



PROTECTION OF INTERNATIONAL LAW OF TRADITIONAL SONGS AS TRADITIONAL CULTURAL EXPRESSIONS: A JURIDICAL ANALYSIS OF INDONESIA AND ITS PRACTICE

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Abstract

This study examines the challenges of legal protection for Indonesian traditional songs as part of Traditional Cultural Expressions (TCEs). The main issue lies in the gap between the individualistic nature of the intellectual property (IP) legal framework and the communal characteristics of TCEs, which makes them vulnerable to unauthorized commercialization and claims by foreign parties. Using normative legal research methods through statutory, conceptual, case, and comparative approaches, this study aims to analyse forms of international and national legal protection and to identify challenges in their implementation in Indonesia. The findings indicate that the existing protection system remains inadequate. At the international level, conventional IP regimes are not aligned with the communal nature of TCEs. At the national level, the implementation of the Copyright Law and the Cultural Advancement Law is still constrained by the absence of specific implementing regulations and the lack of inter-agency synergy. This study recommends strengthening the regulatory framework through a sui generis system or stronger policy integration, as well as empowering indigenous communities as the primary custodians of cultural heritage.

Keywords: *Intellectual Property Rights; Legal Protection; Traditional Songs; Traditional Cultural Expressions (TCEs); Sui Generis Law.*

A. INTRODUCTION

Traditional Cultural Expression (NRE) has an important role in the formation and maintenance of a nation's cultural identity. NRE encompasses a wide range of cultural expressions that develop communally within indigenous peoples and that are inherited from generation to generation. One form of NRE that has deep cultural value is traditional songs, which not only function as entertainment, but also as a form of preservation of cultural values, history, social norms, and people's views on life. ¹The main trait of traditional songs is the anonymity of their creator and communal ownership, so that the song belongs to indigenous peoples.

The communal nature and sustainability of traditional songs that are not limited in time pose problems when faced with conventional intellectual property laws, especially in Law Number 28 of 2014 concerning Copyright in the protection of individual nature

¹ Directorate General of Intellectual Property. "Introduction." DJKI, Ministry of Law and Human Rights, Retrieved 16 January 2026 www.dgip.go.id/menu-utama/ki-komunal/pengenalan

and has a time limit in its protection. This inconsistency creates a normative conflict between the communal rights owned by Traditional Cultural Expressions (NRE) and the individualistic nature of the copyright system. As a result, traditional songs are vulnerable to abuse, commercialization without the consent of indigenous peoples, and claims by foreign parties.²

At the international level, protection against NRE has not been built comprehensively. *The World Property Organization* (WIPO) through *Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (IGC) encourages a system of positive protection by granting control rights to indigenous communities. Meanwhile, the *United Nations Educational, Scientific and Cultural Organization* (UNESCO) through the 2003 Convention focuses more on cultural preservation efforts and does not specifically regulate economic aspects. On the other hand, the *World Trade Organization* (WTO) through TRIPS has not provided a special mandate for NRE. This creates a legal vacuum that has the potential to open up space for the exploitation of traditional songs and other cultures, especially in developing countries such as Indonesia.

In Indonesia, although there are already legal regulations such as Law Number 5 of 2017 concerning the Promotion of Culture and Government Regulation Number 56 of 2022 concerning Communal Intellectual Property, the protection of traditional songs in Indonesia has not run optimally. The many obstacles encountered, especially in terms of management inventory, as well as the system of representing the interests of indigenous peoples, have the potential to cause losses not only in the economic sector, but also threaten the sustainability of the nation's culture and identity.

B. METHOD

This research uses a normative research method conducted by examining law as a collection of norms, principles, and principles regulated in laws and regulations and legal doctrines. This method was chosen to provide an overview of how the legal protection of traditional songs as Traditional Cultural Expressions (NRE) is formulated and implemented, both within the framework of international and national law. The approaches used are a legislative approach to review relevant regulations, a conceptual approach to understand legal doctrines and theories related to NRE, a case approach to see the application of norms in practice, and a comparative approach to compare international legal arrangements and Indonesian national law. Legal materials are obtained through *library research* which includes primary, secondary, and tertiary legal materials, which will then be analyzed qualitatively and the study of legal norms.³

C. ANALYSIS AND DISCUSSION

1. Analysis of the International Legal System and Its Relevance for Indonesia

² Komang Gede Kurniawan & I Made Wirya Darma, *The Legal Protection for Folk Songs from Unknown Origin: Orientation and Formulation in the Perspective of Legal Cybernetics*, SASI, Vol. 29, No. 4 (2023), hlm. 75.

³ Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), pp. 47-48.

Legal protection efforts for traditional songs as part of Traditional Cultural Expression (NRE) in Indonesia are closely related to the development of international law. This linkage cannot be ignored, considering that international law in the era of globalization serves as a basis that influences the formation and development of national law. In this context, international law plays an important role in determining the limits, principles, and policy directions of states in providing protection for communal cultural wealth. Until now, the protection of NRE, including traditional songs, in the international realm is still developing and has not reached a comprehensive and universally binding form. Various international organizations have initiated the formulation of norms and principles for NRE protection, but the resulting instruments are still *soft law* and have not been able to provide adequate legal certainty for countries that own culture. This condition has an impact on the weak position of developing countries, including Indonesia, in facing the potential for the use and commercialization of traditional songs by foreign parties without approval or fair distribution of benefits. Furthermore, the application of international norms related to NRE protection shows that there are different approaches between countries. These differences are influenced by the characteristics of the national legal system, economic interests, and the level of state commitment to protecting traditional cultural heritage. As a result, legal protection of traditional songs has not been uniformly and effectively, both at the international and national levels. In the Indonesian context, this situation emphasizes the importance of strengthening the national legal framework that remains in line with the development of international law, but is able to accommodate the interests of the traditional song-owning community in a fair manner⁴.

The World Intellectual Property Organization (WIPO) plays a central role as an institution under the United Nations that handles intellectual property issues. The role of WIPO became vital through the establishment of the *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (IGC) in 2000. One of WIPO's greatest theoretical contributions was the shift in terminology from "Folklore" to *Traditional Cultural Expressions* (TCEs) or NRE. This change in the term is not merely semantic, but rather an attempt to avoid the connotation of "Folklore" which is often considered a static, archaic and economically irrelevant artifact. On the contrary, the term NRE reflects the dynamic, lively, and ever-evolving nature of culture. WIPO defines NRE as the embodiment of skills, values, and beliefs that are passed down orally from generation to generation, which includes verbal, musical, and artistic expressions.⁵ However, the biggest challenge within the WIPO framework is the philosophical clash between the conventional Intellectual Property (IP) system and the characteristics of NRE. The conventional IP system is built on the foundations of individualism and capitalism, which grants exclusive rights and economic monopolies to individual creators. This is diametrically opposed to the communal and cross-generational nature of NRE. In addition, there are obstacles to the doctrine of *Common Heritage of Mankind* (CHIM). This doctrine, which was originally nobly intended to make cultural heritage the common property of humanity, is often abused in practice

⁴ Alison Duxbury, "The Role of WIPO as an International Organization," dalam *Research Handbook on the World Intellectual Property Organization* (Edward Elgar Publishing, 2020), hlm. 6.

⁵ *Berne Convention for the Protection of Literary and Artistic Works*, Paris Act 1971, Article 15(4). Diakses 10 Januari 2026 <https://www.wipo.int/wipolex/en/text/283698>

by multinational corporations and developed countries. This doctrine is often used as a justification for placing NRE in the *public domain*, so that it can be exploited freely without the obligation to compensate indigenous communities. This inequality is very relevant when analyzed using *Distributive Justice Theory* and the critique of *Anti-Colonialism*. In this perspective, the dominance of developed countries in the WIPO forum often marginalizes the local knowledge systems of developing countries, leading to the practice of *cultural appropriation*.⁶

In response to these challenges, WIPO through ICGRTRKF has drafted a protection article that proposes a revolutionary concept in the form of *Tiered Rights*. This concept offers a middle ground solution: very strict and enduring protection is given for NRE that is sacred or secret, while more flexible protection is given for NRE that is secular or has become widespread. However, the slow negotiation process and the absence of legally binding international legal instruments have encouraged the discourse on the need for a *Sui Generis* protection system. *The Sui Generis* system is a specially designed “like itself” legal regime, which breaks away from conventional copyright regimes in order to accommodate the unique characteristics of anonymous and collective NRE.⁷

In contrast to WIPO, which views culture from the perspective of property and economic rights, the *United Nations Educational, Scientific and Cultural Organization* (UNESCO) emphasizes the aspect of preservation or *safeguarding*. Through the *Convention for the Safeguarding of the Intangible Cultural Heritage* in 2003, UNESCO expanded the horizons of cultural protection. Intangible Cultural Heritage (WBTh) is no longer only seen as a dead monument, but as a living heritage, representation, expression, knowledge, and skill. UNESCO’s fundamental principle is a *community-based approach*. This means that a cultural element can only be recognized as heritage if the community of its own owners recognizes it, preserves it, and bequeaths it. This approach is very much in line with *Hegel’s Personality Theory*, which views a work (in this case a traditional song) as an external manifestation of the personality and identity of its creator (community). Therefore, UNESCO’s protection is not just about protecting the object of the song, but also protecting the dignity and identity of the community. Furthermore, the *United Nations Declaration on The Rights of Indigenous Peoples* (UNDRIP) in 2007 strengthened the human rights dimension in this protection. Articles 11 and 31 of UNDRIP explicitly affirm the right of indigenous peoples to *self-determination*. Indigenous peoples have the right to control, protect, and develop their cultures without adverse external intervention. The synergy between the UNESCO Convention (preservation) and UNDRIP (human rights) offers a more holistic and humane protection framework than just a transactional IP regime.⁸

In the context of global trade, the *World Trade Organization* (WTO) through the *Trade-Related Aspects of Intellectual Property Rights* (TRIPs) agreement sets minimum

⁶ World Intellectual Property Organization, *Report on the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)*, WIPO Doc. WO/GA/64/15 Rev. (14 July 2023) Diakses 17 Januari 2026 www.wipo.int/documents/d/igc/docs-en-igc-mandate-2024-2025.pdf

⁷ World Trade Organization, “TRIPs: Agreement on Trade-Related Aspects of Intellectual Property Rights. Background to Article 27.3(b),” Diakses 15 Januari 2026 https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

⁸ United Nations Educational, Scientific and Cultural Organization (UNESCO), “Convention for the Safeguarding of the Intangible Cultural Heritage,” (17 Oktober 2003), Pasal 2., Diakses 17 Januari 2026 <https://ich.unesco.org/en/convention>

standards for IP protection for member countries. However, TRIPs have a very significant gap because they are built entirely on Western legal traditions. This agreement tends to consider traditional knowledge and NRE as something that has become a thing of the past so that it enters the *Public Domain*. The implications are very serious for developing countries like Indonesia. Traditional songs can be modified and commercialized by the global music industry without violating positive international law, even if such actions hurt the sense of justice of the cultural ownership community. These gaps in TRIPs are a basic argument for developing countries to demand amendments or negotiations of new legal instruments that are more equitable and recognize non-Western knowledge systems as economically viable entities.⁹

The absence of universally binding international treaties creates a vacuum of *law* at the global level. On the national side, Indonesia faces difficulties in translating the concept of individualistic IP law into the communal cultural reality of the archipelago. Many traditional artists refuse to claim personal copyright to their works because they consider them to be ancestral trusts¹⁰. Therefore, Indonesia needs a dual strategy: at home to form laws that are *sui generis*, and abroad to conduct active cultural diplomacy to encourage the realization of international treaties that protect NRE.¹¹

2. Analysis of Indonesian National Law

In response to the constitutional mandate to advance national culture, Indonesia regulates the protection of Traditional Cultural Expressions through Law Number 28 of 2014 concerning Copyright. Article 38 of the Copyright Law serves as the main legal basis for this protection. The article expressly provides that copyright over Traditional Cultural Expressions is held by the State. This provision positions the State not as an absolute owner in the ordinary civil-law sense, but rather as a trustee responsible for inventorying, safeguarding, and preserving these cultural expressions in the national interest.

Article 38 of the Copyright Law may be understood as a manifestation of the theory of state sovereignty over culture, as well as an attempt to adopt the theory of natural rights within a communal framework. This provision contains several strengths and weaknesses.

The first strength is the perpetual nature of the protection. One of the main advantages of Article 38 paragraph (1) is that protection is not limited by time. Unlike copyright protection for contemporary works, which is subject to a specific duration, such as the lifetime of the author plus seventy years, the State's copyright over Traditional Cultural Expressions continues indefinitely as long as the cultural expression still exists. This ensures the preservation of ancestral heritage for future generations. Second, Article 38 offers a solution to the problem of attribution. Since many traditional songs are anonymous and their original creators are unknown, the concept of the "State as the

⁹ World Trade Organization, Op Cit Diakses 15 Januari 2026 www.wto.org/english/tratop_e/trips_e/art27_3b_background_e.htm

¹⁰ World Intellectual Property Organization (WIPO), "WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge," (2024) Diakses 16 Januari 2026 <http://www.wipo.int/en/web/traditional-knowledge/wipo-treaty-on-ip-gr-and-associated-tk>

¹¹ Bryan Eduardus Christiano, "Urgency of Sui Generis Protection for Indonesia's Communal Intellectual Property: Stick with Defensive, Shift to Positive, or Hybrid Approach?", Indonesian Law Journal, Vol. 16, No. 1 (2023), hlm.19-38.

copyright holder” provides legal certainty. The State fills the gap in legal subjectivity, thereby preventing such works from being treated as ownerless or unprotected.

Third, this provision provides legitimacy for collective protection. Article 38 recognizes the sociological reality that Traditional Cultural Expressions are collectively owned. By placing these expressions under the authority of the State, potential ownership conflicts between individuals within the same community may be minimized. Fourth, Article 38 also contains macroeconomic potential. In theory, the State may manage Traditional Cultural Expressions for the benefit of the national economy, including through cultural tourism, with the resulting benefits being redirected toward public development.

However, Article 38 also has several weaknesses.

First, the provision still imposes the framework of copyright, which is individualistic in nature, upon traditional culture, which is essentially communal. This often creates ambiguity at the level of technical implementation. Second, the most serious weakness lies in the absence of a specific Government Regulation or implementing regulation governing the mechanisms for management, licensing, and benefit-sharing in relation to regional songs, as mandated by Article 38 paragraph (4). Without such technical regulation, the article risks becoming a dormant legal provision.

Third, the current model of state protection tends to be defensive in nature, mainly aimed at preventing foreign parties from claiming Indonesian cultural expressions. There has been insufficient active protection that empowers Indigenous peoples or local communities as legal subjects with the authority to manage and directly enjoy the economic benefits of their cultural expressions. This situation may conflict with the principle of self-determination. Fourth, excessive state dominance may marginalize the role of customary institutions. Indigenous peoples and local communities risk being reduced to objects of protection rather than recognized as active rights-bearing subjects in the governance of their own cultural heritage.

3. Comparison of Legal Regulations on the Protection of Traditional Songs as Other Countries with Indonesia

- a. Mexico: Through *the Federal Law for the Protection of Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities* (2022), Mexico applies very high standards. This law strictly requires the principle of *Free, Prior, and Informed Consent* (FPIC). Any party wishing to use traditional motifs or songs for commercial purposes must obtain written permission from the community, and there are severe criminal sanctions for violators.¹²
- b. New Zealand: In its Intellectual Property system, New Zealand establishes a Māori Cultural Advisory Committee (*Mātauranga Māori*). This committee has the authority to review trademark or copyright registrations that contain elements of Māori culture. If it is considered offensive or not in accordance with customary values, registration may be rejected.¹³

Indonesia needs to consider the adoption of the FPIC mechanism and the integra-

¹² New Law in Mexico / Federal Law for the Protection of the Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities.” *PPM (Panamericana de Patentes y Marcas)*, Jan. 2022, Diakses 13 Januari 2026 <https://www.ppm.com.mx/en/pages/27-new-law-in-mexico.html>.

¹³ Wright, E., and D. Robinson. “The Patents Māori Advisory Committee of Aotearoa New Zealand: Lessons for Indigenous Knowledge Protection.” *The Journal of World Intellectual Property*, vol. 27, 2024, pp. 222-41. Retrived From <https://doi.org/10.1111/jwip.12295>.

tion of customary institutions in the structure of the DJKI (Directorate General of Intellectual Property) to strengthen protection, which is currently still too *state-centric* (state-centered).

4. Challenges of Identification, Recording, and Management of Communal Copyright In the field, efforts to protect NRE face multidimensional challenges:

Traditional songs are inherited orally (*oral tradition*). The absence of written documentation makes it difficult to prove the legal process regarding authenticity and ownership. The requirements for manifestation in real form in copyright law are difficult to meet by oral traditions because indigenous peoples often do not feel the need to record their culture because they consider it a part of daily life, not an economic asset. Then the emergence of *Artificial Intelligence* (AI) adds complexity. AI can create new music by learning the data patterns of traditional songs. Current law stutters to determine the copyright status of the AI's work: whether it belongs to the creators of the program, the user, or the indigenous community whose data is extracted

Then the absence of concrete cases where the state has succeeded in collecting royalties for the use of traditional songs shows that Article 38 of the UUHC has not been economically effective. Protection is still limited to legal rhetoric without real welfare impacts.¹⁴

5. Role and Performance of Collective Management Institutions (LMK)/ National Collective Management Institutions (LMKN)

- a. The Collective Management Institution (LMK)/ National Collective Management Institution (LMKN) Formed under the UUHC has a mandate to manage song and music royalties. However, in the context of traditional songs, the role of LMKN is almost invisible.
- b. Structural Failure: LMKN is designed for the modern music industry system that has anonymous creators and copyright holders. Because traditional songs are anonymous and communal, the LMKN system is not compatible. There is no clear mechanism for how LMKN must distribute regional song royalties.¹⁵
- c. System Transparency: Transparency issues in *the Song and/or Music Information System* (SILM) and lack of published audits keep public trust low.¹⁶
- d. Lack of Socialization: Many commercial users (hotels, restaurants) do not understand the obligation to pay royalties, especially for traditional songs that are often considered *public domain*. As a result, the economic potential of billions of rupiah from the use of regional songs has evaporated¹⁷

¹⁴ Vira Nur Maharani and Dwi Desi Yayi Tarina, "The Authority and Responsibility of the National Collective Management Institution (LMKN) in the Protection of the Economic Rights of Indonesian Musicians," *Journal of Legal Interpretation* 5, no. 1 (2024): 881–888.

¹⁵ Pariela, M. V. G., et al. (2025). Copyright assessment of the oral tradition of making fishing traps among indigenous peoples. *Batulis Civil Law Review*, 6(1), 33–43.

¹⁶ National Collective Management Agency. (n.d.). *LMKN at a glance*. Retrieved January 12, 2026 <https://www.lmkn.id/tentang-kami/>

¹⁷ Nadya, A. P. (2023). The strength of the national collective management institution in the withdrawal of royalties. *Prosecutor: Journal of Legal and Political Studies*, 1(4), 142–149. Retrieved From <https://doi.org/10.51903/jaksa.v1i4.1410>

6. The role of the Law on the Advancement of Culture in Strengthening the Protection of Law Number 5 of 2017 concerning the Advancement of Culture brings a new model.

The Copyright Law focuses on “Protection of Exclusive Rights”, the Law on the Promotion of Culture focuses on “Development and Utilization”. This law regulates the systematic mechanism:

- a. Inventory
- b. Security & Maintenance
- c. Rescue & Publication

This mechanism is very crucial as a *defensive protection database*. The data in SPKT can be a priority evidence (*prior art*) to cancel patent or copyright claims of foreign parties who try to steal Indonesian culture.¹⁸

7. Harmonization of the Copyright Law and the Promotion Law

With the harmonization of these two laws, there are great opportunities for harmonization between these two legal systems, these opportunities are:

- a. These two laws complement each other, the Law on the Advancement of Culture provides the data (documentation) needed by the Copyright Law to enforce the law.¹⁹
- b. Articles in the Law on the Promotion of Culture that emphasize utilization for the welfare of the people can be operationalized through the royalty mechanism in the Copyright Law.
- c. Both laws support cultural adaptation (new arrangement) as long as it does not damage the core values, allowing culture to remain relevant for the younger generation.

8. Challenges in the Implementation of National Regulations

Although regulations are available, law enforcement for *piracy* is still weak. The practice of physical (pirated VCD/DVD) and digital (illegal downloading/streaming without permission) of re-recorded regional songs is still rampant. Some of the causes of the lack of enforcement are as follows:

- a. Weak Coordination: Synergy between the Police, DJKI Civil Servant Investigators (PPNS), and regional officials often does not work.
- b. Limited human resources: Lack of officials who understand the intricacies of IPR law and culture.
- c. Legal Culture: People still view piracy as commonplace, not a crime.²⁰

9. The Problem of Attribution, Authenticity, and Unfair Commercialization The most fundamental problem in NRE protection is injustice.

- a. Attribution: When modern musicians arrange regional songs, often the name of the original community is not listed, or simply written “NN” (No Name). It is a form of historical erasure.²¹

¹⁸ Indonesia, *Law Number 5 of 2017 concerning the Promotion of Culture*, Ps. 16-34. <https://peraturan.bpk.go.id/Details/37642/uu-no-5-tahun-2017> accessed January 10, 2026

¹⁹ Indonesia, *Law No. 28 of 2014 concerning Copyright*, Ps.38

²⁰ Muhammad Yusuf Ibrahim et al., “Legal Literacy as an Instrument for Shaping Legal Culture in the Protection of Intellectual Property Rights,” *Phenomenon* 19, no. 1 (2025): pp. 142-150.

²¹ Ahmad Khusnan Junaidi, “The Validity of Song Modifications Made by Unknown Identities (Anonymous) Under the Copyright Law” (Dissertation, Maulana Malik Ibrahim State Islamic University, 2025), pp.

- b. Authenticity: Commercialization often triggers desacralization. The song that was once sacred for traditional ceremonies, was turned into disco music for mere entertainment, which distorts its original meaning²².
- c. Commercialization: The industry reaps huge financial gains, while the creator community remains poor. This is a form of *economic neo-colonialism*.²³

10. Traditional Song Protection Practices in Indonesia: A Case Study

The “Rasa Sayange” case: In 2007, the use of the song “Rasa Sayange” in the “*Malaysia Truly Asia*” campaign triggered a strong reaction from Indonesia. This case proves the weakness of national documentation at the time. Legally, Indonesia has difficulty suing because the song is considered *public domain* and spread across the archipelago (including Malaysia) without strong evidence of copyright registration by the previous Indonesian state.²⁴

Polemic “Yamko Rambe Yamko”: In 2020, a debate arose about the origin of this song. Although popular as a Papuan song, there is not a single tribe in Papua that recognizes its language. There are even allegations that this song is an adaptation of an African song or a creation of the 1960s. This case shows an identity crisis and the danger of establishing the status of “Traditional Song” without valid anthropological and linguistic research. If the origin alone is unclear (extreme anonymity), legal protection becomes impossible.²⁵

11. The Role of Government and the Role of Indigenous Peoples

The government moves through two main frameworks of the Ministry of Education and Culture focusing on cultural and educational substance (Independent Curriculum, Traditional Music Festival). Meanwhile, the DJKI of the Ministry of Law and Human Rights focuses on legality (Communal IP Data Center). The synergy between the two, plus the role of the Regional Government through the Indonesian Fund, is starting to show improvements in the data collection system.²⁶ The role of indigenous peoples in the protection of traditional songs is the most important role. Through oral inheritance, traditional rituals, and non-formal education in art studios, they keep traditional songs from becoming extinct. In the digital era, many communities have begun to do self-documentation using simple technology (YouTube, Social Media) as a digital archive. This participatory approach is essential. The state should not position indigenous peoples as passive objects, but rather as active subjects who have the right to *self-determination* to determine the direction of their own cultural preservation.²⁷

18-24

²² Stevanny, Stevanny, and Gunawan Djajaputra. “Economic Potential of Traditional Cultural Expression From The Perspective of Indonesia’s Intellectual Property Rights Law”. *Journal of Law, Politic and Humanities*, vol. 4, no. 4, June 2024, pp. 723-9, doi:10.38035/jlph.v4i4.419. Retrieved From <https://doi.org/10.38035/jlph.v4i4.419>

²³ Diah Imaningrum Susanti, Rini Susrijani, and Raymundus I Made Sudhiarsa, “Traditional Cultural Expressions and Intellectual Property Rights in Indonesia,” *Yuridika* 35, no. 2 (May 2020): p. 253

²⁴ Setiyono, et al. (2024). Has Indonesia safeguarded traditional cultural expressions? *Jambura Law Review*, 6(2), hlm 206–239. Retrieved from <http://ejurnal.ung.ac.id/index.php/jalrev/>

²⁵ DJKI affirms commitment to protect copyrights in the digital era, Directorate General of Intellectual Property (18 Nov. 2024), 2026 <https://www.dgip.go.id/index.php/artikel/detail-artikel-berita/djki-tegaskan-komitmen-lindungi-karya-cipta-di-era-digital>

²⁶ Peak of National Music Day 2021, Ministry of Education and Culture Announces Two Policy Breakthroughs Accessed January 10, 2026 <https://kebudayaan.kemdikbud.go.id/bpsmpsangiran/puncak-hari-musik-nasional-2021-kemendikbud-umumkan-dua-terobosan-kebijakan>

²⁷ Pattipeilohy, M., Jazuli, M., Rohendi Rohidi, T., & Sunarto, S. (2022). Implementation of Community-Based Art Education Through Informal, Formal and Non-formal Education Collaborative Music Practices in

D. CONCLUSION

Legal protection of traditional songs, both at the international and national levels, has not been fully harmonized until now. At the international level, WIPO through the IGC seeks to formulate sui generis legal instruments to protect Traditional Cultural Expressions (NRE), but this process still faces fundamental obstacles due to the differences between the individualistic Intellectual Property regime and the communal and dynamic character of NRE. The debates over attribution, benefit-sharing, and the regulation of sacred and secular rights reflect the difficulty of reaching a global consensus. However, the ratification of the WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge in 2024 marks an important step forward in the recognition of the rights of indigenous peoples. On the other hand, UNESCO through the 2003 Convention offers a community-based protection approach that is more in line with the value of NRE, as reflected in the recognition of gamelan as Intangible Cultural Heritage. UNDRIP has also strengthened the recognition of the collective rights of indigenous peoples, although its implementation in Indonesia is still constrained by conceptual debates on the definition of indigenous peoples. At the national level, the protection of traditional songs is regulated through the Copyright Law, specifically Article 38, which places the state as the copyright holder of anonymous works and provides indefinite protection. However, the absence of implementing rules, weak documentation, low public awareness, and incompatibility of the concept of copyright with the communal nature of NRE are the main obstacles. The Law on the Advancement of Culture actually offers a more comprehensive approach through data collection and preservation mechanisms, but its implementation is still not optimal, especially in law enforcement, economic benefit sharing, and indigenous peoples' involvement. The role of LMKN in royalty management has also not been effective due to the lack of socialization, institutional limitations in the regions, and the lack of transparency in the distribution of royalties.

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