



Between Nations or Cultures: Dilemmas Related to Intellectual Property Based on Traditional Cultural Expression from a Legal Philosophy Perspective

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Article	Abstract
<p>Keywords: Traditional Expressions; Philosophy; Property.</p>	<p><i>The expression of traditional cultural expressions as intellectual property is the result of the community's collective creativity and intellectuality and must receive effective legal protection. In practice, there is often a phenomenon of filtering claims between countries regarding the existence of a particular cultural expression. This research is normative legal research that emphasizes philosophical, conceptual, and legislative approaches. The research findings confirm that the state plays a role in promoting respect for and recognition of traditional cultural expressions as intellectual property, serving as a collective human identity through policy, education, and public awareness programs. From a legal philosophical perspective, the recognition of traditional cultural expressions faces dilemmas and conflicts, primarily due to the communal nature and cross-border existence of such cultures. Therefore, an update to international regulations is needed, particularly the Convention on the Safeguarding of the Intangible Cultural Heritage (CSICH), which must affirm the communal nature of such intellectual property and regulate fair and pluralistic mechanisms for resolving disputes between countries. The main recommendation is to revise the CSICH to accommodate communal characteristics and clarify mechanisms for resolving disputes over cultural recognition between countries.</i></p>

INTRODUCTION

Labor Intellectual property plays a very important role in the current era of globalization, as it is not only a high-value economic asset but also serves as a protector of a nation's innovation, creativity, and cultural heritage. One form of intellectual property that is often overlooked but holds deep meaning is traditional cultural expressions. Traditional cultural expressions encompass a variety of works such as dance, music, rituals, batik motifs, weaving, and other art forms that are passed down

through generations within the community. Protecting traditional cultural expressions as part of intellectual property is an important effort to safeguard the nation's cultural identity from imitation, unauthorized exploitation, and unilateral claims by foreign parties.

The protection of intellectual property, particularly in the form of traditional cultural expressions, can also encourage cultural preservation, increase public appreciation for ancestral works, and open up new economic opportunities through the legitimate and fair utilization and promotion of local culture. Thus, the importance of intellectual property lies not only in its commercial aspects, but also in its significant role in protecting, developing, and preserving traditional cultural expressions as an invaluable national asset. The international regulation of intellectual property rights over traditional cultural expressions is governed by several important conventions and initiatives involving global organizations such as the World Intellectual Property Organization (WIPO) and UNESCO.

WIPO, through various forums and negotiations, is working to establish a *sui generis* system of protection for traditional cultural expressions, recognizing their distinct nature compared to conventional intellectual property. WIPO has developed Draft Articles for the protection of traditional cultural expressions, which emphasize the need to protect the rights to community cultural works, respect the rights of indigenous and local communities, and prevent unauthorized exploitation by third parties. Besides WIPO, UNESCO also plays a central role through the "Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH)" in 2003, which emphasizes the importance of preserving intangible cultural heritage, including traditional cultural expressions. This convention encourages member states to identify, document, and protect traditional cultural expressions, while also creating space for the participation of indigenous communities.

In international practice, the protection of traditional cultural expressions can also utilize existing intellectual property mechanisms such as copyright, related rights, geographical indications, or trademarks, depending on the character and form of the expression. However, conventional intellectual property systems are often considered inadequate to protect the interests of the creators of traditional cultural expressions, as these systems typically prioritize individuals or legal entities, rather than communities or indigenous groups collectively. The Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH), as initiated by UNESCO, has been ratified by 181 countries worldwide, including Indonesia. Indonesia has ratified the Convention for the Safeguarding of the Intangible Cultural Heritage through Presidential Regulation No. 78 of 2007 concerning the Ratification of the CSICH (Convention for the Safeguarding of the Intangible Cultural Heritage). Ratification is important for Indonesia so that it can accommodate the substance of the CSICH and apply it to positive law in Indonesia.

Despite the existence of regulations as formulated in the CSICH, the protection of traditional cultural expressions in the world still poses problems in the form of "mutual claims" between countries regarding specific cultures. In practice, regarding claims related to intangible cultural heritage, the "mutual claims" between Malaysia and Indonesia have attracted international attention. The conflict, which involves "mutual claims" between Malaysia and Indonesia regarding this culture, encompasses several aspects, such as Malaysia's claims over Reog Ponorogo, Batik, and other cultural elements. Despite the conflict that led to "mutual claims" between Malaysia and Indonesia, one interesting question is whether claims regarding culture can be monopolized by a single country. This is because culture has a broad meaning, and sometimes the development of a culture spreads across borders from one country to another.

As in the example above, there are differing claims between Malaysia and Indonesia regarding batik because Malaysian society, particularly the Malays and Javanese in Malaysia, also preserves batik, just as in Indonesia, various ethnic groups such as the Javanese, Malays, Sundanese, and others also preserve batik as part of their intangible cultural heritage. The existence of "mutual claims" is not fundamentally detailed in the CSICH, which often leads to prolonged tensions between countries regarding cultural claims by one nation. From these problems, this research attempts to analyze the intellectual property of traditional cultural expressions from a legal philosophy perspective to determine whether the intellectual property of traditional cultural expressions is essentially "owned" by the state or by community groups such as cross-border tribes. The legal issues focused on in this research are the nature and existence of traditional cultural expressions as intellectual property and the dilemma of traditional cultural expressions from a legal philosophy perspective.

METHOD

This research, focusing on the intellectual property aspects of traditional cultural expressions from a legal philosophy perspective, is normative legal research with authoritative legal products in the form of legislation as the main aspect under investigation. The primary legal material used in this study is the Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH), which has been ratified by various countries around the world. The secondary legal materials used are books, journal articles, and research findings that discuss intellectual property and traditional cultural expressions. The non-legal material used is a legal dictionary. The collected legal materials were then analyzed using prescriptive-based analysis, where the legal issues in this study were then formulated into legal solutions or prescriptions to address the research problem statements in this study.

RESULTS AND DISCUSSION

A. The Essence and Existence of Traditional Cultural Expression as Intellectual Property

Traditional cultural expressions are all forms of creative works, whether tangible or intangible, or a combination of both, that demonstrate the existence of a traditional culture and are held communally and passed down across generations by an indigenous community or society. Traditional cultural expressions include music, dance, fine arts, crafts, traditional ceremonies, folklore, and traditional architectural forms. Traditional cultural expressions are a manifestation of the cultural identity and heritage of a group of people, which are believed in, practiced, and preserved together.

The World Intellectual Property Organization (WIPO) defines Traditional Cultural Expressions as various forms of traditional cultural expression, also known as "expressions of folklore," which include music, dance, visual arts, design, names, symbols, performances, traditional ceremonies, architectural forms, handicrafts, and narratives. Traditional cultural expressions are considered the form in which traditional culture is expressed, becoming part of the identity and heritage of traditional communities/indigenous societies, and are passed down from generation to generation. Traditional cultural expressions play a very important role in the identity and heritage of communities, conveying knowledge, skills, and even core values that are shared beliefs. The protection of traditional cultural expressions reflects efforts to safeguard cultural diversity and prevent misuse by foreign entities.

UNESCO also emphasizes that Traditional Cultural Expressions are an element of intangible cultural heritage. Its definition refers to "the shared use, representation, expression, knowledge, and techniques of instruments, objects, artifacts, and cultural spaces inherent within them, recognized by the community as an integral part of cultural heritage." Another perspective was put forward by Olteanu, who stated that Traditional Cultural Expressions must be articulated and preserved within a collective context by indigenous peoples or local communities. This ensures that the expression is a unique product closely related to the cultural, social, and heritage identity of the community. Traditional cultural expressions serve as a means of collective identification, highlighting the uniqueness of a community and distinguishing it from other communities. Cross-generational transmission is an inherent requirement of Traditional Cultural Expressions; whether continuous or intermittent, it always involves the passing down of ancestral values and wisdom.

Another view, as stated by Tolera, defines Traditional Cultural Expression as the tangible and intangible forms of traditional expression and knowledge that arise from the creativity of individuals or community groups. This expression reflects the cultural and social attributes of the community, and is used and developed based on local customary laws and practices. As an important part of intellectual property rights, Traditional Cultural Expressions have certain parameters and standards that make

them worthy of recognition as intellectual property, namely that, first, Traditional Cultural Expressions are communal property and intergenerational inheritance. This is because Traditional Cultural Expressions are not the work of individuals, but rather the collective property of a community or indigenous society. Traditional cultural expressions are passed down through generations, both orally and through imitation, indicating continuity and the depth of cultural history within these expressions.

Second, it contains communal social identity and values, so Traditional Cultural Expressions reflect the social and cultural identity of their owners and are an important part of collective cultural heritage with economic, spiritual, social, and aesthetic value. This distinguishes it from individual creations, which typically place more emphasis on personal ownership. Third, traditional cultural expressions are essentially held by the state on behalf of the community or indigenous owners. The state has an obligation to inventory, safeguard, and preserve Traditional Cultural Expressions, and copyright protection for these expressions is perpetual as long as the cultural value remains alive within the community that carries it. Fourth, most Traditional Cultural Expressions are created and developed without the individual knowledge of their creators, but rather are the result of the collective creation of society as a whole. Traditional cultural expressions are also often not commercially motivated, but rather serve as a means of cultural, spiritual, and religious expression deeply rooted in local traditions.

Fifth, another characteristic of Traditional Cultural Expressions is that they are cross-border because they are based on ethnicity or community. In its development, a tribe or traditional community does not only exist and develop its culture within a specific country. This can be generally seen in how Portuguese society's culture developed not only in present-day Portugal but also in several other countries such as Timor Leste, Brazil, and other former Portuguese colonies, as a result of past trade and the impact of colonialism. Another example is the culture of the Malay people, which not only developed in Malaysia but also culturally in several other countries such as southern Thailand, Brunei Darussalam, and Indonesia. The existence of examples of tribal or community-based societal development that transcends national borders demonstrates that the intellectual property of Traditional Cultural Expressions is inherently transnational, depending on how civilizations and cultures spread within a tribal or community-based society.

From the five parameters and standards above, it can be seen that Traditional Cultural Expressions are recognized as a unique form of intellectual property, distinct from conventional copyright creations. Legal protection for Traditional Cultural Expressions aims to prevent exploitation, commercialization, and violations of cultural values, and to ensure that the economic rights and benefits arising from them remain in favor of indigenous communities as the rightful owners of the intellectual property of Traditional Cultural Expressions. The state plays an important role in the protection, supervision, and management of the utilization of Traditional Cultural

Expressions so that it can be carried out fairly, sustainably, and with respect for the cultural values inherent in them.

The Convention for the Safeguarding of the Intangible Cultural Heritage (CSICH) essentially affirms that Traditional Cultural Expressions, as part of the intangible cultural heritage, encompass all forms of practices, representations, expressions, knowledge, and skills—including instruments, objects, artifacts, and cultural spaces—recognized by communities, groups, or individuals as an integral part of their cultural heritage. These cultural expressions are born, nurtured, and continuously passed down from generation to generation as a means of identity, continuity, and pride for specific traditional communities or societies. CSICH emphasizes the importance of protecting and preserving traditional cultural expressions through measures including identification, documentation, community engagement, and the implementation of policies that support the sustainability of such intangible cultural heritage at the local, national, and international levels.

Countries that have ratified the CSICH are required to take necessary steps to protect intangible cultural heritage within their territories, including periodically updating inventories, involving traditional communities and cultural experts in management, and conducting education and promotion to increase public appreciation for such heritage. In addition, CSICH also promotes international cooperation in the form of information exchange, experience sharing, and assistance to address common challenges in the protection of traditional cultural expressions, including preventing misuse or exploitation that could harm cultural heritage communities. The main emphasis of this convention is the recognition that intangible cultural heritage, including Traditional Cultural Expressions, is a collective asset of humanity that must be protected for the sustainability of cultural diversity and community identity in the world.

Traditional cultural expressions are not only seen as a static legacy of the past, but as a living culture that continues to evolve, adapting to the changing times without losing its roots and original identity inherent in the community that owns the tradition. CSICH recognizes and emphasizes the active role of traditional communities as the custodians and primary actors in preserving, developing, and transmitting their cultural expressions, ensuring that the protection provided upholds the principle of respect for the rights and cultural values of the communities themselves. Thus, Traditional Cultural Expressions according to CSICH are a dynamic manifestation of living cultural heritage that is developed communally, which must be protected through systematic and sustainable efforts by the state and communities, and recognized as human cultural wealth that supports intercultural dialogue and cross-generational and national understanding. The state plays a very important role in protecting and ensuring the protection of intellectual property, particularly Traditional Cultural Expressions as regulated in CSICH. The state holds a very important position in

cultural protection, both philosophically, legally, and practically. Philosophically, culture is a manifestation of human collective existence and identity. As explained in cultural philosophy, the essence of culture is the realization of human values, history, and creative expression, which distinguishes one nation from another. Losing culture means losing identity and selfhood, so defending culture is the same as defending the meaning and existence of that nation. The state is present as the main actor with the authority, capacity, and moral responsibility to preserve, protect, and promote culture. This task stems from the philosophical belief that the state, as a collective organization, is obligated to guarantee the existence and continuity of noble collective values so that they can be passed on to future generations. The state is also capable of uniting individual and group interests towards a common goal: preserving cultural heritage as the nation's social, economic, and spiritual capital.

Cultural protection by the state does not mean reducing community creativity, but rather ensuring the diversity of cultural expressions that might be marginalized by market forces or threatened with extinction by the tide of globalization. The state acts as both a facilitator and regulator to ensure it can protect the various cultural assets present in society. This is as formulated in various countries around the world, which place importance on legal protection for culture in the respective constitutions of each country. Cultural protection by the state is due to the fact that historically, the state came into existence after the culture already existed in society. In this context, the state exists to protect and facilitate culture because a culture already existed even before a state was formed. Thus, philosophically, the state cannot be absent from efforts to protect culture. The state is an institution that possesses legitimacy and the capacity to encompass cultural pluralism, ensure justice, build bridges between generations, and pass on the nation's noble values. Without state involvement, culture is vulnerable to marginalization, commercialization, or even claims by other nations, leading to a weakening of national identity.

The essence and existence of Traditional Cultural Expressions as intellectual property must be understood as the result of community creativity and intellectuality, therefore Traditional Cultural Expressions as part of intellectual property must be guaranteed legal protection. The state plays an important role in ensuring legal protection for traditional cultural expressions of intellectual property because the state has legal and administrative responsibilities in preventing the misuse, unauthorized exploitation, and commercialization of traditional culture by external parties that could harm the community as the original owners. This country's protection is not only domestic but also involves international cooperation to address global challenges in the preservation of intangible cultural heritage. The state is responsible for promoting respect and recognition of cultural wealth as part of humanity's collective identity, which must be preserved for the sustainability of the world's cultural diversity. Through policy, education, and public awareness programs, the state helps build

respect and appreciation for traditional cultures, while also strengthening the position of indigenous communities as the primary actors in preserving their own cultures. With this role, the state becomes the guarantor that intellectual property rights over traditional cultural expressions are legally recognized and effectively protected, ensuring that the economic, social, and cultural benefits remain with their owning communities.

B. Dilemmas and Conflicts Related to a State's Recognition of Traditional Cultural Expressions: A Legal Philosophy Perspective

The state has an important role in providing recognition and protection for traditional cultural expressions as regulated in the CSICH. However, there are two main issues related to the important role of providing recognition and protection for traditional cultural expressions, namely: first, related to the comprehensive nature of culture that develops within society, even in the smallest communities within society. This emphasizes that the state is obligated to inventory, participate in documenting, and simultaneously empower and preserve the traditional cultural expressions present in society. The problem is that in countries with diverse and heterogeneous cultures like Indonesia and the Philippines, this will make it difficult for the state to participate in inventorying, empowering, and even providing legal protection.

The second problem is related to the cross-border nature of cultural characteristics. This emphasizes that even though a country has provided legal protection for traditional cultural expressions, issues arise when one country guarantees the existence of a certain culture as belonging to that country, while another country claims the same culture, arguing that the cultural existence has developed in more than one country. In practice, cases of "mutual claims" regarding traditional cultural expressions have occurred, such as the mutual claims between Indonesia and Malaysia concerning batik, Reog, wayang, and other cultural aspects. This is because Indonesia and Malaysia can be considered as "one family" culturally, and besides that, the relationship between the Indonesian and Malaysian people has been established in the context of trade, religion, and even general social relations in the past.

The clear separation between Indonesia and Malaysia as a nation occurred due to the "legacy of colonizers," with Malaysia colonized by the British and Indonesia colonized by the Dutch. Because they are "one family," the traditional cultural expressions between Indonesia and Malaysia are very likely to have cultural similarities, making "mutual claims" in certain cultural aspects very possible. This phenomenon of "mutual claims" regarding culture is common because culture is inherently transnational, which becomes problematic when a country, as a political entity, has absolute authority to make claims over certain cultures. Besides between Indonesia and Malaysia, cultural claims also occur regarding cultural heritage in the form of objects, such as the conflict between Thailand and Cambodia at the border, which is

fundamentally due to mutual claims related to the Hindu Temple of Preah Vihear. The conflict between Thailand and Cambodia at the border even led to war and tension in both countries in 2025, where both countries made attempts to attack each other.

The dilemma and conflict related to the recognition of traditional cultural expressions by a country is a complex issue when viewed from the perspective of legal philosophy. On one hand, there is a need for the state to protect, preserve, and recognize traditional cultures as part of national identity and as a form of respect for the collective rights of indigenous communities or specific cultural groups. This recognition is important to uphold substantive justice and prevent marginalization or cultural appropriation by others, both domestically and internationally.

On the other hand, formal recognition by the state often raises philosophical dilemmas related to the concepts of rights, justice, and autonomy. In legal philosophy, there is a clash between the principle of universality of human rights—which demands equal treatment of all cultural expressions—and the principle of particularity, where each culture has its own values and customary legal systems. The state faces a dilemma of whether the formal recognition of traditional cultural expressions should be exclusive (only certain communities are allowed to express/access them) or can be enjoyed widely by all citizens and even the global community. Conflict arises when the state, in the name of cultural preservation, imposes restrictions or even monopolizes the interpretation of traditional cultural expressions, leading to tensions between one country and another that both claim to share the same culture.

From the perspective of legal philosophy, culture is essentially a product of societal creativity and evolves in accordance with societal development. In this case, if a society then develops in various countries and develops its own culture, and it turns out that there is a similar culture between one country and another, it can be said that the culture belongs to the tribe or community entity that developed that culture, even if it exists in more than one country.

The dilemma and conflict regarding the recognition of traditional cultural expressions by a country, viewed from the perspective of legal philosophy, fundamentally assert that as communal intellectual property, traditional cultural expressions belong to the realm of the tribe or community entity that developed the culture, even if it exists in more than one country. This reinforces that unilateral recognition of a traditional cultural expression by one country can be deemed inappropriate if that traditional cultural expression also exists in other countries. Therefore, there is a need for an update in the regulations of the CSICH that emphasizes that traditional cultural expressions belong to community groups, such as tribes, societal entities, and the like. Thus, when a country wishes to recognize and claim a particular culture, it must consider the distribution and existence of these community groups, such as tribes, societal entities, and the like.

CONCLUSION

The essence and existence of Traditional Cultural Expression as intellectual property are the result of community creativity and intellectuality and must be legally protected. The state plays a central role in ensuring this protection through its legal and administrative responsibilities, preventing abuse, exploitation, and unauthorized commercialization that could harm indigenous communities. This protection is not only domestic but also involves international cooperation to address global challenges in the preservation of intangible cultural heritage. In addition, the state plays a role in promoting respect and recognition of cultural heritage as the collective identity of humanity, through policies, education, and public awareness programs that empower indigenous communities as the primary custodians of their culture. In this way, the state ensures that intellectual property rights over traditional cultural expressions are legally recognized and effectively protected, so that the economic, social, and cultural benefits remain with the original owner communities.

The dilemma and conflict related to the recognition of traditional cultural expressions by a country from the perspective of legal philosophy fundamentally assert that traditional cultural expressions are communal intellectual property inherent to community societies such as tribes or cultural entities that develop them, even though the culture may exist in more than one country. In this context, unilateral recognition by one country of traditional cultural expressions that also exist in other countries is considered inappropriate, as it has the potential to overlook the collective rights of communities or cross-regional communities that share the same historical and cultural ties. Therefore, legal philosophy encourages the need for regulatory renewal, for example within the framework of the Convention on the Safeguarding of the Intangible Cultural Heritage (CSICH), which emphasizes that the recognition of traditional cultural expressions must refer to the identity and existence of the community that genuinely preserves and sustains that culture. Thus, when a country intends to make a claim or recognition of a traditional culture, it is necessary to consider the dissemination, existence, and attachment of the relevant cultural community, rather than just focusing rigidly on the territorial boundaries of the state. This approach reflects respect for the collective rights of cultural communities and avoids state monopolies that can lead to conflicts of interest, while also upholding the principles of justice and pluralism in law, so that the recognition of traditional cultures serves as a fair and sustainable tribute to cultural diversity within the framework of national and international law.

The suggestions and recommendations from this research include the need for a revision of the Convention on the Safeguarding of the Intangible Cultural Heritage (CSICH) that emphasizes the communal characteristics of the intellectual property of traditional cultural expressions while also regulating the resolution of inter-state disputes related to the recognition of traditional cultural expressions.

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