

# THE URGENCY OF *SUI GENERIS* PROTECTION OF COMMUNAL INTELLECTUAL PROPERTY IN INDONESIA: A Comparative Study in Philippines

Yenny Eta Widyanti  
Faculty of Law, Universitas Brawijaya, Indonesia  
Email: [yennyeta03@gmail.com](mailto:yennyeta03@gmail.com)

Received: June 14, 2022; Reviewed: June 15, 2022; Accepted: June 22, 2022,

Published: July 30, 2022

## *Abstract*

*Indonesia is a culturally megadiverse country, which is a source of Communal Intellectual Property. However, Communal Intellectual Property that has high economic value can lead to the misappropriation and destruction instigated by foreign parties. Thus, a Communal Intellectual Property legal protection is needed in the international and national law. This research aims to describe about communal intellectual property in national and international law. By using normative juridical research, statute approach, conceptual approach, and comparative approach regarding primary and secondary legal materials, it is then analyzed with the findings that Communal Intellectual Property protection in international and national law do not only cover legal protection in the field of Intellectual Property Rights. It also encompasses non-Intellectual Property Rights legal protection, both preventively and repressively (hybrid protection). This research has an essential meaning in the formation of national law on sui generis Communal Intellectual Property by adopting the best practices in the Philippines.*

*Indonesia adalah negara yang kaya dengan keanekaragaman budaya, sebagai sumber Kekayaan Intelektual Komunal. Namun, dalam perkembangannya, Kekayaan Intelektual Komunal yang memiliki nilai ekonomi tinggi menjadi potensi penyalahgunaan dan perusakan oleh pihak asing, sehingga diperlukan perlindungan Kekayaan Intelektual Komunal dalam hukum internasional dan hukum nasional yang memadai.*

*Penelitian ini bertujuan untuk memaparkan perlindungan Kekayaan Intelektual Komunal dalam hukum nasional dan internasional. Dengan menggunakan jenis penelitian yuridis normatif dan pendekatan peraturan perundangan, pendekatan konseptual, serta pendekatan perbandingan dari bahan hukum primer dan bahan hukum sekunder, maka kemudian dianalisis dengan temuan bahwa perlindungan Kekayaan Intelektual Komunal dalam hukum internasional dan hukum nasional tidak cukup hanya dengan perlindungan hukum di bidang Hak Kekayaan Intelektual, namun juga meliputi perlindungan hukum non Hak Kekayaan Intelektual baik secara preventif maupun represif (perlindungan campuran). Penelitian ini memiliki arti penting dalam pembentukan hukum nasional Kekayaan Intelektual Komunal secara sui generis dengan mengadopsi praktik terbaik di Filipina.*

**Keywords:** *legal protection, communal intellectual property, traditional-cultural expressions*

## Introduction

Intellectual Property is the result of humans' thought that has high economic value for a nation. A crucial issue regarding intellectual property today is the legal issue regarding ownership claims and misappropriation of Communal Intellectual Property (CIP). CIP which includes Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) in general actually refers to "the result of intellectual creativity" of a group of indigenous people that has potential commercial value and can be traded", TK and TCE are then frequently associated with *Sumber Daya Genetik* (SDG; *Eng.* Genetic Resources), particularly regarding how to find and utilize the SDG through the information provided by indigenous people without giving proper compensation to the beneficiary communities.<sup>1</sup>

TK and TCE have generally been created for a very long time and the creators are no longer known. However, a TK and TCE can also be created today by a member of an indigenous community and his identity is recognized. However, it is not considered as a private property because in the context of customary law, a person's creation is considered as the property of the entire indigenous people.<sup>2</sup> In its development, at the international level, various negotiations and the formation of international agreements became the basis for the efforts to protect SDG, TK and TCE as the CIP, which later became known as the New Emerging Issues on Intellectual Property Rights in Intellectual Property Rights (IPR). The World Intellectual Property Organization (WIPO) has often discussed this new field

1 Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM RI, *Modul Kekayaan Intelektual Komunal Bidang Kekayaan Intelektual Komunal* (Jakarta: Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM RI, 2019), 7.

2 Ibid., 8.

since 2000<sup>3</sup> which was followed up by the establishment of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore/Traditional Cultural Expressions (IGC-GRTKF). However, the IPR law has not reached a multilateral agreement in CIP in an international legislation until today although there has been a discourse to regulate it, especially among developing countries in Asia, Africa and Latin America, which call themselves Like Minded Developing Countries (LMDC).<sup>4</sup> The regulation of CIP in international legislation is crucial to do because the current intellectual property regime is contrary to the traditions of indigenous people possessing TK and TCE. WIPO states: “this fact has in fact been acknowledged earlier on by WIPO (2002) that the intellectual property system is in direct conflict with traditional practices and lifestyles where the traditional knowledge holders are situated between their own customary regimes and the formal intellectual property system administered by governments and inter-governmental organizations such as WIPO.”<sup>5</sup>

The absence of international legislation in CIP is one of the weaknesses in realizing CIP protection, including in Indonesia. The weak protection of CIP in Indonesia is inversely proportional to the condition of the Republic of Indonesia, which is very rich in ethnic diversity and intellectual works that are considered as cultural heritage assets that need to be protected and preserved. The regulation of TCE as CIP is further regulated in Law Number 28 of 2014 concerning Copyright. Article 38 states that “Copyrights on traditional cultural expressions are held by the State.” However, Afifah Kusumadara affirms that copyright law has no practical interest for Indonesia since it is not in accordance with the culture and interests of the Indonesian nation.<sup>6</sup> The weakness of TCE protection in Copyright is due to the differences in the concept of property rights. The discrepancy is partly

3 Indigenous peoples, local communities and many countries reject a “public domain” status of TK and TCEs and argue that this opens them up to unwanted misappropriation and misuse. Lihat: World Intellectual Property Organization “Overview Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions”, World Intellectual Property Organization (WIPO), 2015, 10.

4 Badan Penelitian dan Pengembangan HAM Kementerian Hukum dan HAM RI, *Perlindungan Kekayaan Intelektual Atas Pengetahuan Tradisional dan Ekspresi Budaya*.

5 Wan Izatul Asma Wan Talaat, “Protection of the Associated Traditional Knowledge on Genetic Resources: Beyond the Nagoya Protocol”, *Procedia-Social and Behavioral Sciences* 91, (2013): 675.

6 Afifah Kusumadara, *Analysis of The Failure of The Implementation of Intellectual Property Laws in Indonesia*, PhD dissertation, Faculty of Law University of Sydney, 2000, h. 181. As a comparison, Indonesia has the same problems with Australia, which regulates the TCE in Copyright Act, see Natalie Stoianoff and Alpina Roy, “Indigenous Knowledge and Culture in Australia-The Case for Sui Generis Legislation”, *Monash University Law Review* 41, No 3 (2015):746; Terri Janke, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights*, (Sydney: Michael Frankel and Company, 1999), 112.

because the principle in copyright is private ownership (individual) while CIP is communal ownership.<sup>7</sup>In addition, the CIP's creator is unknown because it is passed down from generation to generation.<sup>8</sup> The requirements for copyright protection state that it must be clear who the creator is, and it must be realized in a tangible form and must be original.<sup>9</sup>

Indonesia has a very big interest in realizing the protection of CIP. This is inseparable from the fact that Indonesia is a country that has extraordinary cultural diversity and biological resources, so almost all regions in Indonesia have their own characteristics and cultures that were inherited by their ancestors. It shows that culture is an identity and characteristic of a nation. Culture can show the characteristics of a nation that cannot be found in other nations; thus, culture is very essential to be protected by both the government and the people of the nation.<sup>10</sup>

In this case, TK and TCE are parts of the cultural life of the community containing several values such as economy, spirituality and communality. All these values are respected by indigenous people. Therefore, TK and TCE can represent the identity of indigenous people in certain areas.<sup>11</sup>TK and TCE that have values and represent the identity of the indigenous people are intellectual property, which is the result of humans' thought to meet the needs and welfare of human life. Humans' creativity, which appears as a person's intellectual asset, has had a significant influence on human civilization for a long time, both through results in the field of works of art and creativity as well as new discoveries that are very useful in people's lives.<sup>12</sup>

7 Furthermore, see Jake Philips, "Australia's Heritage Protection Act: An Alternative to Copyright in the Struggle to Protect Communal Interests in Authored Works of Folklore", *Pacific Rim and Policy Journal*, 18 *Pac. Rim L. & Pol'y J.* 547, (August 2009): 549.

8 Lihat Stephanie Spangler, "When Indigenous Communities Go Digital: Protecting Traditional Cultural Expressions Through Integration of IP and Customary Law", 27 *Cardozo Arts & Ent.L.J.*709., *Cardozo Arts and Entertainment Law Journal* (2010): 711.

9 See Susanna Frederick Fischer, "Dick Whittington and Creativity: From Trade To Folklore, From Folklore To Trade", Symposium "The Power of Stories: Intersections of Law, Literature, and Culture The Dick Whittington Story: Its Influences & Its Impacts", 12 *Tex.Wesleyan L. Rev.* 5, *Texas Wesleyan Law Review*, (2005): 20.

10 Husamah, "Mengusung Kembali Khazanah Identitas Budaya Bangsa", *Jurnal Bestari* 42, (2009): 41.

11 DominikusRato, *Pengantar Hukum Adat* (Surabaya: LaksBangPressindo, 2009), 101; HilmanHadikusuma, *Pengantar Hukum Adat* (Jakarta: Mandar Maju, 2010),51. inAyu Citra Setyaningtyas and Endang Sri Kawuryan, "Menjaga aEkspresi Budaya Tradisional di Indonesia" *Jurnal Ilmu Hukum TambunBungau* 1, No. 2 (September, 2016): 123.

12 Kholish Roisah, *KonsepHukum Hak Kekayaan Intelektual Sejarah, Pengertian, dan Filosofi Pengakuan HKI dari Masa ke Masa* (Malang: Setara Press, 2015), 1.

Basically, the concept of IPR itself is a form of appreciation for human creativity, especially when the results of the creativity are used for commercial purposes. This shows that IPR is a special relationship between a person and a thing; an autonomous choice must be related to privacy, and it must be assessed and a guarantee of special protection, as a minimal conception and justice.<sup>13</sup> However, in its development, the cultural diversity of the nation and intellectual works that become the cultural heritage containing high value, have in fact become an attraction for commercial use. This triggers misappropriation, piracy of SDG (biopiracy), destruction of cultural values, and exploitation committed by foreigners.<sup>14</sup>

The misappropriation of IPR has occurred in Indonesia, which is the registration by a foreign party by taking the medicinal properties information of the archipelago's heritage, such as "Anti Aging Agent" which uses *sambiloto* and *kamukus*, "Hair Tonic" which uses Javanese chili, "Beautifying and Whitening Dermal Preparation for External Use" which uses *gambir lumping*.<sup>15</sup> The misappropriation of IPR also occurred over Indonesia's TCE, which was done by Malaysia. It was about ancient manuscripts that were claimed and exploited by Malaysia in 2007. This ancient manuscript belonging to the Riau Province was brought to Malaysia, was made as an online version and each visitor had to pay to see the manuscript.<sup>16</sup>

The misappropriation of IPR case over Indonesia's TCE was also done by Singapore involving the I La Galigo theater performance. It is a classic work of art of the Bugis people, and it has sacred value, but it was performed in Singapore without asking for the permission of the Indonesian government.<sup>17</sup> La Galigo or also known as SureqGaligo is a literary work of Bugis that uses certain Bugis vocabularies so that it is considered very beautiful. This literary work comes from the 14th century AD based on the stories told by Bugis people from generation to generation about the era before Islam came and mythological

---

13 Rahmijened, *Hukum Hak Cipta (Copyright Law)* (Bandung: Citra Aditya Bakti, 2014), 12.

14 Agency of Research and Development of Human Rights of the Ministry of Law and Human Right of the Republic of Indonesia, *Perlindungan Kekayaan Intelektual Atas Pengetahuan Tradisional dan Ekspresi Budaya Tradisional Masyarakat Adat*, 3.

15 Directorate General of Intellectual Property of the Ministry of Law and Human Right of the Republic of Indonesia, *Modul Kekayaan Intelektual*, 25.

16 Tengku Mega Rahmadini, "Perlindungan Ekspresi Budaya Tradisional Masyarakat Adat Melayu Di Provinsi Riau", *JOM Fakultas Hukum Universitas Riau*, Volume VII, No. 1 (January-June, 2020): 8-9.

17 Simona Bustami, "Urgensi Pengaturan Ekspresi Budaya (Folklore) Masyarakat Adat", *Jurnal Hukum Prioris*, 2, No. 4 (February, 2019).

stories written in the form of high-quality literature.<sup>18</sup>This condition of IPR shows that CIP protection is not adequate if it is only protected by IPR law.

The research conducted by Diah Imaningrum Susanti et al. shows that Indonesia's TCE regulations cannot be regulated by laws that exclusively limit the use of TCE.<sup>19</sup>This is in line with Yenny Eta Widyanti's research that shows the misappropriation and piracy of TCE done by foreign parties is the evidence that the legal protection of TCE within IPR is still not sufficiently protected in IPR. Thus, an adequate legal instrument is needed for CIP protection.<sup>20</sup>Likewise, in the research conducted by Robiatul Adawiyah and Rumawi, it is shown that the weakness in protecting the communal wealth of the community is the fact that the regulation is still regulated in several IPR regulations, so it creates ambiguity. Therefore, in order to realize the CIP protection optimally, it needs to be regulated in special law.<sup>21</sup>Based on these problems, the novelty of this research is to find the urgency of *sui generis* CIP protection in Indonesia. It uses a comparative study of Philippine law as an example of best practice that has regulated *sui generis* CIP in fulfilling the rights of indigenous people to be able to be adopted in Indonesian national law. Considering that the previous studies have only examined the weaknesses of CIP protection within IPR, this article is research that combines CIP protection in international and national law, both in the field of IPR and non-IPR (hybrid protection).

## Research Methods

The problems that have been formulated above will be answered using legal research. Peter Mahmud Marzuki<sup>22</sup> stated that legal research is a know-how activity in legal science to solve the studied legal issues. Legal research requires the ability to identify legal problems, perform legal reasoning, analyze problems and provide solutions to these problems. In line with this, Morris L. Cohen and Kent C. Olson declared that "legal research is the process of finding the law that governs activities in human society".<sup>23</sup>This means that legal research activities are

18 Directorate General of Intellectual Property of the Ministry of Law and Human Right of the Republic of Indonesia, *Modul Kekayaan Intelektual*, 28.

19 Diah Imaningrum Susanti, Rini Susrijani and Raimundus I Made Sudhiarsa, "Ekspresi Budaya Tradisional dan Hak Kekayaan Intelektual di Indonesia", *Yuridika*, Jilid 35 No. 2, May, 2020: 252-284.

20 Yenny Eta Widyanti, "The Legal Instrument of Protecting Traditional Cultural Expressions Ownership in Intellectual Property Rights Law", *Technium Social Sciences Journal*, Vol. 21, (July, 2021):492-501.

21 Robiatul Adawiyah and Rumawi, "Pengaturan Kekayaan Intelektual dalam Masyarakat Komunal di Indonesia", *Repertorium Jurnal Ilmiah Hukum Kenotariatan*, Vol. 10, No. 1, (May, 2021):1-16.

22 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2016), 60.

23 Morris L. Cohen & Kent C. Olson, *Legal Research in A Nutshell* (St. Paul Minn: West Publishing Co, 1992),1.

a process of finding applicable laws in social life activities.

The approaches used in this research are the statute, conceptual and comparative approach. "Statute" is in the form of legislation and regulations, so the statutory approach is an approach using legislation and regulations that is carried out by reviewing and analyzing laws and regulations related to the studied legal issues.<sup>24</sup>The conceptual approach came from the legal principles found within the visions of scholars and developing doctrines in the science of law.<sup>25</sup>The concepts used in this study are the concept of legal protection, ownership, IPR, CIP and justice. The comparative approach was once carried out with the Philippines, which was the first to regulate *sui generis* CIP and accommodated the rights of indigenous people.

The legal materials used in the research are primary legal materials, which are authoritative legal materials made by institutions or parties who have authority. Primary legal materials consist of legislation and official records or minutes in the making of legislation,<sup>26</sup> consisting of Copyright Act, Cultural Advancement Act, Law No. 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights and the Decree of the President of the Republic of Indonesia No. 18 of 1997 concerning the Ratification of the Berne Convention for The Protection of Literary and Artistic Works. This study also uses secondary legal materials, namely all legal publications that are not considered official documents.<sup>27</sup>Legal publications include textbooks, legal dictionaries, legal journals, and comments on court decisions<sup>28</sup> related to IPR, CIP, TK and TCE, legal protection, and justice. All primary and secondary legal materials are inventoried, classified and systematized according to the research problem and are then analyzed normatively to obtain a prescription for the urgency of CIP protection in a *sui generis* national law.

## Discussion

### Protection of Communal Intellectual Property in International Law

CIP's legal protection for TK and TCE in international law is regulated in the Berne Convention ratified by Indonesia based on the Decree of the President of the Republic of Indonesia No. 18 of 1997. The principles of TCE Copyright protection in the Berne Convention are:<sup>29</sup>

24 Marzuki, *Penelitian Hukum*, 137.

25 Ibid., 178.

26 Ibid., 181.

27 Ibid.

28 Ibid.

29 Nurul Barizah, "International Copyright Treaties and Its Implementation Under Indonesian Copyright

the principle of national treatment;

*principle of national treatment means that works originating in one of the Member states must be given the same protection in each of the other Member states as the latter grants to the works of its own nationals.*

the principle of automatic protection;

*automatic protection means that the protection must not be conditional upon compliance with any formality.*

the principle of independence of protection;

*the independent of protection means that the existence of protection in the country of origin of the work.*

Through the principle of national treatment, TCE works originating from one of the member states involved in the national treatment must be given protection by other member states as it was given to the works of its own citizens. Furthermore, the principle of automatic protection means that the TCE protection should not depend on any compliance with any formality. Meanwhile, the principle of independence of protection makes the TCE protection in other countries does not depend on the existence of TCE protection in the country of origin that created it.

The copyright protection requirements made based on the standard of copyright's ability are as follows:<sup>30</sup>(1) Originality: it does not mean that the work is new or unique; a work that is made based on something exists in the public domain may be original; (2) Creativity: as a standard of the capability of copyright, originality was mostly the only one measured. Although a work that merely copied a previous work may be considered non-original, if the copy requires an independent creative assessment from the author in its production, that creativity will render the work original; (3) Fixation: a work must be able to be realized in a tangible form.

In this regard, the scope of works protected in the Berne Convention is stipulated in Article 2, namely: (1) The expression "literary and artistic work"....; (2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that work in general or any specified categories of works shall not be protected unless they have been fixed in some material form; (3) Translations, adaptations....shall be protected as original works without prejudice to the copyright in the original work. This means that the scope of Indonesian TCE

---

Act; Is It a Better Access to Knowledge?", *Indonesian Journal of International Law*, 14, No. 1 (October 2016).

30 Rahmi Jened, *Hukum Hak Cipta*, 79-80 (quoting Earl W. Kintner and Jack Lahr, *An Intellectual Property Law Primer* (New York: Clark Boardman, 1983), 346-349).



protected by the Bern Convention encompasses works of art and literature with intellectual personal creation degrees that meet the requirements of originality, creativity, and fixation.

The Berne Convention stipulates economic rights which include the following elements:<sup>31</sup>

- (1) Article 8: right of translation;
- (2) Article 9: right of reproduction;
- (3) Article 11, 11 *bis*, 11 *trans*: right of public performance and wireless broadcasting and cabling of works;
- (4) Article 12: right of adaptation;
- (5) Article 14: the right of authorizing the cinematographic adaptation and reproduced;
- (6) Article 14: (1) (i): right of public performance and communication by wire of cinematographic adaptations and reproductions of work;
- (7) Article 14 *trans* (1): artist resale right subject to reciprocity test art.

In addition to regulating economic rights, the Berne Convention also regulates moral rights as stated in Article 6 *bis* of the Berne Convention as written below:

Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

It can be stated that CIP's legal protection of TCE in the economic rights regulated in the Berne Convention provides an advantage in the utilization of TCE which is very important in order to support the nation's economy.

CIP's protection of TK and TCE is also mentioned in the Human Right Law Convention, the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR 1966). Article 15 of 1966 ICESCR declares that the signatory countries of the Covenant acknowledge the right of everyone "to take part in cultural life, to enjoy the benefits of scientific progress and its applications, to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". In this case, each member state of the Covenant must fulfill the rights of everyone to take part in cultural life, to enjoy the benefits of scientific advancement and its application,

---

31 Jened, *Hukum Hak Cipta*, 63-64.

and to take advantage of both moral and material protection or benefits of products, literature or art created by all creators. The Covenant acknowledges the protection of TK and TCE, which is a right to culture and intellectual property rights since they are the basic human rights. Protection of rights to culture and intellectual property is a part of human rights, the basis for protecting TK and TCE ownership.

In its development, in order to strengthen the rights of indigenous people regarding CIP, it was further stipulated in the Universal Declaration of the Rights of Indigenous People 2007 (UNDRIP 2007). UNDRIP contains comprehensive protection of traditional community rights towards CIP protection for TK and TCE. This is reflected in both the preamble and the body stating that the international community acknowledges the urgent need to respect and promote the inherent rights of indigenous people. The rights of these traditional communities are very broad encompassing social, economic, and political structures as well as those taken from philosophy, history, and spiritual and cultural traditions, especially the rights of traditional communities to land, territory, and other resources.

This regulation is used as the basis for the protection of indigenous people, which is stated in the preamble of UNDRIP 2007 paragraph 7, that “recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources”. Furthermore, the principle of equality is also given to traditional and cultural practices of indigenous people that have contributed to the sustainable and equitable development as well as to the proper management of the environment.<sup>32</sup> Moreover, Article 31 (1) UNDRIP 2007 provides explicit recognition and protection for indigenous people on CIP SDG, TK and TCE within IPR, namely:

*Indigenous people are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their science, technologies and cultural manifestations, including human of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.*

To emphasize this, Article 31 (1) of UNDRIP 2007 states that there are four things that become the rights of indigenous people over SDG, TK and TCE; those are to maintain, to control, to protect, and to develop. UNDRIP 2007 firmly expresses that indigenous people have the right to special measures to

---

<sup>32</sup> Preamble of 2007 UNDRIP paragraph 11.

maintain, control, protect and develop the manifestations of science, technology, culture, human and other genetic resources, seeds, medicine, knowledge of the ownership of fauna and flora, oral traditions, literary works, designs, and various performing arts and fine arts. This is emphasized in Article 31 (1) of UNDRIP declaring that "...They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions." CIP's protection of SDG, TK and TCE in IPR was justified in UNDRIP 2007 asserting that indigenous people have the right to develop intellectual property on SDG, TK and TCE including cultural heritage and traditional knowledge to fulfill the rights of indigenous people based on the principle of equality in human rights.

### **Protection of Communal Intellectual Property in National Law**

In the Preamble to the 1945 Constitution of the Republic of Indonesia, one of the obligations of the state is to protect the entire Indonesian nation and promote the general welfare. This means, within the CIP protection, even if the indigenous people who have economic rights and moral rights over the CIP protection do not yet understand their rights, the government can take the initiative to provide protection. This is further regulated in Article 32, the third Amendment of the 1945 Constitution of the Republic of Indonesia which stipulates that "the State shall advance Indonesia's national culture in the midst of world civilization by guaranteeing the freedom of the people to maintain and develop their cultural values". The mandate is further regulated in Law Number 5 of 2017 concerning the Advancement of Culture (Cultural Advancement Act). As a part of Indonesian culture, CIP protection is inscribed in Article 4 of the Law having the objectives of: developing the noble values of the nation's culture, enriching cultural diversity, strengthening national identity, strengthening national unity and integrity, educating the nation, improving the nation's image, realizing civil society, improve people's welfare, preserve the nation's cultural heritage, and influence the direction of the development of world civilization so that culture becomes the direction of the national development.

According to Article 1 point 3 of the Cultural Advancement Act, "Culture advancement is an effort to increase cultural resilience and the contribution of Indonesian culture in the midst of world civilization through the protection, development, utilization and fostering culture". Based on Article 32 of the Cultural Advancement Act, the efforts to utilize the cultural advancement object are carried out by the Central Government, Regional Government,

and/or everyone, which aim to build the nation's character, increase cultural resilience, improve people's welfare and increase the active role and influence of Indonesians in international relations. Based on these rules, it is clear that CIP originating from culture is an object that is beneficial to improve the welfare of the community, which can support the nation's economy.

Regarding this, the scope of objects for the advancement of culture, based on Article 5 of the Cultural Advancement Act covering oral traditions, manuscripts, customs, rites, traditional knowledge, traditional technology, arts, languages, folk games; and traditional sports. It indicates that the scope of protection for objects of cultural advancement regulated in the Cultural Advancement Act is considered as the scope of protection for TK and TCE. TK and TCE protection in the Cultural Advancement Act consists of inventory (Article 16), security (Article 22), maintenance (Article 24), rescue (Article 26), publication (Article 28), and development (Article 30). Article 16 of the Cultural Advancement Act regulates the Inventory of Cultural Advancement Objects comprising the stages of recording, documenting, determining, and updating the data, which are carried out through the Integrated Cultural Data Collection System. This is inseparable from Article 22 paragraph (4) of the Cultural Advancement Act, which affirms that securing the cultural advancement objects can be performed by continuously updating the data in the Integrated Cultural Data Collection System, passing on the cultural advancement objects to the next generation, and fighting for the cultural advancement objects as the world cultural heritage. This is a form of preventive legal protection and preservation of TK and TCE.

In addition, Article 24 paragraph (4) of the Cultural Advancement Act stipulates that "the maintenance of cultural advancement objects is carried out by maintaining the nobility and wisdom values of cultural advancement objects, using cultural advancement objects in daily life, maintaining the diversity of cultural advancement objects, reviving and maintaining the ecosystems of culture for each cultural advancement object, and bequeathing the cultural advancement object to the next generation". Based on this description, the purpose of using TK and TCE as cultural advancement objects is not only for commercial use that is useful for obtaining economic benefits in order to support the nation's economy. It also functions to preserve the noble cultural values of the nation in everyday life so that they can be inherited to the next generation.

Further, Article 53 of the Cultural Advancement Act regulates the prohibition mentioning that "Every person is prohibited to go against the law, destroy, eliminate or damage the facilities and infrastructure used for the culture

advancement”. This is emphasized in Article 54, which stipulates that “Everyone is prohibited from unlawfully carrying out actions that cause the Integrated Cultural Data Collection System to not function properly”, and violations of this prohibition will be subject to criminal sanctions as stipulated in Article 55, Article 56, Article 57 and Article 58 of Cultural Advancement Act. Based on this, the legal protection of TK and TCE in the Cultural Advancement Act is considered a form of preventive and repressive protection. Preventive protection includes inventory, security, maintenance, rescue, publication and development of TK and TCE aiming to prevent disputes from occurring. Meanwhile, repressive protection is a criminal provision that aims to resolve cultural disputes.

In addition to the Cultural Advancement Act, CIP protection for TCE in national law is also regulated in Law Number 28 of 2014 concerning Copyright. The objectives of Copyright Act are:<sup>33</sup> to support national development and promote public welfare as mandated by the 1945 Constitution of the Republic of Indonesia, to increase protection and legal certainty for creators, for copyright holders, and for the owners of neighbouring rights, as well as further implementation in the national legal system. Thus, national creators are able to compete internationally. The “traditional cultural expressions” within the scope of TCE written in the Elucidation of Article 38 of Copyright Act covers one or a combination of verbal and textual forms of expression, both oral and written, in the form of prose or poetry and in various themes and content of the message. It can be expressed in the form of works of literature or informative narratives, music that includes vocal, instrumental, or a combination of them and motion that includes dance and theater, which includes puppet performances and folk plays, and fine arts. The fine arts can be both in two-dimensional and three-dimensional forms, which are made of various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, etc. or a combination of them, as well as traditional ceremonies.

The objects protected in Copyright Act according to Article 1 point 1 Copyright Act are “the exclusive rights of the creators that arise automatically based on declarative principles after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations”. Meanwhile, Article 1 point 5 of Copyright Act states that neighbouring rights are the rights associated with Copyright, which is an exclusive right for performers, phonogram producers, or broadcasting institutions. This is emphasized in Article 3 of Copyright Act stipulating that “objects protected in Copyright Act include copyright and neighbouring rights”. Based on these provisions, Article 4 of

---

33 See the Consideration Section of Copyright Act

Copyright Act declares that the protection of exclusive rights for TK and TCE in Copyright Act consists of copyright and neighbouring rights comprising economic and moral rights. According to Article 5 of Copyright Act, Moral rights are the rights that are eternally attached to the creator either to include or not include his/her name on the copy associated with the use of his/her work for the public, to use his/her alias or pseudonym, to alter his/her work to suit the decency in society, to change the title and the subtitle of the works, defend his/her rights if distortion regarding the works occur, mutilation of the works, modification of the works, or things that are detrimental to his/her honor or reputation. For a period of time, the protection of moral rights prevails indefinitely as stipulated in Article 57 paragraph (1) in Copyright Act.

Meanwhile, the economic rights that are the exclusive right of the creator or Copyright holder to obtain economic benefits for the creation according to Article 9 of the Copyright Act cover the publication of the Work, duplication of the Work in all its forms, translation of the Work, adaptation, arrangement, or transformation of the Work, distribution of the Work or its copies, performance of the Work, announcement of the Work, communication of the Work, and rental of the Work. The utilization of this economic right aims to obtain economic benefits for the creator or copyright holder, which can certainly affect the nation's economy.

The protection of economic and moral rights of TCE, based on the Copyright Act, applies automatically (automatic protection) based on the declarative principle, which means that this copyright protection will automatically be attached to its creator after the idea has been realized in a tangible form/fixation. CIP for TCE that has met the fixation requirements is protected in Article 40 paragraph (1) of the Copyright Act regulating the scope of protected works, which include creations in the fields of science, art, and literature that are protected indefinitely as stipulated in Article 60 paragraph (1) in Copyright Act. It says that the copyright on TCE held by the state is valid indefinitely. The regulation of TCE protection through Copyright Act which applies indefinitely (perpetuality), is expected to be able to respect and preserve cultural values and social values in traditional society. Also, it aims to provide better economic value in realizing justice and welfare for traditional community, nation and state. Concerning preventive legal protection of TCE Creations, Article 64 paragraph (1) of the Copyright Act stipulates that the Minister of the Ministry of Law and Human Rights organizes the recording and elimination of works and neighbouring rights products.

In case TCE dispute occurs, Copyright Act explicates it in Article 95 paragraph (1) stating that the settlement of Copyright dispute can be carried out through alternative dispute settlement, arbitration, or courts. Settlement of copyright disputes in the Copyright Act can be applied for the settlement of TCE disputes as a form of repressive protection for the economic and moral rights of TCE. Meanwhile, recording can be performed as a preventive protection of TCE Creations as regulated in Article 64 of the Copyright Act.

**Table 1.** Comparative Table of TCE Protection in National Law

<b>Criteria</b>	<b>Cultural Advancement Act</b>	<b>Copyright Act</b>
Objectives	To develop the noble values of the nation's culture, enrich cultural diversity, strengthen national identity, strengthen national unity and integrity, educate the nation, improve the nation's image, create civil society, improve people's welfare, preserve the nation's cultural heritage; and influence the direction of the development of world civilization, so culture becomes the direction of national development (Article 4).	To support national development and promote public welfare as mandated by the 1945 Constitution of the Republic of Indonesia, to increase protection and guarantee of legal certainty for creators, copyright holders and neighbouring rights owners, for further implementation in the national legal system so that national creators are able to compete fairly in international level (Consideration Section)
The Scope of Protection Object	Oral traditions, manuscripts, customs, rites, traditional knowledge, traditional technology, arts, languages, folk games, and traditional sports (Article 5).	TCE comprises verbal textual, both oral and written, in the form of prose and poetry, in various themes and content of messages, which can be shown in the form of literary works or informative narratives; music, including vocal, instrumental, or a combination of them; movement that includes dance; theatre, (including <i>wayang</i> / puppet performances and folk plays); fine arts, which are both in two-dimensional and three-dimensional forms made of-

		various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, and others or a combination of them; and traditional ceremonies (Explanation of Article 38).
Disputes Settlement	Court (Article 55-58)	Copyright dispute settlement can be done through alternative dispute settlement, arbitration, or court (Article 95 paragraph 1)

Source: Primary Legal Source, 2022

### Communal Intellectual Property Protection in Philippines

In a comparative study of the best practice law regulation of the CIP protection in the world, Indonesia can compare it with the Philippines, which has already regulated *sui generis* CIP. The Philippines was the first country to regulate the protection of indigenous people's rights to CIP including SDG, TK and TCE as declared in the Indigenous People Rights Act (IPRA No. 8371) on October 29, 1997.<sup>34</sup> The law acknowledges the indigenous people's rights to their territories and lands of the ancestor over self-government and empowerment, self-justice and human rights and cultural integrity. Besides, the law provides protection for community intellectual property rights of community, religious sites and ceremonies, culture, customary knowledge and practices, and biological resources.<sup>35</sup>

The indigenous people's rights to communal IPR are stated in Article 32 *IPRA No. 8371* which stipulates that:

*Indigenous cultural communities/indigenous people have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.*

<sup>34</sup> Zainul Daulay, *Pengetahuan Tradisional Konsep, Dasar Hukum, dan Praktik* (Jakarta: Raja Grafindo Persada, 2011), 116.

<sup>35</sup> World Intellectual Property Organization, "Roundtable on Intellectual Property and Traditional Knowledge", *Reports on Protecting Traditional Knowledge the Experience of The Philippines*, WIPO/IPTK/RT.99/6A, 9.



Based on these provisions, indigenous people have the right to practice and revitalize their own cultural traditions and customs. States must preserve, protect and develop their past, present and future cultural manifestations as well as the right to the return of their cultural, intellectual, religious and spiritual property.

Therefore, Section 10 of *IPRA No. 8371* stipulates that indigenous people have the right to own, control, develop and protect: (1) *The past, present and future manifestations of their cultures, such as but not limited to, archeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature as well as religious and spiritual properties;* (2) *Science and technology including but not limited to, human and other genetic resources, seeds, medicines, health practices, vital medicinal plants, animals, minerals, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of flora and fauna, and scientific discoveries;* and (3) *Language, music, dance, script, histories, oral traditions, conflict resolution mechanisms, peace building processes, life philosophy and perspectives and teaching and learning systems.* Based on these provisions, the scope of protection of CIP in the Philippines is very broad, covering their cultural manifestations in the past, present and future. It is not only limited to archaeological and historical sites, artifacts, designs, ceremonies, technology and visual and performing arts, literature as well as religious and spiritual property. It also includes the protection of CIP SDG, TK and TCE covering science and technology, other genetic resources, seeds, medicines, health practices, vital medicinal plants, animals, minerals, indigenous knowledge systems and practices, resource management systems resources, agricultural technology, knowledge of the characteristics of flora and fauna, and scientific discoveries. Further, it includes language, music, dance, scripts, history, oral traditions, conflict resolution mechanisms, processes of making peace, philosophy and way of life, and teaching-learning systems.

Furthermore, the indigenous people's rights to customary knowledge systems and practices are regulated in Section 34 of *IPRA No. 8371* stating that:

*Indigenous cultural communities / indigenous peoples are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of flora and fauna, oral traditions, literature, designs and visual and performing arts.*

Based on *IPRA No. 8371*, indigenous people have the right to the recognition of ownership, full control as well as protection of their cultural and intellectual rights. They have the right to special measures to control, develop and protect science, technology and cultural manifestations put within the scope of SDG, TK and TCE. This is in accordance with the 1987 amendment of the Philippine Constitution, particularly Section 17, Article 14 stipulates that: “The State shall recognize, respect and protect the rights of the indigenous cultural communities to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national plans and policies.”

Based on those description, the indigenous people are lawful as the general owner of the CIP for eternity (perpetuality). As the owners, all benefits obtained from the knowledge and innovation created by indigenous people will accrue to their development and well-being; therefore, it must be shared fairly. Commercial use of CIP knowledge and innovations, however, must be carried out only with the prior informed consent of the general owner or custodian under mutually agreed terms. It emphasizes that States should also strive to protect and encourage customary use of living resources in accordance with appropriate traditional cultural practices and promote their conservation and sustainable use.

### **The Urgency of *Sui Generis* Protection of CIP in National Law**

Indonesia, a country which does not have a *sui generis* CIP regulation until today, needs to ratifying international conventions as an effort as a protection for CIP preventive law. Also, it is important to immediately regulate CIP in a *sui generis* law by adopting important rules regulated in *IPRA No. 8371* of Philippines. It covers the scope of CIP, the legal subject of CIP owners and beneficiaries as the fulfillment of the indigenous people’s right, the function of the state in regulating CIP, and utilization and preservation of CIP in a fair and sustainable manner. In this regard, according to John Rawls, justice is “the first virtue of social institutions, as truth is of a system of thought”.<sup>36</sup> Rawls also thinks that if the rules related to the main social institutions in the society depend solely on utilitarian principles, then minority members of society will always be the victims of injustice, and this is unacceptable. Therefore, Rawls argues that the determination of fundamental rights and obligations for the community must be based on a principle of justice while arranging the rules related to social institutions in society. It cannot be ruled out by political bargaining. Rawls also mentions the principle of justice that is used to compile

---

36 John Rawls, *A Theory of Justice*, (The Belknap of Harvard University Press, 1993), 3.

or evaluate the distribution of fundamental rights and obligations in society with the principle of justice as fairness.<sup>37</sup> Rawls' principles of justice can be applied in a fair distribution of CIP as described as follow, the greatest equal liberty principle affirming that all citizens, including indigenous people who have CIP, have the same rights over all benefits from the use and preservation of CIP as long as they do not conflict with the values and traditions of the indigenous people. Based on the greatest equal liberty principle, every community, both individual and communal, has the same rights over all profits and income in the utilization and preservation of CIP. This is in line with Dworkin's theory of justice, namely the provision of facilities, infrastructure and access for the community based on the equality of opportunity, regardless of "the genetic luck" which results in "the different talents" and "the different ambitions".<sup>165</sup> In Dworkin's criteria, A fair law should be a very fundamental beginning as a demand for the government to give equal respect and concern to its citizens as stated by Dworkin that "Anyone who professes to take rights seriously, and who praises our Government for respecting them, must have some sense of what that point is. He must accept, at the minimum, one or both of two important ideas. The first is the vague but powerful idea of human dignity...".<sup>166</sup> Thus, Rawls and Dworkin's thoughts are very crucial in regulating Indonesian CIP in *sui generis* way, namely the legislative process that is consistent with these principles will result in a law containing values of justice in order to realize the welfare of the nation's people.

## Conclusion

CIP Protection in international law encompasses preventive and repressive legal protection in IPR is arranged in the Berne Convention; meanwhile, non-IPR aspect is arranged in the Human Right Law Convention, the International Covenant on Economic, Social and Cultural Rights Law of 1966 (ICESCR 1966), and Universal Declaration of the Rights of Indigenous People of 2007 (UNDRIP 2007). The CIP protection in national law comprises preventive legal protection as well as repressive legal protection in the IPR aspect as regulated in Copyright Act and non-IPR is arranged in Cultural Advancement Act. This preventive and repressive hybrid protection in IPR and non-IPR aspects are necessary, considering the concept of protecting IPR objects that must meet the requirements of originality, creativity acknowledged by the creator, and creation or work that is realized in a tangible form (fixation). Those requirements are not easy to be implemented by CIP. Therefore, to overcome these weaknesses, the

---

<sup>37</sup> Ibid.

establishment of CIP protection in a *sui generis* manner in Indonesian national law is essential to be realized immediately. It can be carried out by adopting the implementation of best practices for CIP protection in the Philippines, which strictly regulates the active role of the state in realizing the indigenous people's rights as the owners and beneficiaries of CIP based on IPRA No. 8371. Using Rawls and Dworkin's theory of justice, a *sui generis* CIP legislative process is expected to be able to accommodate the rights of indigenous people as the owners and holders of CIP. The essential results of this study are appealing to be used as recommendations for the government and legislative institutions to immediately regulate *sui generis* CIP and provide awareness to the public to be actively involved in the utilization and preservation of CIP so that the noble values in CIP can be passed on to the next generation of the nation in a sustainable manner. The author affirms the need for further studies that can complement and carry on the same topic of study in the form of a benefit sharing arrangement model and access to prior informed consent in the fair use of CIP. Thus, the rights of indigenous people can be fulfilled as in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia.

### References

- Adawiyah, Robiatul dan Rumawi, "Pengaturan Kekayaan Intelektual dalam Masyarakat Komunal di Indonesia", *Repertorium Jurnal Ilmiah Hukum Kenotariatan*, Vol. 10 No. 1 (Mei 2021): 1-16
- Antons, Christoph. "What is "Traditional Cultural Expression? International Definitions and Their Application in Developing Asia". *WIPOJ*, 1, No.1 (2009); 103-116
- Badan Penelitian dan Pengembangan HAM Kementerian Hukum dan HAM RI. *Perlindungan Kekayaan Intelektual Atas Pengetahuan Tradisional dan Ekspresi Budaya Tradisional Masyarakat Adat*. Bandung: Alumni, 2013.
- Barizah, Nurul. "International Copyright Treaties and Its Implementation Under Indonesian Copyright Act; Is It a Better Access to Knowledge?". *Indonesian Journal of International Law*, 14, No. 1 (Oktober 2016): 1-27
- Bustami, Simona. "Urgensi Pengaturan Ekspresi Budaya (Folklore) Masyarakat Adat". *Jurnal Hukum Prioris*, 2, No. 4 (Februari 2019): 245-255
- Cohen, Morris L. & Kent C. Olson, *Legal Research in A Nutshell*. St Paul Minn: West

Publising Co, 1992.

Daulay, Zainul. *Pengetahuan Tradisional Konsep. Dasar Hukum. dan Praktik.* Jakarta:RajaGrafindoPersada, 2011.

Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM RI. *Modul Kekayaan Intelektual Komunal Bidang Kekayaan Intelektual Komunal.* Jakarta: Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan HAM RI, 2019.

Fischer, Susanna Frederick. "Dick Whittington and Creativity: From Trade to Folklore. From Folklore to Trade". Symposium "The Power of Stories: Intersections of Law. Literature. and Culture the Dick Whittington Story: Its Influences & Its Impacts". *12 Tex.Wesleyan L. Rev. 5, Texas Wesleyan Law Review*, (2005): 5-66

Hadikusuma, Hilman. *Pengantar Hukum Adat*. Jakarta: Mandar Maju, 2010.

Husamah. "Mengusung Kembali Khazanah Identitas Budaya Bangsa". *Jurnal Bestari* 42, (2009): 33-49

Susanti, Diah Imaningrum, Rini Susrijani, dan Raymundus I Made Sudhiarsa. "Ekspresi Budaya Tradisional dan Hak Kekayaan Intelektual di Indonesia", *Yuridika*, Jilid 35 No. 2, (Mei 2020): 257-276

Janke, Terri. *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights.* Sydney: Michael Frankel and Company, 1999.

Jened, Rahmi. *Hukum Hak Cipta (Copyright Law).* Bandung: Citra Aditya Bakti, 2014.

Kintner, Earl W. dan Jack Lahr. *An Intelelectual Property Law Primer.* New York: Clark Boardman, 1983.

Kusumadara, Afifah. *Analysis of The Failure of The Implementation of Intellectual Property Laws in Indonesia.* PhD dissertation, Faculty of Law University of Sydney, 2000.

Marzuki, Peter Mahmud. *Penelitian Hukum.* Jakarta: Prenada Media, 2016.

Philips, Jake. "Australia's Heritage Protection Act: An Alternative to Copyright in the Struggle to Protect Communal Interests in Authored Works of Folklore". *Pacific Rim and Policy Journal.* 18 *Pac. Rim L. & Pol'y J.*, 547, (August 2009): 547-573

- Rahmadini, Tengku Mega. "Perlindungan Ekspresi Budaya Tradisional Masyarakat Adat Melayu Di Provinsi Riau". *JOM Fakultas Hukum Universitas Riau*, Volume VII, No. 1 (Januari-Juni 2020): 1-15
- Rato, Dominikus. *Pengantar Hukum Adat*. Surabaya: Laks Bang Pressindo, 2009.
- Rawls, John. *A Theory of Justice*. The Belknap of Harvard University Press, 1993.
- Roisah, Kholish. *Konsep Hukum Hak Kekayaan Intelektual Sejarah Pengertian dan Filosofi Pengakuan HKI dari Masa ke Masa*. Malang: Setara Press, 2015.
- Setyaningtyas, Ayu Citra and Endang Sri Kawuryan. "Menjaga Ekspresi Budaya Tradisional di Indonesia". *Jurnal Ilmu Hukum Tambun Bungau* 1. No. 2 (September 2016): 122-132
- Spangler, Stephanie. "When Indigenous Communities Go Digital: Protecting Traditional Cultural Expressions Through Integration of IP and Customary Law". *27 Cardozo Arts & Ent.L.J.709*, *Cardozo Arts and Entertainment Law Journal*, (2010): 709-736
- Stoianoff, Natalie and Alpana Roy. "Indigenous Knowledge and Culture in Australia-The Case for Sui Generis Legislation". *Monash University Law Review* 41, No 3, (2015): 753-768
- Talaat, Wan Izatul Asma Wan. "Protection of the Associated Traditional Knowledge on Genetic Resources: Beyond the Nagoya Protocol". *Procedia-Social and Behavioral Sciences* 91, (2013): 673-678
- The Indigenous Peoples Rights Act (IPRA No. 8371) on 29 October 1997.
- Universal Declaration of the Rights of Indigenous People 2007.
- Widyanti, Yenny Eta. "The Legal Instrument of Protecting Traditional Cultural Expressions Ownership in Intellectual Property Rights Law", *Technium Social Sciences Journal*, Vol. 21, (July 2021): 492-501
- World Intellectual Property Organization. "Intellectual Property Needs and Expectations of Traditional Knowledge: WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999)". Accessed on May 1, 2021. <https://www.wipo.int/publications/en/details.jsp?id=283&plang=EN>.

World Intellectual Property Organization. "Overview Intellectual Property and Genetic Resources. Traditional Knowledge and Traditional Cultural Expressions". World Intellectual Property Organization (WIPO), 2015.

World Intellectual Property Organization. "Roundtable on Intellectual Property and Traditional Knowledge". *Reports at Protecting Traditional Knowledge The Experience of The Philippines*. WIPO/IPTK/RT.99/6A.