeguarding of genuine communal rights relating to TCEs' moral and economic rights. Ethnic groups must have the right to safeguard the secrecy of TCEs, which is indeed secret and sacred and should not be exposed in public, as well as the right to construct and maintain the integrity of specific TCEs to prevent distortion, destruction, or improper use. They should be able to profit financially from the commercial usage of TCEs. As a result, the purpose of this *Sui Generis* must also include acknowledgment and respect for these groups and their rights (Susanti, et.al, 2019:208-209).

CONCLUSION

Based on the foregoing discussion, it can be concluded that using the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright to protect traditional Toba Batak ulos is still insufficient to provide adequate protection and use for traditional cultural expressions, particularly for the interests of indigenous peoples as bearers of traditional cultural heritage (custodian). The role of indigenous peoples as custodians of communal intellectual property rights (custodians) in the use of traditional Toba Batak ulos motifs is not explained in Article 38 of the 2014 Copyright Law. Local governments' participation in conducting inventories of various forms of traditional Batak Toba ulos motifs is not taken seriously enough in their work program. Therefore, there are still many varieties of ancient traditional patterns on Toba Batak ulos that the current generation is unaware of. Since no formal papers are inventorying various sorts of ancient traditional motifs as manifestations of traditional culture and communal intellectual property, the registration of traditional cultural expressions on traditional Toba Batak ulos motifs has not been carried out adequately. The state has a legal obligation to offer specific legal protection (*Sui Generis*) against several forms of traditional Toba Batak ulos motifs that are no longer known in the community, to prevent the exploitation of these patterns.

REFERENCES

1. Ayu, Miranda Risang, et.al. "Sistem Perlindungan Sumber Daya Budaya Tak Benda Di Palembang Sumatera Selatan Indonesia". *Jurnal MIMBAR HUKUM*. Volume 29 Nomor 2. Juni 2017. DOI: 10.22146/jmh.16671, hlm. 214.
2. Arnesen, Christian P. "Protection of Traditional Cultural Expressions: an EU Perspective". *Journal of Intellectual Property Law & Practice*. Volume 9 Nomor 5. 2014. <https://doi.org/10.1093/jiplp/jpu042>, hlm. 392.
3. Awopetu, Richard. "In Defense of Culture: Protecting Traditional Cultural Expressions in Intellectual Property". *Emory Law Journal*. Volume 69 Issue 4. 2020. <https://scholarlycommons.law.emory.edu/elj/vol69/iss4/3>, hlm. 753.
4. Bustani, Simona. "Perlindungan Hak Komunal Masyarakat Adat Dalam Perspektif Kekayaan Intelektual Tradisional Di Era Globalisasi: Kenyataan Dan Harapan". *Jurnal Hukum PRIORIS*. Volume 6 Nomor 3. Februari 2018. <https://trijurnal.lemlit.trisakti.ac.id/prioris/article/view/3184>, hlm. 321-306.
5. Djumhana, Muhamad dan Djubaedillah, R. 2014. *Hak Milik Intelektual: Sejarah, Teori Dan Praktiknya Di Indonesia*. PT. Citra Aditya Bakti. Bandung. Cetakan ke 4.
6. Damian, Eddy. 2012. *Glosarium Hak Cipta Dan Hak Terkait*. PT. Alumni. Bandung. Edisi Pertama. Cetakan ke 1.
7. Djaja, Hendra. "Perlindungan Hukum Terhadap Ekspresi Budaya Tradisional Dalam Perspektif Undang-Undang Hak Cipta". *Jurnal Cakrawala Hukum*. Volume 7 Nomor 1. 2016. DOI: <https://doi.org/10.26905/idjch.v7i1.1790>, hlm. 22.
8. Hetami, Kamilia. "Perlindungan Terhadap Warisan Budaya Tak Benda". <http://pusdiklat.kemendag.go.id/v/2018/ko>

lom/perlindungan-terhadap-warisan-budaya-tak-benda. [26/07/2019]. Online.

9. Nugroho, Sigit. "Pengelolaan Ekspresi Budaya Tradisional (TCEs) Di Daerah Pasca Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta (Perspektif Hukum Administrasi Negara)". *Jurnal Society*. Volume V Nomor 1. Juni 2017. DOI: 10.33019/society.v5i1.22, hlm. 92.
10. PA, Reh Bungana. "Perlindungan Foklor Menurut UU Hak Cipta Perkembangannya dan Perbandingannya Dengan Negara-Negara Lain". *Jurnal YUSTISIA*, Volume 1 Nomor 1. April 2012. DOI: <https://doi.org/10.20961/yustisia.v1i1.10608>, hlm. 124..
11. Susanti, Diah Imaningrum, et.al. 2019. *Ekspresi Budaya Tradisional Dan Hak Kekayaan Intelektual*. Percetakan Dioma. Malang.
12. Susanti, D.I., 2018. *Perlindungan Negara Atas Warisan Budaya Bangsa*. Setara Press. Malang.
13. Susanti DI, Susrijani R, Sudhiarsa RI. et.al. "Traditional Cultural Expressions and Intellectual Property Rights in Indonesia". *Jurnal Yuridika*. Volume 35 Nomor 2. Mei 2020. DOI: <http://dx.doi.org/10.20473/ydk.v35i2.15745>, hlm. 268.
14. Soelistyo. 2014. *Hak Kekayaan Intelektual: Konsepsi, Opini, dan Aktualisasi*. Buku Pertama. Penaku.
15. Simatupang, Violetta. 2015. *Hukum Kepariwisata Berbasis Ekspresi Budaya Tradisional*. PT. Alumni. Bandung. Cetakan ke 1.
16. Varah, Franky, et.al. "Protecting Expressions of Naga Folklore Through Sui Generis Model". *The Journal of World Intellectual Property*. 2021. DOI: 10.1111/jwip.12197., hlm. 8-9.