

Research Article

Traditional Knowledge and Traditional Cultural Expressions as Communal Intellectual Property: Are They Protected Under the WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge 2024?

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ABSTRACT

Indonesia has a culture and natural wealth that has the potential to be protected by Communal Intellectual Property (CIP). Indonesian national law has shown seriousness in the legal protection of CIP by issuing various CIP laws and regulations. However, the protection of CIP at the international level has only appeared with the issuance of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge GRATK/DC/7 2024 (WIPO Treaty GRATK/DC/7 2024) 2024. This paper examines the protection of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) as CIP in Indonesia and internationally through the WIPO Treaty GRATK/DC/7 2024. The normative legal research method is used with a statutory, conceptual, comparative and analytical approach. The results show that PP 56/2022 and Permenkumham 13/2017 provide sufficient protection for CIP works including TK and TCE, especially in the form of defensive protection (inventory and recording of CIP). WIPO Treaty GRATK/DC/7 2024 emphasizes genetic resources (GR) protection and TK related to GR and not TCE. However, TCE protection internationally is seen in the amendment to the Berne Convention, Article 15.4 through "anonymous works". WIPO Treaty GRATK/DC/7 2024 is an advancement in international recognition of the protection of CIP, especially TK related to GR. Internationally, this document is a legal umbrella to protect Indonesian CIP including TK that is used commercially considering that communities from regions in Indonesia are very rich in TK that they have inherited across generations.

Keywords: Traditional Cultural Expressions; Traditional Knowledge; Communal Intellectual Property; WIPO Treaty GRATK/DC/7 2024; Protection.

ABSTRAK

Indonesia memiliki budaya dan kekayaan alam yang berpotensi dilindungi Kekayaan Intelektual Komunal (KIK). Hukum nasional Indonesia sudah menunjukkan keseriusan dalam perlindungan hukum KIK dengan menerbitkan berbagai peraturan perundang-undangan KIK. Namun, perlindungan KIK di tingkat internasional baru nampak dengan terbitnya *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge GRATK/DC/7 2024* (WIPO Treaty GRATK/DC/7 2024) 2024. Tulisan ini mengkaji perlindungan Pengetahuan Tradisional (PT) dan ekspresi Budaya Tradisional (EBT) sebagai KIK di Indonesia dan internasional melalui *WIPO Treaty GRATK/DC/7 2024*. Metode penelitian hukum normatif dipergunakan dengan pendekatan perundang-undangan, konseptual, komparatif dan analitis. Hasil menunjukkan PP 56/2022 dan Permenkumham 13/2017 cukup memberikan perlindungan karya KIK termasuk PT dan EBT, khususnya dalam bentuk perlindungan defensif (inventarisasi dan pencatatan KIK). *WIPO Treaty GRATK/DC/7 2024* perlindungannya menekankan Sumber Daya Genetik (SDG) dan PT yang terkait dengan SDG dan tidak EBT. Namun,

perlindungan EBT secara internasional terlihat saat amandemen *Berne Convention*, Pasal 15.4 melalui “*anonymous works*”. *WIPO Treaty GRATK/DC/7 2024* ini merupakan suatu kemajuan pengakuan internasional terhadap perlindungan KIK, khususnya PT terkait SDG. Internasional dokumen ini menjadi payung hukum melindungi KIK Indonesia termasuk PT yang dimanfaatkan secara komersial mengingat komunitas asal daerah-daerah di Indonesia sangat kaya dengan PT yang diwarisinya lintas generasi.

Kata Kunci: Ekspresi Budaya Tradisional; Pengetahuan Tradisional, Kekayaan Intelektual Komunal; *WIPO Treaty GRATK/DC/7 2024*; Perlindungan.

A. INTRODUCTION

Traditional Cultural Expressions (TCE) and Traditional Knowledge (TK) are two of the five types of Communal Intellectual Property (CIP) in Indonesia, closely related to traditional culture and deeply rooted traditional skills that have been passed down through generations within communities. Simultaneously, the emergence of the Society 5.0 era has introduced the involvement of the Internet of Things, artificial intelligence, and big data to enhance human quality of life (Ardinata et al., 2022).

This era's developments have gradually eroded Indonesian culture, while foreign cultures have increasingly gained popularity among the nation's younger generations (Megawaty et al., 2021). Despite the global competition that has accelerated technological advancements and prioritized individualistic pursuits, it is crucial to remember that Indonesia was built on a foundation of a strong communal spirit and the struggle for unity. Moreover, Indonesia's abundant natural and cultural resources significantly contribute to the economic well-being of its people (Kusuma & Roisah, 2022).

To preserve the existence of TCE and TK, it is imperative to provide legal protection through effective recognition and regulation, not only at the national level but also internationally.

At the national level, recognition of the importance of preserving Indonesian culture has been established by the 1945 Constitution of the Republic of Indonesia (UUD 1945), which serves as the country's constitutional foundation. Article 32, Paragraph (1) of the UUD 1945 stipulates that the state is responsible for advancing Indonesia's national culture within the context of global civilization while ensuring the freedom of its people to preserve and develop their diverse cultural values. The protection of traditional cultural works and traditional knowledge, communally held by Indonesian communities, can be more specifically addressed within the realm of Communal Intellectual Property.

The Legong Kraton Dance, the Cak (Kecak) Bedulu Dance, Loloh Cemcem Penglipuran beverage, Bali's Endek textile, and the Perangsada ceramic jars from Pering Village are just a few examples of the thousands of communal works in Indonesia that have been

inventoried and recorded as Communal Intellectual Property in the “KI Komunal DJKI” database of the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia (DJKI Kemenkumham) (Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2024).

Various expressions of Indonesia’s traditional culture, which hold significant value, are preserved, continuously developed across generations, and collectively managed, fall under the category of Traditional Cultural Expressions. Meanwhile, skills, knowledge, and technical expertise closely tied to traditional values and communally held by Indonesian communities fall within the realm of Traditional Knowledge.

Communal Intellectual Property is a form of Intellectual Property (IP) whose existence has gained recognition over time. Initially, Intellectual Property (IP) was designed to protect individual works born from human intellect. IP is categorized into Copyright and Industrial Rights (including Trademarks, Patents, Industrial Designs, and Trade Secrets) (Samsithawrati, 2024). For example, Copyright emerged as a result of the invention of the printing press in 1476 in England, which significantly boosted the growth of the printing and publishing industry closely tied to the reproduction of works (Samsithawrati et al., 2023).

Since the protection of personal IP has been established for quite some time globally, it is

rational to conclude that various regulations at both international and national levels in each country are now more adequately available, structured, and comprehensive.

The recognition and regulation of personal Intellectual Property (IP) at the international level are evident in the World Trade Organization (WTO) Agreement, specifically through one of its annexes, the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). This agreement establishes minimum standards for IP regulation among its member countries, including Indonesia (Dharmawan et al., 2024).

Additionally, there is the Berne Convention for the Protection of Literary and Artistic Works of 1886, one of the oldest copyright conventions globally, and the Paris Convention for the Protection of Industrial Property, which governs IP categorized as industrial rights. These agreements have been followed by various other international treaties.

At the national level, Indonesia has enacted seven laws related to IP, covering copyright, trademarks and geographical indications, industrial designs, patents, trade secrets, plant varieties, and integrated circuit layout designs (Hananto & Prananda, 2019). These regulations are harmonized with the minimum protection standards outlined in the TRIPS Agreement as a consequence of Indonesia’s participation in the WTO Agreement.

Shifting from personal Intellectual Property to Communal Intellectual Property, which includes

works categorized as Traditional Cultural Expressions and Traditional Knowledge, reveals a different level of recognition and regulation. While the Indonesian government has shown significant awareness of the urgency of recognizing and regulating CIP, as evidenced by Government Regulation No. 56 of 2022 on CIP (PP 56/2022) and the Ministry of Law and Human Rights Regulation No. 13 of 2017 on CIP Data (Permenkumham 13/2017), the recognition and regulation of CIP at the international level are not as comprehensive as those for personal IP.

Internationally, as early as 1967, an amendment to the Berne Convention began to imply regulation of TCE through Article 15.4 concerning “anonymous works.” Over time, various initiatives emerged, such as forming expert groups on the international protection of expressions of folklore, creating global forums on folklore protection (initially referred to as expressions of folklore), conducting WIPO fact-finding missions to identify the needs and expectations of TK holders—including TCE as a subset—and establishing the WIPO Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge, and Folklore in the late 2000s (WIPO, 2005).

Additionally, in 1982, the WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions were introduced. These provisions identified two main categories of protection for TCE: “illicit

exploitation” and “other prejudicial actions,” influencing national laws in various countries (WIPO, 2005).

However, it was not until May 2024 that a legal instrument in the form of a treaty explicitly addressed TK—albeit focusing on TK related to Genetic Resources (GR). Unlike previous frameworks, such as the Convention on Biological Diversity and its Nagoya Protocol, which only included TK and GR benefit-sharing as complementary provisions for indigenous and local communities (Adhiyatma & Roisah, 2020; Indrayati, Luhur, & Dhuwur, 2021), the WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge GRATK/DC/7 2024 (WIPO Treaty GRATK/DC/7 2024) directly addressed these issues.

The issuance of this treaty provides significant hope for legal certainty, as treaties impose binding obligations on participating countries (Pratama, Susianto, & Miladiyanto, 2016).

Based on the background outlined above, it becomes compelling to examine the protection of Traditional Cultural Expressions and Traditional Knowledge as part of Communal Intellectual Property from both Indonesia's national and international perspectives, particularly through the issuance of the WIPO Treaty GRATK/DC/7 2024. This is especially relevant in the context of their commercial utilization.

As an international recognition and regulatory step that includes the phrase "related to Traditional Knowledge" in its title, it is particularly intriguing to analyze whether this legal instrument comprehensively accommodates both TK and TCE, which are part of the same CIP framework.

Similar previous studies have addressed issues related to Communal Intellectual Property, including TCE and/or TK, such as: (1) a 2024 study by Ni Ketut Supasti Dharmawan et al. on "Quo Vadis Traditional Cultural Expressions Protection: Threats from Personal Intellectual Property and Artificial Intelligence," which focuses on analyzing TCE that has been transformed and adapted as personal works or created by Artificial Intelligence, as well as the steps taken to address these threats (Dharmawan et al., 2024); (2) a 2024 study by Sasqia Salsabilla on "Protection of Traditional Knowledge and Cultural Expressions Based on the Cultural Advancement Law," which focuses on cultural advancement (Salsabilla, 2024); (3) a 2024 study by Frédéric Perron-Welch on "Striking a Balance Between Innovation and Tradition in the Global Patent System," which discusses the WIPO Treaty GRATK/DC/7 2024 as a significant step forward in promoting transparency regarding the use of GR and Associated Traditional Knowledge within the patent system (Perron-Welch, 2024); (4) a 2024 study by Ismail Koto on "The Potential of Traditional Knowledge As An Improvement of the Welfare of Communal Communities," which

focuses on the potential of TK to improve the welfare of communal communities and the efforts required to provide protection for TK works (Koto, 2024); and (5) a 2023 study on "Exploring the Discourse of Subject in Intellectual Property Rights: Communal Rights in Indonesia," which focuses on Indonesia's perspective on IP and Communal Intellectual Property (Putri, Putri, & Sabatira, 2023).

Compared to these similar prior studies, this study can be considered original as it focuses on the regulation of TCE and TK at both the national level in Indonesia and internationally through the issuance of the WIPO Treaty GRATK/DC/7 2024.

B. RESEARCH METHOD

Legal research is conducted to resolve legal issues through the careful and thorough discovery of legal materials or data (Diantha, 2016). In this paper, the normative legal research method is used to analyze the legal issues of protecting Traditional Cultural Expressions and Traditional Knowledge as Communal Intellectual Property from both Indonesia's national and international perspectives through the issuance of the WIPO Treaty GRATK/DC/7 2024. Normative legal research is a method of studying laws and regulations from both the hierarchy of laws (vertical) and the harmony of laws (horizontal) perspectives (Benuf & Azhar, 2020). The approaches used in this research are the statute approach, conceptual approach, comparative

approach, and analytical approach. The document study technique is employed to examine legal materials consisting of primary, secondary, and tertiary legal sources. Authoritative legal materials are considered primary legal sources (Marzuki, 2017). In this paper, the basic legal norms (1945 Constitution) and various national regulations in Indonesia (PP 56/2022, Permenkumham 13/2017), as well as international legal instruments related to TCE and TK as CIP (WIPO Treaty GRATK/DC/7 2024), are used. Secondary legal materials are those that explain primary legal materials, such as journals and books. Tertiary legal materials are those that clarify primary and secondary legal materials (Juliardi, 2023). In this study, the Indonesian Dictionary is also used. Once these legal materials are collected, they are analyzed using a descriptive qualitative analysis technique.

C. RESULTS AND DISCUSSION

1. Traditional Knowledge and Traditional Cultural Expressions as Communal Intellectual Property from Indonesia's National Perspective

Human daily life is actually closely related to Intellectual Property (IP), although people often do not realize that these are works protected by the IP regime. The rights granted to the owner for their intellectual creativity, which results in works that have utility and economic value, are referred to as IP (Samsithawrati, 2023). In addition to individual IP, as explained earlier, Communal

Intellectual Property (CIP) is also important to be protected by law in the modern era. CIP is a form of IP where ownership is communal, with both economic value and significance to the social, moral, and cultural values of the nation (Article 1, Number 1, PP 56/2022).

Bali, as one of the most popular tourist destinations in the world, is renowned for its unique traditional arts and culture, making it an interesting example of why the issue of protecting Communal Intellectual Property is important. For centuries, the Balinese people have held purification ceremonies to address any form of imbalance, disturbance, or violation of customary laws (Putra, 2022). Bali is one of the 38 provinces in Indonesia, consisting of 8 regencies and 1 city (Sumiasih, 2018). In Bali, there are Traditional Villages (Desa Adat) and Administrative Villages (Desa Dinas). Traditional Villages are those that function to preserve and nurture the customs and practices of the Hindu community in Bali, with a status and role distinct from that of Administrative Villages, which are government-run villages (Duarsa, Sugiarta, & Sudibya, 2020). Data from 2023 from the Satu Data Indonesia Bali Province shows that there are 1,493 Traditional Villages in Bali (Satu Data Indonesia Bali Province, 2024). Each of these villages has its own unique traditional ceremonies that have been passed down through generations. Therefore, there is great potential for the existence of CIP works in the form of Traditional Cultural Expressions that

should be protected through CIP registration and the issuance of CIP certificates.

In addition to Bali, Indonesia has many other regions renowned for their traditional culture and knowledge. As of the first semester of 2024, Indonesia's population reached 282,477,584 (two hundred eighty-two million four hundred seventy-seven thousand five hundred eighty-four people), spread across 38 provinces in the country (Kompas.com, 2024). For example, Aceh is known for the famous Saman Dance, the Special Region of Yogyakarta for the Sidomukti batik motif, which is a traditional batik design from the Keraton, Bangka Belitung for its Traditional Knowledge in the form of Cual weaving, and Sumbawa for its Traditional Knowledge in the form of Sumbawa oil, a herbal oil passed down through generations (Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2024).

Referring to the data on the number of Communal Intellectual Property from various regions in Indonesia that have been successfully inventoried and recorded in the Ministry of Law and Human Rights database, it implicitly shows that the regulation regarding CIP in Indonesia, including Traditional Cultural Expressions (TCE) and Traditional Knowledge (TK), is already quite adequate. As of October 5, 2024, at least 1,733 TCE and 484 TK have been successfully inventoried and recorded in the database (Direktorat Jenderal Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia

Republik Indonesia, 2024). However, considering the vast diversity of arts, culture, and traditional knowledge in Indonesia, along with the country's population size and territorial expanse, it is clear that the number of CIP records can still be significantly optimized.

Regulations on CIP at the national level in Indonesia are scattered across various laws and regulations (Anis, Kereh, & Umbah, 2023). One of the steps taken by the Indonesian government in its serious effort to provide legal protection for CIP works in Indonesia is the issuance of PP 56/2022 and Permenkumham 13/2017, which specifically regulate various provisions related to CIP, particularly concerning the data and inventory of CIP. The provisions within these regulations, which primarily focus on the inventory and recording of CIP, have optimized the regulation regarding the defensive protection of CIP itself.

Defensive protection of CIP is a legal protection aimed at preventing misappropriation or violations of cultural claims recognized by other parties (Sembiring, Narwadan, & Balik, 2024). This can be prevented through the process of inventorying works that have the potential to be protected by CIP, after which the work is registered as CIP by the government, resulting in the issuance of a CIP Certificate, whether in the form of TCE, TK, GR, Geographical Indication (GI), or Potential Geographical Indication (PGI).

The first national regulation specifically concerning CIP was Permenkumham 13/2017,

which was later followed by the issuance of PP 56/2022 in 2022. Upon further examination, it can be seen that PP 56/2022, which was issued after Permenkumham 13/2017, includes a greater number of CIP types, with 5 (five) types, compared to the 4 (four) types of CIP regulated in Permenkumham 13/2017. The comparison is shown in Figure 1 below.



Figure 1. Types of CIP Based on Article 4 of PP 56/2022
(Source: Author based on PP 56/2022 and Permenkumham 13/2017).

The definitions of each type of CIP provided by PP 56/2022 and Permenkumham 13/2017 essentially do not differ significantly in meaning for each type of CIP, such as TK, TCE, PIG, or GR, as outlined in Permenkumham 13/2017. However, PP 56/2022 introduces one additional definition for Geographical Indications (IA), which is a new type of CIP that appears in PP 56/2022.

TK refers to all ideas and concepts within a community that contain local value as a result of real-life experiences in interacting with the environment, developed continuously, and passed down to the next generation (Article 1, paragraph 3, PP 56/2022). Examples include traditional

processes, technical skills, craftsmanship, learning, technical knowledge, ecological knowledge, knowledge related to GR, as well as medicinal knowledge and others, as regulated in Article 8 of PP 56/2022.

The existence of TK, which falls under the scope of CIP regulation, is crucial to receive protection with legal certainty, considering that the communities in various regions of Indonesia possess a great deal of TK, which has been passed down through generations. However, due to its relatively large number, the process of inventorying and recording these TKs has not been maximized in terms of legal protection. Therefore, a continuous effort is needed for mapping and documenting the types of TK owned by regions in Indonesia. As an example, in Bali, the Batuan Style Painting from Batuan Village, Gianyar Regency, was successfully inventoried and recorded to receive defensive legal protection as TK in 2023. Then, in mid-2024, the Paso (Pottery) craft from Pering Village, Gianyar Regency, was also successfully inventoried and recorded under TK protection.

In addition to TK, which is regulated under the CIP group for legal protection, there are also works of TCE. According to the provisions of Article 1, paragraph 2 of PP 56/2022, TCE refers to all forms of creative works, whether tangible or intangible, or a combination of both, that reflect the existence of a traditional culture held communally and passed down through generations. The criteria for a work to be

protected under CIP TCE can be found in Article 6 of PP 56/2022, which briefly requires the work to have value, a traditional form, and a perspective that is maintained and developed within or outside the traditional context. It must be communally and collectively managed by the indigenous peoples or local communities as the source communities of the work, continuously developed, preserved, passed on, and used across generations, and capable of providing identity and respect for the culture. Various forms of TCE include rituals, music, architecture, and others, which are specifically regulated in Article 7, paragraph (1) of PP 56/2022.

After understanding that the inventorying and registration of CIP are conducted as a form of defensive protection, the next question is: who is responsible for carrying out this obligation, and what is the mechanism? The State holds the rights to CIP (Article 3, Paragraph (1) of PP 56/2022). Consequently, it is the State's duty to inventory, preserve, and safeguard the diverse forms of CIP (Article 3, Paragraph (2) of PP 56/2022). This concept, however, remains somewhat abstract. Therefore, Article 3, Paragraph (3) of PP 56/2022 clarifies that the State, in the context of inventorying, safeguarding, and maintaining CIP, is represented by the Minister, Ministers/Heads of Non-Ministerial Government Institutions, and/or Regional Governments. Referring to the phrase "and/or," this means the designated representatives of the State can undertake these

responsibilities either independently or collaboratively. The Minister, in this case, refers to the Minister responsible for governmental affairs in the field of law (Article 1, Paragraph 8 of PP 56/2022), which in Indonesia is currently under the authority of the Minister of Law and Human Rights (Menkumham).

The inventorying of CIP is carried out through the recording and integration of CIP data. The CIP recording process is conducted electronically, accompanied by various administrative requirements. Examples include a registration application form, a description, supporting data, and a written statement signed by the Regional Government (Articles 12–17 of PP 56/2022). CIP applications are not subject to any fees (Article 26 of PP 56/2022). Evidence of CIP registration will be issued by the State if the application has been verified and meets the qualifications for recognition as CIP (Article 22, Paragraph (4) of PP 56/2022). This evidence takes the form of a CIP Certificate. Furthermore, the integration of CIP data is conducted within the Indonesian CIP Information System by the Minister, serving as a manifestation of the defensive protection of CIP (Article 27 of PP 56/2022).

In addition to being regulated under PP 56/2022 and Permenkumham 13/2017, which specifically govern CIP, provisions related to CIP are also scattered across various other intellectual property laws, which generally provide protection for personal intellectual property. For

instance, TCE is regulated in Article 38 of Law Number 28 of 2014 on Copyright (UU 28/2014), Article 26 of Law Number 13 of 2016 on Patents (UU 13/2016), which outlines benefit-sharing for GR, and Articles 63–65 of Law Number 20 of 2016 on Trademarks and Geographical Indications (UU 20/2016), which set forth provisions on IA.

If at the national level the regulations regarding CIP are already quite comprehensive, then at the local level, similar regulations have also begun to emerge. For instance, in Gianyar Regency, Bali, there is Gianyar Regency Regulation Number 86 of 2021 on the Protection of Regional Culture and Intellectual Property (Perbup Gianyar 86/2021). This regulation also outlines mechanisms for CIP protection through CIP inventory. Another example is the Special Region of Yogyakarta, known for its art and culture, which has enacted Governor Regulation of the Special Region of Yogyakarta Number 32 of 2023 on the Implementation of Regional Regulation Number 3 of 2017 on the Preservation and Development of Culture (Pergub DIY 32/2023). Pergub DIY 32/2023 includes provisions for the facilitation by the Yogyakarta Cultural Office to protect CIP, which encompasses both TCE and TK.

In addition to defensive protection of CIP, equally important is the need for positive protection. Positive protection of CIP refers to measures enshrined in laws and regulations (Putri, 2021), including the creation of legal

frameworks to prevent unauthorized use and exploitation of CIP works (Susanti, 2022).

The regulation of benefit-sharing for CIP in a clearer and more practical manner is one of the necessary aspects. If an external party outside the Original Community commercializes a CIP work, whether through transformation or other methods and forms, it is only fair for those external parties who gain economic benefits from the CIP of an Original Community to provide benefit-sharing to that community. This serves as a form of protection for the existence of CIP (Dharmawan et al., 2023).

Regarding benefit-sharing from the commercial use of CIP works by parties outside their Original Community, there is currently no specific regulation under PP 56/2022 or Permenkumham 13/2017. Referring to Article 26 of Law No. 13 of 2016, the phrase "benefit-sharing and/or access to the utilization of genetic resources and/or traditional knowledge ... shall be implemented in accordance with laws and regulations and international agreements ..." can be observed. Thus, Article 26 of Law No. 13 of 2016 already briefly emphasizes the importance of benefit-sharing for the use of genetic resources. Consequently, the need to elaborate on the provisions concerning benefit-sharing from the commercial use of CIP is urgent, including the mechanism and minimum percentage of benefit-sharing. Furthermore, as highlighted in a study by Supasti et al. (2023), there is a recommendation to establish regulations in a higher legal hierarchy,

such as a Law, to govern CIP protection (Dharmawan et al., 2023).

Based on the explanation in this subsection, it appears that the regulation of CIP at the national and local levels is sufficient to accommodate the inventory and registration of CIP, serving as a framework for defensive protection. However, further policy formulation is needed regarding benefit sharing, both at the national and local levels, particularly for positive protection of CIP. This is essential to better safeguard CIP against unauthorized utilization by unauthorized parties, which could economically harm the Indigenous Communities.

2. Penta-Helix Collaboration in the Inventory and Registration of Communal Intellectual Property

The reality on the ground often does not go as smoothly as expected, including in the inventory and registration of Communal Intellectual Property (CIP). A study by Nugroho (2024) shows that factors influencing the suboptimal process of CIP inventory and registration include the lack of law enforcement resources, as well as a lack of public awareness and understanding about respecting and protecting CIP. This makes CIP vulnerable to various violations, both intentional and unintentional, by parties outside the originating communities of the CIP (Nugroho, 2024). Therefore, although the responsibility for CIP inventory lies with the state under the law, it is also important for the state to consider

collaborating with other parties to accelerate and optimize the CIP inventory process. In their study, Kasih, Dharmawan, and Samsithawrati (2024) highlighted that the Penta-Helix collaboration model was used in the process of CIP inventory in Batuan Village, Gianyar, Bali. In this collaboration, the Gianyar Regency Government, as well as other stakeholders such as academics, lecturers, and students from the Faculty of Law at Udayana University Bali, played a role (Kasih, Dharmawan, & Samsithawrati, 2024).

The Penta-Helix collaboration is essentially a design for the integration of five sectors that are coordinated with each other (Amrial, Muhamad, & Adrian, 2017). If this model is applied to the CIP inventory process, the registration of CIPs will become more effective, thus providing greater legal protection for the originating communities of these CIPs. The key reason for the urgent need to fully implement this model in the CIP inventory process is that, within the GR 2030 Agenda, specifically Goals 4.7 and 8.9, culture plays a role in sustainable development, and there is an emphasis on designing and implementing policies to promote sustainable tourism that creates jobs and promotes local culture and products. Indonesia is one of the countries committed to achieving the Sustainable Development Goals through the 2030 development agenda (Kementerian Perencanaan Pembangunan Nasional / Badan Perencanaan Pembangunan Nasional, 2023). The Penta-Helix collaboration model is actually not new in the context of

Indonesian tourism. This model was first implemented in the Minister of Tourism Regulation No. 14 of 2016 on Guidelines for Sustainable Tourism Destinations (Permenpar 14/2016), which was later replaced by the Minister of Tourism and Creative Economy/Head of the Creative Economy Agency Regulation No. 9 of 2021 on Guidelines for Sustainable Tourism Destinations (Minister of Tourism and Creative Economy/Head of the Creative Economy Agency Regulation 9/2021). In the Penta-Helix model, there are five actors involved: academics, businesspeople, government, media, and society. Therefore, if the Penta-Helix model is adopted in the CIP inventory process, these five actors will be involved, as shown in Figure 2 below.

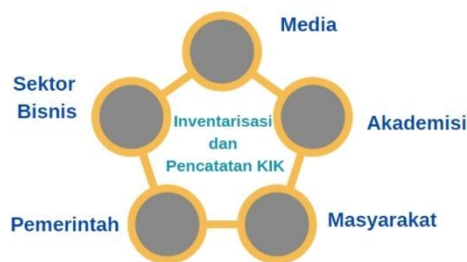


Figure 2. Penta-Helix Collaboration in the Inventory and Registration of CIPs
(Source: Author)

Based on Figure 2 above, there are 5 actors with the following roles: (1) the government, as the regulator and controller of the CIP inventory activities, and the provider of funds since the registration of CIPs is free, but the process of gathering data on the ground requires adequate budgeting; (2) academics, who assist in conducting normative research related to relevant

legal regulations and help gather the necessary data in the field; (3) the business sector, which provides various facilities and infrastructure that are relevant, as well as additional funding for the CIP inventory activities; (4) the media, which plays a significant role in the documentation sessions in the field, making the data collected for CIP registration comprehensive; and (5) the community, in this case, the community of origin of the work that is potentially protected by CIPs, playing the role of intermediary or connector between stakeholders—acting as the maestro, for example, by providing crucial information about the works being inventoried.

3. WIPO Treaty GRATK/DC/7 2024: The Scope of Protection and Its Relation to Traditional Cultural Expressions and Traditional Knowledge as Part of Communal Intellectual Property

Traditional Cultural Expressions (TCE) and Traditional Knowledge (TK) as part of Communal Intellectual Property (CIP) should now begin to receive more attention from both the national government and countries around the world. These works are crucial to be protected and preserved to ensure their existence before they are claimed by others, used without permission, or lost with the passage of time.

Issues that need to be considered regarding Communal Intellectual Property (CIP) include digital commercialization in the modern era, which also encompasses digital tourism. Often, industry players commercialize CIP works

carried by the communal society of a region, which can potentially lead to economic losses (Dharmawan et al., 2024). Furthermore, a study showed that in Kakara Lamo Village, North Halmahera, there was a decline in the implementation of the Hibua Lamo (gomatere) traditional ceremony due to damage to the ceremony site and the lack of community participation (Syawal & Hendrakusumah, 2023). In fact, this generational ceremony is important to preserve and protect. According to Article 7, Paragraph (1)(f) of PP 56/2022, a traditional ceremony is considered a form of Traditional Cultural Expression (TCE), and therefore, the ceremony in this village has the potential to be protected as part of CIP.

The government, as the party responsible for inventorying and registering works that have the potential to be protected as Communal Intellectual Property (CIP), must act swiftly and intelligently. The government must be able to map out works that have high economic value if commercialized and immediately register them as CIP. For example, the Endek Bali fabric, which was registered as a CIP from Bali, went viral in the early 2020s within the international fashion community when it was used as material for garments at Paris Fashion Week in 2020 (Direktorat Jenderal Kekayaan Intelektual, 2021). The Endek Bali fabric was used by the world-renowned fashion brand Christian Dior (Kariodimedjo, Rotua, & Jordi, 2022). On the other hand, Indonesia cannot turn a blind eye to

various cases of Traditional Knowledge related to genetic resources. For instance, the biopiracy case of Indonesia's biological resources involved the submission of 51 patent applications for medicinal plants and spices native to Indonesia, filed by a foreign cosmetic company (Susanti, 2022). The appropriation and monopoly of long-standing traditional knowledge of healing related to nature and its physical resources, known as biopiracy, is also a critical issue that should be emphasized by the government, further reinforcing that CIP is a legal issue deserving of maximum legal protection (Susanti, 2022; Masrur et al., 2024).

When examining Traditional Cultural Expressions and Traditional Knowledge, in terms of the objects they protect, they can actually also receive protection under the realm of cultural advancement, not just under Communal Intellectual Property. The advancement of culture in Indonesian national law is regulated in Law Number 5 of 2017 on Cultural Advancement (UU 5/2017). According to Article 5, letter (c) of UU 5/2017, one of the objects protected is customs and traditions. Meanwhile, according to Article 7, Paragraph (1)(f) of PP 56/2022, traditional ceremonies are a form of TCE protected by CIP. Another example is traditional knowledge, which is also an object protected under Cultural Advancement (Article 5(e) of UU 5/2017), and at the same time is an object protected by CIP (Article 8 of PP 56/2022). Therefore, there is an intersection between the two. However, the

difference lies in the ministry responsible for each. Cultural advancement falls under the Ministry responsible for cultural affairs (Article 1, number 17, UU 5/2017), while CIP is under the Ministry of Law and Human Rights.

From the perspective of Intangible Cultural Heritage, the protection of objects that also have the potential to be protected under Communal Intellectual Property has already been addressed at the international level through legal frameworks in the form of international agreements. For example, the 2003 United Nations Educational, Scientific and Cultural Organization Convention for the Safeguarding of the Intangible Cultural Heritage (2003 UNESCO ICH Convention) and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005 UNESCO DCE Convention).

Indonesia's response to these international legal instruments has been to ratify the 2003 UNESCO ICH Convention through Presidential Regulation Number 78 of 2007 on the Ratification of the Convention for the Safeguarding of the Intangible Cultural Heritage (Perpres 78/2007) and to ratify the 2005 UNESCO DCE Convention through Presidential Regulation Number 78 of 2011 on the Ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Perpres 78/2011) (DM et al., 2022)

Indonesia's ratification of these two international agreements represents a positive step toward providing legal certainty. According to

Article 1, point 2 of Law Number 24 of 2000 concerning International Agreements (Law 24/2000), ratification, which is one form of approval, is a legal act intended to bind the country to an international agreement. The existence of an international agreement implies the presence of rights and obligations in the field of public law (Article 1, point 1 of Law 24/2000). Through the ratification of an international agreement, the Government of the Republic of Indonesia formally commits itself to the terms of that agreement (Article 3 of Law 24/2000).

Hikmahanto Juwana (2019), in his study, states that the ratification of an international agreement gives rise to two obligations that must be fulfilled by the state. These obligations are: (1) the state must ensure that the international agreement aligns with Indonesia's Constitution (the 1945 Constitution), as the constitution holds the highest position in Indonesia's legal hierarchy. Additionally, the state must verify whether there are any covert interventions from other countries; and (2) the international agreement must be transformed into national law, particularly for agreements categorized as "law-making treaties," which aim to amend a country's provisions. Consequently, the ratification document cannot serve as the basis for enforcing the international agreement at the national level (Juwana, 2019).

Building upon the concept that international agreements, whether conducted bilaterally between two countries or multilaterally among many countries, give rise to rights and obligations

in the field of public law, these agreements are subsequently ratified and bind the participating countries. This process ensures legal certainty regarding the matters regulated in the international agreement. International agreements are known by various terms, such as treaties, conventions, and others (Situngkir, 2018).

Regarding Intellectual Property (IP), in the context of personal IP, recognition and regulation at the international level in the form of various legal instruments of international agreements have existed for hundreds of years. This is primarily because IP initially emerged in Western countries to provide protection for individuals. The Berne Convention of 1886 is one of the oldest international agreements in the realm of copyright. Other conventions, such as the Paris Convention, and what is considered the most comprehensive international agreement in the field of IP, the WTO-TRIPs Agreement, also serve this purpose.

As part of its obligations as a member state in various international IP conventions, Indonesia currently provides personal IP protection through laws including: Law No. 29 of 2000 on Plant Variety Protection, Law No. 30 of 2000 on Trade Secrets, Law No. 31 of 2000 on Industrial Design, Law No. 32 of 2000 on Integrated Circuit Layout Designs, Law No. 28 of 2014 on Copyright, Law No. 20 of 2016 on Trademarks and Geographical Indications, Law No. 13 of 2016 on Patents, Law No. 6 of 2023 on the Stipulation of Government

Regulation in Lieu of Law No. 2 of 2022 on Job Creation as a Law, which amended several articles concerning trademarks and patents, and Law No. 65 of 2024 on the Third Amendment to Law No. 13 of 2016 on Patents.

However, in developing countries where communities live with a strong spirit of collectivism, many communal works have emerged from the intellectual efforts of these societies. As such, these works also require IP protection.

In the context of communal rights, recognition and regulation of Communal Intellectual Property at both national and international levels have not progressed as significantly as personal IP. However, at the national level in Indonesia, all CIP is protected under Article 18B Paragraph (2) and Article 32 Paragraph (1) of the 1945 Constitution.

More specifically, the protection of Traditional Cultural Expressions is regulated under Article 38 of Law No. 28 of 2014, Ministerial Regulation No. 13 of 2017, and Government Regulation No. 56 of 2022. The protection of Traditional Knowledge is governed by Article 26 of Law No. 13 of 2016, Ministerial Regulation No. 13 of 2017, and Government Regulation No. 56 of 2022. The protection of Genetic Resources is also regulated under Article 26 of Law No. 13 of 2016, Ministerial Regulation No. 13 of 2017, and Government Regulation No. 56 of 2022.

Furthermore, the protection of Geographical Indications is stipulated in Articles

53–62 of Law No. 20 of 2016, Ministerial Regulation No. 13 of 2017, and Government Regulation No. 56 of 2022. Lastly, the protection of Indications of Origin is regulated under Articles 63–65 of Law No. 20 of 2016 and Government Regulation No. 56 of 2022.

At the international level, recognition of Traditional Cultural Expressions (TCE) began to emerge during the amendment of the Berne Convention in 1967. This amendment introduced an international mechanism for the protection of unpublished and anonymous works. According to the drafters of this amendment, as reflected in Article 15(4) of the Berne Convention, the provision was intended to provide international protection for TCE (WIPO, 2005).

In fact, as early as 1982, the existence of the *WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions* can be traced. This document established two main categories of actions for which Traditional Cultural Expressions (TCE) are protected: "illicit exploitation" and "other prejudicial actions" that influence the national laws of various countries (WIPO, 2005). However, it was only in May 2024 that the *WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge* (GRATK/DC/7 2024) was issued. This treaty serves as an international legal instrument addressing issues related to intellectual property, genetic resources (GR), and traditional knowledge (TK).

This treaty, even in its title, explicitly emphasizes traditional knowledge (TK), albeit within the context of GR. Unlike the *Convention on Biological Diversity* and its Nagoya Protocol—which include TK and GR only as complementary provisions focusing on benefit-sharing for the utilization of GR and TK by indigenous and local communities—this treaty represents a comprehensive framework.

Given the binding force of international treaties on member states, the existence of this treaty marks a significant milestone eagerly anticipated by many, including Indonesia. It provides a pathway for the recognition and regulation of intellectual property, including TK, with legal certainty at the international level.

The World Intellectual Property Organization (WIPO) adopted a significant treaty mandating provisions related to Genetic Resources (GR) and Associated Traditional Knowledge (TK) through the *WIPO Treaty GRATK/DC/7 2024*. So far, a considerable number of countries have signed this treaty, and it could go into effect if and when a majority of these countries ratify it. Consequently, some countries ratifying the treaty may also need to amend their existing laws to comply with its provisions, depending on how the terms of the treaty are interpreted (Info Justice, 2024).

Regarding the *WIPO Treaty GRATK/DC/7 2024*, it is compelling to examine whether this legal instrument comprehensively accommodates Traditional Knowledge (TK) and Traditional

Cultural Expressions (TCE). Historically, TCE has been recognized as a subset of TK. This was evident during WIPO's fact-finding missions conducted in 28 countries in 1998 and 1999 to identify IP-related needs and expectations concerning TK. As part of these missions, TK was defined to include TCE as a subset.

This classification is evident in the *WIPO Report on Fact-finding Missions (1998-1999)*, which described WIPO's use of the term TK to refer to "literary, artistic, or scientific works based on tradition; ... and other tradition-based creations resulting from intellectual activity in the fields of industry, science, literature, or art." The phrase "based on tradition" refers to systems of knowledge, creations, innovations, and cultural expressions rooted in tradition (WIPO, 2001).

WIPO is a United Nations (UN) agency that serves the world's innovators and creators to ensure their ideas reach the market safely, thereby improving living standards globally. WIPO achieves this by providing services that enable creators, innovators, and entrepreneurs to protect and promote their intellectual property (IP) across borders and acting as a forum to address cutting-edge IP issues (WIPO, 2024-a). As of the writing of this article, WIPO has 193 member states, including Indonesia (WIPO, 2024-b).

Regarding the signing of the *WIPO Treaty GRATK/DC/7 2024*, on July 8, 2024, the treaty was signed by Indonesia, represented by the Minister of Law and Human Rights, Yasonna H. Laoly, in Geneva, Switzerland. Indonesia's

participation in signing this treaty is part of its strategy to protect Genetic Resources (GR) and Associated Traditional Knowledge (TK), with plans to adopt the treaty and harmonize it with related regulations in Indonesia (Yogyakarta, 2024). This signing by Indonesia aligns with Article 12 of the *WIPO Treaty GRATK/DC/7 2024*, which essentially allows any WIPO Member State to become a party to the treaty.

In general, the *WIPO Treaty GRATK/DC/7 2024* does have a title with the phrase "Intellectual Property" (or *KI* in Indonesian), but the provisions within it primarily focus on intellectual property related to patents, rather than other forms of intellectual property. The patents in question are those connected to GR and associated Traditional Knowledge (TK) related to GR. This is evident from the preamble of the treaty, which acknowledges and reaffirms the role of the intellectual property system in promoting innovation, transferring and disseminating knowledge, and fostering economic development, for the mutual benefit of both providers and users of GR and TK related to GR. The treaty's focus on patents is also reflected in Article 1, which outlines its objectives. Article 1 of the *WIPO Treaty GRATK/DC/7 2024* states that the goals of the treaty are: (a) to enhance the effectiveness, transparency, and quality of the patent system related to GR and TK related to GR, and (b) to prevent the erroneous granting of patents for inventions that are not new or inventive concerning GR and TK related to GR.

Before proceeding further, it is important to understand some key and fundamental terms in the *WIPO Treaty GRATK/DC/7 2024*, such as what GR is, the sources of GR, and the sources of TK related to GR. All of these are defined in Article 2 of the treaty. GR is defined as genetic material, any material derived from plants, animals, microbes, or other sources that contain functional hereditary units, which have actual or potential value. In this treaty, the definition of GR aligns with how the term is understood in the context of the Convention on Biological Diversity, and it is not intended to cover "human genetic resources." However, the treaty does not define "Traditional Knowledge Associated with Genetic Resources" or TK related to GR. In this article, which focuses on TK in addition to TCE, the definition of TK related to GR is what is particularly sought in this treaty. It would be even more complete if there were a definition of what TK is. It seems premature to expect a definition in this treaty that aligns with the general understanding of TK as defined in the Indonesian CIP legislation. Nevertheless, at the very least, Article 2 of the treaty, which contains definitions of various terms, should and could define what TK related to GR is. For comparison, in Article 1, Number 4 of the Indonesian Minister of Environment and Forestry Regulation No. P.2/MENLHK/SETJEN/KUM.1/1/ 2018 on Access to Genetic Resources of Wild Species and Benefit Sharing on Their Utilization (PermenLHKP.2/MENLHK/SETJEN/KUM.1/1/201

8), TK related to GR (TK-GR) is defined as the knowledge, skills, innovations, or practices, whether individual or collective, of indigenous or local communities related to GR or its derivatives, which have actual and/or potential value. Based on the provisions of the *WIPO Treaty GRATK/DC/7 2024*, the TK mentioned in this instrument is essentially limited to TK related to GR only. Therefore, it is not the definition of TK in its broadest sense, as TK is defined as one of the CIP in Article 1, Number 3 of Government Regulation No. 56/2022.

In the preamble of the *WIPO Treaty GRATK/DC/7 2024*, it would be beneficial to provide a more detailed explanation of why it is important to recognize Traditional Knowledge associated with Genetic Resources (hereinafter TK-GR). Nuryanti (2015) argues that TK-GR arises due to the presence of a recognizer as the subject and genetic resources as the object. Furthermore, the TK-GR of a community is the result of local genius in identifying the various potentials of GR in a specific area, primarily used to support the livelihoods of the people within that community.

Nuryanti (2015) also describes several functions of TK-GR within traditional communities in West Kalimantan, including:(a) Food and beverage sources: For instance, plants from the Arecaceae/Palmae family are used by the Dayak community as food, ropes, and materials for handicrafts;(b) Medicinal plants: An example is *Nepenthes ampullaria* (pitcher plant), whose

roots and leaves are boiled and used as a remedy for stomachaches by local communities;(c) Building materials: For example, the *Belian* tree (*Eusideroxylon zwageri*) is used as structural pillars for buildings with shingle roofs tied together with rattan, forming longhouses (*rumah betang*) in Dusun Ulu' Palin, Kapuas Hulu Regency;(d) Social activities and ceremonial purposes: For instance, the Dayak Iban and Tamambalo tribes use the bark of *Annonaceae* (Selukai) trees to ward off evil spirits, particularly in rooms where mothers have recently given birth (Nuryanti, 2015; Rochwulaningsih et al., 2019).

Such elaboration would highlight the cultural and functional significance of TK-GR and underscore the importance of its recognition and protection in the treaty.

TK-GR, which arises from the recognizer as the subject and GR as the object, is reflected in the provisions of Article 3.2 of the *WIPO Treaty GRATK/DC/7 2024*. This article stipulates that when an invention claimed in a patent application is based on TK related to GR, each party to the treaty is obligated to require the applicant to disclose:(a) the Indigenous peoples or local communities, as applicable, that provided the TK related to GR; or (b) in cases where the information under (a) is unknown to the applicant or where (a) does not apply, the source of the TK related to GR.

TK, which is indeed a form of Intellectual Property due to its communal nature—since it is upheld by its originating community across

generations—receives recognition under this provision. This is evident as Indigenous peoples or local communities that provide TK related to GR must be explicitly mentioned when the invention claimed in a patent application is based on TK related to GR.

Examining the issue of Traditional Knowledge (TK), which in the *WIPO Treaty GRATK/DC/7 2024* specifically focuses on TK associated with Genetic Resources (GR), is intrinsically linked to GR itself. GR, by definition, comprises diverse materials originating from plants, animals, microbes, or other sources containing functional units of heredity with actual or potential value in a specific region. If the commercial utilization of GR by unauthorized parties is not clearly regulated by each country, it could lead to ecosystem degradation, malnutrition, food insecurity, water scarcity, public health issues, and diminished human welfare both now and in the future (Nuryanti, 2015; Irawan, 2017).

Without sustainable use of GR and the associated TK, there is also a potential impact on global climate change. Such climate change can have direct effects, such as extreme heat or cold temperatures, and indirect effects, including a decline in human health due to exposure to extreme climates or secondary impacts like reduced air, water, and food quality (Setya & Supartono, 2024).

Thus, it becomes increasingly evident that the utilization of GR, or bioprospecting, needs to

be meticulously regulated to ensure sustainable development for fulfilling current and future human needs. This is especially crucial as Indonesia has committed to achieving the Sustainable Development Goals (SDGs) 2030, a continuation of the Millennium Development Goals (Malihah, 2022)

Based on the discussion in this subsection, the scope of regulation under the WIPO Treaty GRATK/DC/7 2024 is specifically still limited to Traditional Knowledge (TK) related to Genetic Resources (GR). As for Traditional Cultural Expressions (TCE), it has not been explicitly covered; however, the recognition and regulation of TCE at the international level can be traced back to Article 15.4 of the Berne Convention. TCE is reflected in the phrase "anonymous works." Furthermore, international efforts to protect TCE are evident in the Mandate of the WIPO Intergovernmental Committee (IGC) 2024/2025 during the Sixty-Fourth Session of the WIPO Member States (6-14 July 2023). The report of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC GRTKF) highlighted that the committee will continue its work on the protection of GR, TK, and TCE, aiming to finalize an international treaty on Intellectual Property that balances the interests of TK and TCE. The document further indicates that negotiations on TK and/or TCE are scheduled for March 2025, with a focus on resolving existing

issues and exploring options for drafting a legal instrument (WIPO, 2023)

D. CONCLUSION

Government Regulation (PP) No. 56/2022 and Ministry of Law and Human Rights Regulation (Permenkumham) No. 13/2017 provide adequate protection for Cultural Intellectual Property (CIP), including Traditional Cultural Expressions (TCE) and Traditional Knowledge (TK), particularly in the form of defensive protection through the inventory and registration of CIP. However, there is still a need for positive protection through the formulation of further policies related to benefit sharing at both national and local levels. Currently, such mechanisms remain rudimentary, as seen in Law No. 13/2016 concerning patents in relation to Genetic Resources (GR).

Therefore, it is crucial to urgently develop regulations for TCE and TK. The *WIPO Treaty GRATK/DC/7 2024* focuses more on GR and TK associated with GR. The treaty does not appear to contain provisions regarding TCE. Nevertheless, international recognition of TCE can be traced back to the 1967 amendment of the *Berne Convention*, where Article 15.4 provides protection for TCE through the concept of "anonymous works."

Furthermore, international efforts to protect TCE are evident in the negotiation agenda of the *WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources*,

Traditional Knowledge, and Folklore (IGC GRTKF) scheduled for 2025. This negotiation aims to draft an international instrument addressing TK and/or TCE. Such a document could serve as a legal framework for protecting Indonesia's CIP, including TK used for commercial purposes, given the immense wealth of Traditional Knowledge passed down across generations in communities throughout Indonesia.

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