

# Effectiveness of Law Enforcement of National and International Instruments for the Protection of Traditional Cultural Expressions as Intangible Cultural Heritage in Indonesia

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## Abstract

*The uniqueness, preservation, protection, moral and economic rights of communities and countries of origin are important issues that require joint protection, including in Indonesia. The main focus of this study is how the legal norms of various instruments are effectively enforced against violations of the use of Traditional Cultural Expressions that contain moral rights as an identity, as well as economic rights for the survival of the owner community. This study is descriptive with an empirical legal approach, focus of the study lies in secondary data consisting of various primary and tertiary legal materials. Secondary and primary data were obtained through interviews and then analyzed empirically and legally. The study results indicate that the protection of Traditional Cultural Expressions in Indonesia as Intangible Cultural Heritage has been attempted through the integration and harmonization of international instruments into national instruments. In international level, there is the Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention on the Protection of the Diversity of Cultural Expression which have been ratified into national law. The results encourage the strengthening of national instruments with special regulations on Traditional Cultural Expressions in Law No. 28 of 2014 concerning Copyright, and Government Regulation No. 56 of 2023 concerning Communal Intellectual Property Rights. However, law enforcement against instruments regulating Traditional Cultural Expressions as Intangible Cultural Heritage still has weaknesses in the substance of the regulations, limited law enforcement officers, lack of supporting facilities, and challenges to community culture, implementation is not yet effective.*

**Keywords:** *Traditional Cultural Expressions, Law Enforcement, Moral and Economic Rights.*

## Introduction

Protection of Traditional Cultural Expressions as Intangible Cultural Heritage has long been a global issue, especially since the inclusion of Intellectual Property Rights into international trade through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) within the framework of the Agreement Establishing the World Trade Organization (WTO). There are different views between developed and developing countries regarding international Intellectual Property Rights (IPR) instruments, (LILING, 2014). Communities of origin, consisting of artists who maintain and develop their cultural creativity, often lack the attention and appreciation they deserve, both morally and economically. Many artists complain about the lack of recognition for the cultural practices they preserve as living heritage. They believe that local practices and products that are their signature often do not receive adequate recognition. Efforts to protect Traditional Cultural Expressions as part of Intangible Cultural Heritage continue to be carried out both internationally and nationally. (Bhatt et al., 2024; Olstad et al., 2023). In 1971, the Berne Convention was revised from the Stockholm version of 1967, which allowed Traditional Cultural Expressions to be considered as part of the Intangible Cultural Heritage, given their characteristics as Creations. In 1972, UNESCO adopted the international treaty Convention Concerning the Protection of the World Cultural and Natural Heritage, which was ratified at the UNESCO General Conference in Paris on 16 November 1972.

In 1978, the WIPO Governing Body meeting attempted to formulate protection for cultural expressions, in the form of a "first draft of sui generis protection to protect folklore from unauthorized use and distortion". This first draft was then discussed further by the committee in Dakar in March 1979, which recommended the establishment of a working group resulting from collaboration between WIPO and UNESCO. This group was tasked with formulating not only domestic regulatory aspects but also

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international steps for the legal protection of cultural expressions. Finally, in 1982, the "Model Provision for National Laws on Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions" was born. To strengthen this legal protection, several international conventions were then implemented, such as the Convention for the Safeguarding of the Intangible Cultural Heritage in 2003 and the Convention on the Protection of the Diversity of Cultural Expressions in 2005 which were produced through the Unesco Forum. (UNESCO, 2013). These two conventions more specifically focus on the legal protection of Traditional Cultural Expressions.

As a developing country and a member of WIPO, Indonesia has a great interest in protecting Traditional Cultural Expressions, given its extraordinary cultural wealth. Based on BPS data in 2010, Indonesia has more than 300 ethnic groups or tribes, precisely 1,340 tribes. Each tribe has its own cultural wealth, ranging from values, norms, behavior, works, ideas, to creations. This makes Indonesia rich in the diversity of intellectual wealth. In various regions, communal intellectual wealth reflects the uniqueness of each tribe, whether in the form of typical food, carving, sculpture, batik, dance, weaving, building architecture, all of which are included in the category of Intangible Cultural Heritage..

For that reason, Indonesia has ratified these international conventions. The Indonesian government ratified the Convention for the Safeguarding of the Intangible Cultural Heritage 2003 through Presidential Regulation of the Republic of Indonesia Number 78 of 2007 concerning Ratification of the Convention for the Protection of the Intangible Cultural Heritage (Presiden Republik Indonesia, 2007). Meanwhile, the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Kono, 2008) ratified based on Presidential Regulation of the Republic of Indonesia Number 78 of 2011 concerning Ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. At the national level, integration and harmonization of laws and regulations were carried out by replacing Law No. 19 of 2002 with Law No. 28 of 2014 concerning Copyright (Indonesia, 2014). In this law, Traditional Cultural Expressions [8] are specifically regulated in Chapter V on Traditional Cultural Expressions and Protected Creations, with Part One regulating Traditional Cultural Expressions and Copyright over Creations whose Creator is Unknown..

Integration and harmonization of international instruments into national law are expected to strengthen the legal protection of Traditional Cultural Expressions as Intangible Cultural Heritage of the Indonesian nation. This is important to maintain and protect against claims by other countries, misuse, fraud, misrepresentation, and theft or piracy. However, in some cases, protection of Traditional Cultural Expressions, especially in law enforcement related to national and international instruments, is still ineffective. Examples of cases of Malaysia's claim on various Indonesian creative and artistic products, such as wayang kulit, the song Rasa Sayange, batik, reog Ponorogo, rendang, angklung, pendet dance, plate dance, and kuda lumping. In addition, there is a case of unilateral claim of flower motifs (fleur) belonging to the Balinese people by PT. Karya Tangan Indah, whose exclusive rights were transferred to John Hardy Limited, claimed of Jepara carvings by PT. Harrison & Gil Java, and claim of Bokor carvings belonging to the Juwana Pati community by Leo Rusli (Fromer, 2009).

The various cases above are the subject of study in this research to show how the factors of regulatory substance, law enforcement officers, facilities, public awareness, and community culture influence the effectiveness of implementing and enforcing national and international instruments that regulate Traditional Cultural Expressions. This research is a development and update of previous studies that focused on the protection of Traditional Cultural Expressions, such as research by (Dahayu & Lutfi, 2021) entitled "Inside Safeguarding Principles UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003 in Indonesia". The study describes how Indonesia, which has signed the Convention for the Safeguarding of the Intangible Cultural Heritage 2003, attempts to prevent claims from foreign parties by implementing it through legislation. Another study by Hendra Djaja entitled "Legal Protection of Traditional Cultural Expressions in the Perspective of Copyright Law", (Krisnawati, 2023) found that the protection of Traditional Cultural Expressions as Intangible Cultural Heritage has been regulated both in national and international law. While this study focuses more on how these legal norms are implemented or enforced effectively..

## Research Methods

The research approach used in this research is Qualitative Description using primary and secondary data in the study of local cultural legal protection in Indonesia. Law enforcement efforts focus on how laws governing Traditional Cultural Expressions as Intangible Cultural Heritage, both those regulated in national and international law, can be implemented effectively. Therefore, this study uses a descriptive empirical legal approach. (Disemadi, 2022) , where researchers collect secondary data in the form of primary, secondary, and tertiary legal materials, and are supported by primary data (Carroll, 2015) obtained through interviews with selected respondents.

Several primary legal materials analyzed in this study include Law No. 28 of 2014 concerning Copyright, Government Regulation No. 56 concerning Communal Intellectual Property Rights, the Convention for the Safeguarding of the Intangible Cultural Heritage 2003, Convention on the Protection of the Diversity of Cultural Expressions 2005 resulting from the UNESCO Forum, and the United Nations Convention on Biological Diversity (CBD) 1992. In addition, secondary legal materials (Martins et al., 2018) The materials analyzed include court decisions (case studies), doctrine, draft legislation, previous research results, etc. Tertiary legal materials (Krisch et al., 2019) used include expert opinions, and public opinions in journals, magazines, books, and other sources collected through literature studies. Primary data in the form of interviews with selected respondents are also used to support the analysis of these legal materials. The legal materials collected are classified based on various identified problems. Then, testing is carried out on social reality where legal symptoms appear as phenomena that need to be analyzed. Furthermore, these legal symptoms are analyzed empirically and legally.

## Discussion and Discussion

### Literature Review

Humans who live together in a certain area will form a society. From this society emerge values that develop into culture. Culture is the entire system of ideas, actions, and human works in community life that are obtained through the learning process. In other words, culture as a result of human work, will, and creation functions to deal with the environment in which humans live. Edward B. Taylor (1832-1917) stated in detail that culture is a complex unity, which includes knowledge, beliefs, art, morals, customary law, and various other abilities and habits possessed by humans as members of society. (Tylor, 2011).

Traditional Cultural Expressions include all forms of creative works, both tangible and intangible, or a combination of both, that reflect the existence of a traditional culture that is inherited communally and across generations. Creative works that fall into the category of Traditional Cultural Expressions include:

- a. Verbal and textual expressions, both oral and written, in the form of prose or poetry, with various themes and message content, which can be in the form of literary works or informative narratives;
- b. Music, including vocals, instrumental, or a combination of both;
- c. Movement, including dance;
- d. Theater, such as wayang performances and folk dramas;
- e. Fine arts, both two-dimensional and three-dimensional, made of various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, and others, or a combination of these materials;
- f. Traditional ceremonies.

Objects as a result of culture have property rights. In Indonesian law, Article 503 of the Civil Code states that there are property rights over both tangible and intangible objects. The distinction between tangible and intangible objects is not only recognized in the Continental European legal system, such as in the Netherlands which is the reference for the Indonesian civil law system (KUH Perdata Indonesia), but also in the Anglo-Saxon legal system (common law), such as England and America, which distinguish between movable and immovable property, or tangible movables and intangible movables. From the perspective of intellectual property rights, Traditional Cultural Expressions are included in the category of intangible objects. According to L.J. van Apeldoorn, property rights are rights to property that provide direct power over an object. This power includes the right to enjoy the results of the creation freely, including for profitable purposes. The creation process requires time, effort, and costs, so that the creator is entitled to compensation in the form of exclusive rights to utilize his creation, without ignoring the interests of the community to also utilize the results of his creation. As part of Intellectual Property Rights, Traditional Cultural Expressions have rights, both moral rights and economic rights, which are communal in nature.

The rationale for protecting intellectual property rights is rooted in the idea of individual natural law. One of the figures in natural law, Hugo de Groot, put forward four principles underlying intellectual property rights, namely the Principle of Ownership (I have it and you have it), the Principle of Loyalty to Promises, the Principle of Compensation, and the Principle of the Need for Punishment. Furthermore, Hugo de Groot emphasized that private property rights are exclusive rights, not inclusive rights. Property rights are exclusive in the sense that the owner of the goods has the right to retain and use the goods exclusively, without giving others the opportunity to claim the same rights to the goods. The theory of Intellectual Property Rights protection is the basis for the establishment of laws and regulations regarding Cultural Expression, both at the national and international levels. These regulations aim to protect ethnic/tribal and cultural diversity, as well as wealth in the fields of art and literature in Indonesia. Therefore, the development and implementation of these regulations must be carried out properly so that they can be implemented and enforced. Law enforcement is an effort to realize the principles of justice, legal certainty, and social benefits. Thus, law enforcement is actually the process of realizing these ideas. This process involves the application of legal norms in real terms as a guideline for behavior in social and legal interactions in the life of society and the state. Law enforcement is an effort to implement legal ideas and concepts that society hopes can become a reality.

According to Barda Nawawi Arif (2009) in (Rustamaji, 2019) , law enforcement can be understood in two contexts. In a broader context, law enforcement covers all norms in the order of community life, while in a narrower context, law enforcement refers to judicial practices in various fields such as politics, social, economic, and defense and security. Meanwhile, Jimmly Asshiddiqe (Asshiddiqie, 2008) defines law enforcement as a process carried out to ensure that legal norms actually function as guidelines for behavior in interactions and legal relations in society and the state.

In general, law enforcement is defined as the act of applying certain legal means to enforce legal sanctions in order to ensure compliance with established provisions. On the other hand, Satjipto Raharjo (Asshiddiqie, 2008) states that law enforcement is a process to realize legal desires, namely ideas produced by the legislative body that are stated in legal regulations, into reality.

Soerjono Soekanto states that the effectiveness of implementing legislation is highly dependent on five factors, namely:

- 1) Legal rules (substance of law)
- 2) Law enforcers (structure of law)
- 3) Facilities and infrastructure (facility)
- 4) Public awareness
- 5) Community culture (culture of law).

In addition, Soerjono Soekanto also stated that legal rules will be able to run effectively if they meet three requirements. First, legal rules must be in line with the principles of the validity of the law. Second, regulations need to be implemented. Third, clarity in the use of words in legal rules is very important to avoid multiple interpretations that can confuse the public.

### *Effectiveness of Law Enforcement in Cases of Violations of the Use of Traditional Cultural Expressions*

The effectiveness of law enforcement is influenced by five factors, namely: legal rules, law enforcers, facilities and infrastructure, public legal awareness, and legal culture. Analysis of law enforcement cases related to violations of the use of Traditional Cultural Expressions, as explained previously, can be described as follows:

#### *Substance of Law*

A law is said to function well if it fulfills three legal elements, namely: legal elements, sociological elements, and philosophical elements., (Obed Livingstone Banda et al., 2024a). If only the legal rules apply, then the law is a dead rule. Meanwhile, if only sociological rules apply, then the law becomes a rule or norm that is mandatory in society., (Gigli, 2024; Nicolosi, 2024). Meanwhile, if only philosophical principles apply, then the law will only be an aspired-to law (*ius constituendum*).

By considering the national legal aspects contained in Law No. 28 of 2014 concerning Copyright, it can be concluded that philosophically, this Law has fulfilled the philosophical elements. This can be seen in the consideration section which states that copyright is intellectual property in the fields of science, art, and literature, which has a strategic role in supporting national development and improving public welfare, as mandated by the 1945 Constitution. Previously, in Law No. 19 of 2002 concerning Copyright, the considerations also stated that Indonesia is a country rich in ethnic, tribal, and cultural diversity, and has wealth in the fields of art and literature that requires copyright protection for intellectual property that arises from this diversity, as explained in his research (Iturralde González, 2017; S.H & Sugiyono, 2024). Philosophically, the purpose of creating this Copyright Law is to protect cultural expressions, both those originating from individual creativity and innovation, as well as communal-traditional cultural expressions belonging to the Indonesian nation. In the context of Law No. 28 of 2014 concerning Copyright which regulates Traditional Cultural Expressions, this copyright law has been in effect since October 16, 2014, when it was enacted. Therefore, this law only applies to events that occur after the date of its enactment and is declared effective (Non-Retroactive), (Disemadi, 2022). Hierarchically, this law is in line with the existing order of laws and regulations (Principle of Hierarchy) and has fulfilled the principle of *Lex Posterior Derogat Lex Prior*, which means that the new law will replace the old law. Thus, Law No. 28 of 2014 replaces Law No. 19 of 2002 concerning Copyright.

In order for the Copyright Law to be implemented effectively, implementing regulations are also needed as a tool that technically explains the implementation of the regulation. In Article 38 paragraph (4) of Law No. 28 of 2014 concerning Copyright, it is stated that further provisions regarding Copyright held by the state for traditional cultural expressions, as regulated in paragraph (1), will be regulated through Government Regulation. The Government Regulation in question is Government Regulation No. 56 of 2022 concerning Communal Intellectual Property, as explained in (Beringen, 2024; Carroll, 2015; UNESCO, 2013).

The results of the study show that the inventory and recording of Traditional Cultural Expression data by the community of origin is rarely done. Meanwhile, the recording submitted by the Regional Government is still sporadic and has not been preceded by a systematic inventory, such as a study from (Etinski, 2023; Le Moli, 2020). In addition, at the provincial and district/city levels, the database is not yet available. This is because the recording process requires in-depth studies that take a lot of time and money. In addition, the Regional Government also does not have a special institution that handles communal intellectual property, as in research from (Bjorge, 2023; Fromer, 2009; Yotova, 2020). However, to facilitate the process of inventory, recording, and integration of Traditional Cultural Expressions, the Government through the Ministry of Law and Human Rights of the Republic of Indonesia has provided the Communal Intellectual Property Information and Access System (SI AKIK) as well as the Communal Intellectual Property

Database, which can be accessed and utilized by Regional Governments that do not yet have their own database.

In addition to recording, data integration is also carried out on Traditional Cultural Expressions which is coordinated by the Minister through the Indonesian Communal Intellectual Property (KIK) information system as a form of defensive protection, (Lu et al., 2013). This defensive protection aims to defend the rights of the Community of Origin from abuse, deception, fraud, misrepresentation, and theft or piracy. Although this protection can be used to prevent criminal acts, the practice of law enforcement against criminal violations related to Traditional Cultural Expressions is still difficult to do. First, in Articles 112 to 119 of the Copyright Law which regulate criminal norms, there is not a single article that links it to Article 38 on Traditional Cultural Expressions, (Bhatt et al., 2024). This makes criminal prosecution of violations of Traditional Cultural Expressions, both in terms of moral rights and commercialization, difficult to carry out (based on the Principle of Legality). Second, the licensing procedures regulated in Government Regulation No. 56 of 2022 have not been specifically stipulated in the form of a Ministerial Regulation, even though this permit is important to defend against commercial exploitation of Traditional Cultural Expressions. Third, Traditional Cultural Expressions as Communal Intellectual Property only have inclusive moral rights, not exclusive rights, even though they have potential economic benefits.

In addition to conducting an inventory, the state also has an obligation to protect and preserve Traditional Cultural Expressions. (Tylor, 2011). This obligation is carried out by the Minister, ministers/heads of non-ministerial government institutions, and/or Regional Governments through several methods, including: (a) preventing exploitation of Communal Intellectual Property (KIK) that is not in accordance with the values, meaning, identity of KIK, and/or social institutions applicable in the Community of Origin; (b) conducting mediation and/or advocacy on legal issues related to KIK; and/or (c) conducting diplomacy with other countries. (Garcia Maia, 2023; Roeben, 2024).

The research results show that in its implementation, the regulations related to guarding and maintenance are not yet fully effective, (G. Zhao et al., 2024). For example, in the case of Bokor from Juwana, Pati, Central Java, an individual named Leo Rusli claimed that the bokor was his intellectual property, so he prohibited the bokor craftsmen from producing the craft. In fact, bokor art has been made for generations by the people of Juwana, Pati, and is used by Buddhists for worship purposes. In this situation, the Government and/or Regional Government did not make any legal advocacy efforts, such as filing for the cancellation of the certificate of rights to the bokor owned by Leo Rusli. A similar thing happened in the case of a book catalog containing various Jepara carving motifs claimed to belong to PT Harrison and Gil Java, where the government also did not intervene to revoke the use of the motifs used in the catalog, (W. Li & Chen, 2024).

Internationally, since 1982, the "Model Provision for National Laws on Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions" has been produced. To strengthen this legal protection, several conventions have been implemented, including the Convention for the Protection of Intangible Cultural Heritage in 2003, which was ratified by the Indonesian government through Presidential Regulation of the Republic of Indonesia Number 78 of 2007 concerning Ratification of the Convention for the Protection of Intangible Cultural Heritage. In addition, the Convention for the Protection and Promotion of the Diversity of Cultural Expressions in 2005 has also been ratified based on Presidential Regulation of the Republic of Indonesia Number 78 of 2011 concerning Ratification of the Convention for the Protection and Promotion of the Diversity of Cultural Expressions.

There is support from international instruments for Traditional Cultural Expressions, which have been ratified by the Republic of Indonesia as a national instrument in the form of a Presidential Regulation. In terms of the stipulation and implementation of international conventions, it can be considered that these international instruments function as an impetus to integrate and regulate Traditional Cultural Expressions into national instruments, namely Law No. 28 of 2014 concerning Copyright, and Government Regulation No. 56 of 2022 concerning Communal Intellectual Property, where the basic principles of these international conventions form the basis for national instruments. However, when viewed from the hierarchy of laws and regulations regulated in Law No. 12 of 2011 concerning the Hierarchical Structure of

Laws and Regulations of the Republic of Indonesia, the Presidential Regulation is below the Government Regulation. This shows that the material contained in international instruments is below the Government Regulation, which means that the Convention for the Protection of Intangible Cultural Heritage 2003 and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005, which were produced from the UNESCO Forum, regulate more technical administrative matters, as research from (Mou, 2024; Muchlinski & Arnold, 2024).

### *Law Enforcer*

Law enforcers are individuals or officers who have the authority to enforce the law in society. Law enforcers are divided into two categories, namely direct law enforcers and indirect law enforcers. In Indonesia, law enforcers include the Police, Prosecutors, Courts, Correctional Institutions, Advocates, and various other law enforcers, both acting directly and indirectly. Law enforcers who are directly involved in law enforcement against traditional cultural expressions include the police, prosecutors, and courts in the context of criminal law; judicial institutions in the context of civil law; and the Central and/or Regional Government in the context of state administrative law enforcement. These law enforcers are the focus of research and analysis in this paper. The understanding of law enforcers regarding the laws that must be enforced is very crucial. For example, in the Bokor case, the police prohibited Bokor craftsmen in Juwana Pati from continuing their production based on a report from Leo Rusli, who claimed that the Bokor design they used had been registered by him. In fact, the carvings on the Bokor had been made by craftsmen for years from generation to generation. As a result, the craftsmen were unable to produce Bokor within a certain period of time.

However, in the context of civil law enforcement, Leo Rusli's lawsuit against the Bokor craftsmen not to use the design and produce Bokor was rejected both at the first and appeal court levels. This shows that the police have not fully understood Traditional Cultural Expressions, which should be inclusive. If used for commercial purposes, such use must obtain permission from the state (Government and/or Regional Government), not from Leo Rusli. In fact, Leo Rusli is not the creator or owner of the rights to Bokor, but rather the state that holds the copyright.

The case of Jepara carvings that have been cataloged by PT. Harrison & Gil Java shows the lack of understanding of law enforcement officers in responding to the existence of this Traditional Cultural Expression. In the criminal case, PT. Harrison & Gil Java reported Peter Nicolas Zaal, a Dutch citizen who lives and runs a furniture business in Jepara. Peter's business produces furniture according to customer orders and buys directly from Jepara furniture and carving craftsmen, which are then exported to various countries in Europe and America.

Peter was reported by PT. Harrison & Gil Java for allegedly violating the law by violating Copyright against the company's catalog. He is suspected of inserting catalog photos into a website used for commercial purposes, which was created by someone on his orders, as a means of promotion and marketing of products sold by his company., (Bhatia & Kaur, 2024; Paudel, 2024). The judge at the Semarang District Court in Decision No. 702/Pid. B/2005/PN SMG, which was later strengthened by the Central Java High Court No. 11/Pid/2007/PT SMG, decided that Peter Nicolas Zaal was proven guilty of committing copyright infringement on the catalog of PT. Harrison & Gil Java by inserting photos of the catalog into a website for commercial purposes. Judging from the catalog image containing typical Jepara carvings, the judge's consideration and decision can be considered appropriate because protection of copyright on photos is protected under Law No. 28 of 2008.

In the civil decision, although the judge rejected Peter Nicolas Zaal's lawsuit because it was considered to be without legal standing both subjectively and objectively, the judge still considered the contents of the catalog. The judge noted that the carved images in the catalog were traditional carvings typical of Jepara, where the party entitled to sue for the commercial use of the carvings was the state, (Nicolosi, 2024). This shows that in substance, the lawsuit against Jepara carvings as a Traditional Cultural Expression of the Jepara community was recognized by the judge, (Ally, 2024).

However, as reflected in the statement of Defendant I, there are weaknesses on the part of the State (Government and/or Regional Government) which has not yet determined or recorded Jepara carvings as folklore. (Ally, 2024). Defendant I denied the Plaintiff's argument that the contents of the catalog were folklore, stating that "there has been no determination from the government regarding the contents of the creations contained in Defendant I's catalog book as folklore." The Defendant also added that if the Plaintiff could prove that the contents of the catalog were indeed folklore, then the Plaintiff must obtain permission from the rights holder, namely the State, to broadcast, announce, or reproduce the creations that are considered folklore..

### *Infrastructure and Resources*

Means are all things used as tools to achieve predetermined goals. Without adequate means, the implementation of law in society will be less effective, as explained in (Ituarte-Lima & Mares, 2024). The facilities and infrastructure needed in law enforcement to protect Traditional Cultural Expressions include all facilities needed to implement and enforce the rules stipulated in national and international laws and regulations. In implementing the protection of communal intellectual property and its law enforcement, there are a number of activities that must be carried out by the State (Government and/or Regional Government) as the copyright holder of Traditional Cultural Expressions, according to research from (Bhatt et al., 2024; Sarabdeen & Mohamed Ishak, 2024). These activities include inventory through recording and integrating data in a database, safeguarding and maintenance of Traditional Cultural Expressions, as in the findings of (Bhatt et al., 2024; G. Zhao et al., 2024).

In the implementation of data inventory, the Central Government, in this case the Directorate General of Intellectual Property Rights, has a database as a basis for recording and integrating data. Inventory activities through recording and integrating Traditional Cultural Expressions (Olstad et al., 2023) has been widely carried out by the Government, although the recording and integration of the data is not yet fully comprehensive. This is due to the limited budget for this inventory activity. The budget is very important to improve these activities, considering that recording and integrating data requires an assessment that also requires sufficient funds..

Another facility needed for inventory activities is a database. In this case, the Government, through the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights, already has a database. The database is very important as a means for recording and integrating data owned by the Central Government, because it can be utilized by Regional Governments, which currently only have a few electronic databases. As a result of the lack of Regional Governments that have electronic database facilities, inventory activities in the form of recording and integrating data cannot be carried out optimally. In fact, every Regional Government already has a computer as a means for electronic inventory, as in the research (Paudel, 2024);(L. Zhao & Kim, 2024).

The absence of a database and the suboptimal implementation of data recording and integration has caused the Regional Government, where the Community of Origin is located, to have difficulty in advocating for the legal problems faced by the community, as research from (L. Zhao & Kim, 2024). This can be seen in the Bokor case in Juwana Pati and the Jepara Carving case. In both cases, the copyright registration certificate cannot be revoked because the state (Government and/or Regional Government) at that time had not recorded, determined, and registered the rights to Traditional Cultural Expression in both Communities of Origin as State Rights, this finding is in accordance with (Y. Li, 2024; Muchlinski & Arnold, 2024; Obed Livingstone Banda et al., 2024a).

Likewise, in the efforts to safeguard and maintain Indonesian Traditional Cultural Expressions that must be carried out by the Government and/or Regional Government or Community of Origin, the current condition of the facilities is still very minimal and limited, so that safeguarding and maintenance activities cannot be carried out optimally. For example, until now, the Indonesian Government has only registered 13 Intangible Cultural Heritages as communal intellectual property rights with UNESCO, including: Wayang, Keris (Vebrianto et al., 2021), Batik, Batik Education and Training (Kurniawan, 2023), Angklung (Rosyadi, 2012), Tarian Saman (2011), Noken (2012), Tiga Genre Tari Bali (2015), Pinisi Ship

(Yusuf et al., 2023), Penca Silat Tradition (Pamungkas et al., 2022), Pantun (2020), Gamean (2021), and Healthy Culture of Jamu (2023). In addition, in 2021, the Ministry of Education, Culture, Research, and Technology (Kemendikbudristek) designated 289 Intangible Cultural Heritages from 28 provinces as Indonesian Intangible Cultural Heritage, (Menteri Pendidikan dan Kebudayaan Indonesia, 2013). In fact, Indonesia has more than 300 tribes and ethnic groups, and of course each tribe or region does not only have one Traditional Cultural Expression.

### *Public Awareness*

Public awareness of the implementation of the law can be realized if they understand their rights and obligations well, and there are legal activities that protect them. Several factors that can influence the low level of public awareness of the implementation of the law include: first, people often do not realize when their rights are violated. Second, they are not aware of legal efforts that can protect their interests. Third, people may not be able to utilize legal efforts due to various factors they face, such as economic, psychological, social, or political problems. Fourth, people generally do not have experience being members of organizations that fight for their interests. Fifth, people lack experience in interacting with formal legal stakeholders (Shidarta, 2021).

Based on the above factors, generally the Asal community or craftsmen, as happened in the case of Bokor in Juwana Pati and Jepara Carvings, many still do not understand copyright law as in the research. (Szablowski, 2024) . They tend to only think about producing goods to sell to the public. Misappropriation occurs due to the lack of awareness of the majority of Indonesian people, especially local people, about the importance of protecting their intellectual works. They often allow their creations to be plagiarized by others and even feel proud if their work is widely used by others..

The results of research in the Community of Origin of Trusmi Cirebon batik craftsmen, for example, show that when asked why they were reluctant to record Trusmi Cirebon Traditional Batik, they explained that the practice of plagiarism among craftsmen had become commonplace. (Handayani, 2018). If there is a request to make batik from other areas, such as Pekalongan, batik craftsmen in Trusmi can fulfill the request. Likewise, Pekalongan batik craftsmen can make Trusmi batik if there is a request (Salsabilla & Ningsih, 2022). They also expressed concerns that if they registered copyright, there would be a conflict of lawsuits, so that it would be "busy" in court instead of at Trusmi Market..

### *Cultural Law*

The existence of legal culture basically includes values that are the basis for existing laws and are applied in society. These values reflect views on what is considered good and should be followed, as well as what is considered bad and should be avoided. In addition, the cultural diversity of Indonesian society also influences community compliance with applicable legal regulations..

According to Lawrence M. Friedman, the culture of society includes all attitudes and values that exist among the citizens of society, which in turn will influence the way the law should be applied in society. (Al Kautsar & Muhammad, 2022). Thus, the culture of society has a very important role in determining an individual's attitude towards accepting or rejecting the law. Finally, the existence of legal institutions that can be accepted and used by a particular society or community is greatly influenced by the culture that develops in the environment of that society or community. The communal culture that is characteristic of Indonesian society still influences the lives and attitudes of society today. Values such as togetherness, mutual cooperation, and helping each other are still applied in everyday life, this finding is in accordance with research from (Obed Livingstone Banda et al., 2024b). Therefore, when a person or group of people creates something that is the result of their intellectual creativity, the work is not immediately claimed as personal property and registered with the Ministry of Law and Human Rights. Instead, the work is more often disseminated and taught to the surrounding community, including to residents from other regions or countries. For example, in Bali, sharing and teaching the results of creativity has become commonplace and does not require copyright protection. Copyright infringement is not considered a threat, but rather a form of contribution.

## Conclusion

The results of the study indicate that law enforcement against national and international instruments that regulate Traditional Cultural Expressions is still relatively weak. This is due to the unclear substance of legal norms in both national and international law related to criminal law norms. The applicable criminal law norms refer to the principle of limited and interpretive legality, so that all actions must fulfill the elements of a formal crime. Although the application of civil law norms is possible, this is highly dependent on the implementation of state administrative law norms. This study also revealed that there are still many Indonesian Traditional Cultural Expressions that have not been recorded, integrated, and determined as state rights, making it difficult for the state (Government and/or Regional Government) or the Community of Origin to file a lawsuit. Therefore, it is hoped that the state can further improve the laws and regulations governing Traditional Cultural Expressions. In particular, the Copyright Law needs to firmly stipulate criminal provisions related to violations of the use of Traditional Cultural Expressions. On the other hand, civil law enforcement must begin with the implementation of state administrative law. In this case, the state (Government and/or Regional Government) or the Community of Origin needs to carry out administrative actions, such as recording, data integration, and guarding and maintenance, equipped with adequate facilities. To build public awareness and culture, the Government and/or Regional Government must carry out socialization through education, training, and legal advocacy to the community or community of origin regarding the importance of recording their Traditional Cultural Expressions. This aims to maintain sustainability, identity, and maintain their economic rights.

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