



Enhancing community economies through legal protection models of traditional knowledge and cultural expressions: a study on Indonesia's communal intellectual property framework



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ABSTRACT

This research investigates the impact of legal protection models for Traditional Knowledge and Traditional Cultural Expressions (TKTCE) on the economic development of communities in Indonesia. It emphasizes the Government's role in regulating TKTCE as an integral component of communal intellectual property (CIP) that can be effectively integrated into the national development framework. The study employs a juridical-normative approach, utilizing both primary and secondary legal materials collected through comprehensive literature reviews and analyzed descriptively and qualitatively. This research highlights significant gaps in the current regulatory framework, particularly the inadequacies in international conventions that have led to economic losses for Indonesia. The findings indicate that the Government's recent initiatives, including Government Regulation Number 56 of 2022, aim to enhance protective measures for TKTCE, thereby fostering a creative ecosystem that benefits local communities. This research is crucial as it addresses the intersection of legal protection, cultural expression, and economic improvement, providing insights into how effective legal frameworks can empower communities and preserve cultural heritage.

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1. Introduction

Indonesia's cultural diversity and natural wealth, in the form of traditional knowledge and traditional cultural expressions, is a form of Communal Intellectual Property (CIP) that should be used as essential capital for national development. Intellectual Property (IP) is the result of thought that produces a valuable product or process for humans. The rights contained in an IP are exclusive rights that can be used to enjoy the results of creativity [1] economically. How meaningful the IP aspects contained in trade are On April 15, 1994, the Indonesian Government signed the final Agreement on the Uruguay Round of Multilateral Trade Negotiation. It ratified the Agreement Establishing the World Trade Organization, one related to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) [2]. The ratification became the starting point for the Indonesian Government in carrying out national economic development by increasing, expanding, strengthening, and securing markets for goods and services, investment, increasing competitiveness in international trade and its protection, as well as participating in encouraging the use of IP related to trade activities [3]. The steps taken have become one of the instruments driving Indonesia's success by strengthening the world economic order, the stability of the international trade system, the ability to adapt the national economy to the trade order between countries, as well as a commitment to the protection and

utilization of Traditional Knowledge and Traditional Cultural Expressions (TKTCE)[4] in broader trading activities.

The abundance of Indonesian cultural expressions is the essential capital of national development. As a protective effort, the Government needs to regulate appropriately through inventory and safeguarding actions to create an integrated, beneficial conservation ecosystem[5], as interpreted as a constitutional obligation that must be implemented by the state [6]. In response to issues related to CIP amidst cross-border trade competition, the Indonesian Government took quicker action by promulgating Government Regulation No. 56 of 2022 concerning Communal Intellectual Property. This step is based on the Government taking preventive efforts due to the lack of comprehensive CIP regulations and differences in views of countries that are members of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC-GRTKF) of the World Intellectual Property Organization (WIPO). as well as its authority as a world IP organization [7]. This arrangement is expected to control TKTCE, which tends to be unfair and uncertain, in addition to providing unilateral benefits by reducing benefits, which is one of the objectives of the law. Cultural expressions grow and develop over a long period. This cultural expression contains local values resulting from human interaction with the environment, is developed continuously, and is passed down from generation to generation, showing the existence of traditional culture. Meanwhile, as an Indonesian cultural heritage asset, TKTCE is believed to have noble moral, social, and national cultural values and high economic value. This fact makes TKTCE an attractive object that many parties can exploit without sharing the benefits with the community of origin.

Some parties have bad intentions (misappropriation), such as prohibiting the community of origin from using it in trading activities. Legal incidents up to the cassation level, such as criminal cases involving silver jewelry designs with crocodile skin motifs, Soka flower motifs (*plong*), wild cat motifs, and Balinese carving motifs in general, are proof of the weakness of the CIP protection system, especially regarding traditional cultural expressions [8]. This incident occurred in Bali in 2008 through PT. Karya Tangan Indah is a business group of John Hardy International Ltd., based in the United States. This company made demands against Balinese artist Ketut Deni Aryasa because it was deemed to have taken motifs that should have been used for generations in the community of origin without permission. John Hardy argued that the motif was a work of creation with the name of the combined river stone motif whose copyright had been registered with the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights [9]. This incident was not a case of mutual claims for a creation; thousands of silversmiths in Bali were psychologically affected and experienced anxiety over 1,800 silver jewelry motifs which were estimated to have been claimed by foreign nationals as their creations, even though these motifs were motifs that had existed for generations, hereditary and used as an economic support for the community of origin.

Apart from traditional cultural expressions, there are other legal incidents in the form of violations of traditional knowledge in tempe-making technology, which has been passed down from generation to generation and across generations, originating from the cultural heritage of the Indonesian people. This traditional knowledge is a typical food made from fermented soybeans, which is processed into various types of food, such as snacks, side dishes, chili sauce, and various other preparations. As one of the main foods, because it is a mandatory food category for the Javanese, tempe can encourage the food processing industry with high economic value, thus making many parties want to participate in exploiting it [10]. Japan, through its patent office in its country, registered tempe fermentation technology without permission from the community of origin in Indonesia. The Japan Patent Office (JPO) received a food patent entitled "*Preparation of soybean jam*" regarding the production of baked confectioneries containing fermented soybean mixed with tempe [11]. There is another patent registration at the European Patent Office (EPO) for eleven herbal medicine ingredients from nutritious plants in Indonesia, resulting in business actors from Indonesia asking for permission or paying the patent holder to obtain a patent license for trading activities [12]. The following legal incident was related to the broadcast of traditional Indonesian cultural expressions in Pendet dance, *wayang kulit*, and *reog ponorogo* on Discovery Channel advertisements titled

"*Enigmatic Malaysia*," carrying narratives about several cultures from Malaysia [13]. Several legal incidents related to TKTCE require the presence of the state in efforts to protect and regulate utilization fairly and legally [14]. This fundamental problem needs further research regarding legal protection models and the Government's efforts to utilize TKTCE in Indonesia to encourage improvements in the community's economy fairly and legally. Indonesia's rich cultural diversity and natural wealth manifest through TKTCE, which are vital CIP components. This research seeks to address the question: How do existing legal frameworks in Indonesia address the economic challenges communities face in protecting their Traditional Knowledge and Cultural Expressions? Despite recognizing TKTCE's value, communities face significant legal challenges, including ambiguities in ownership rights and insufficient enforcement of existing protections. Economically, these communities often suffer from exploitation by external entities, receiving little to no compensation for using their cultural heritage. Furthermore, unresolved legal ambiguities, such as the unclear application of international treaties like TRIPs to TKTCE, hinder effective protection. This research is crucial as it aims to highlight these challenges and propose solutions to empower communities economically while preserving their cultural identity. By examining the current legal landscape, this study aspires to inform policymakers about the necessary reforms to create a more equitable and effective legal framework for TKTCE, ultimately contributing to the sustainable development of Indonesia's cultural economy.

2. Method

This research employs a juridical-normative approach [15], focusing on the legal frameworks governing TKTCE in Indonesia [16]. The methodology consists of several key steps: (1) Legal materials were identified through comprehensive searches in legal databases, government publications, and academic journals. Relevant international treaties and conventions were also reviewed to understand their implications for TKTCE protection; (2) Sources were selected based on their relevance to TKTCE, credibility, and authority. Primary legal texts, such as national laws and regulations, were prioritized alongside secondary sources that provide critical analysis and commentary on these laws; (3) The selected legal materials were analyzed using qualitative content analysis and comparative methods. This involved examining the effectiveness of existing laws, identifying gaps, and assessing the implications of legal ambiguities on TKTCE protection; (4) The concepts of "*das sein*" (fact) and "*das sollen*" (norm) guide this research. "*Das sein*" is used to analyze the current state of TKTCE protection, while "*das sollen*" informs the normative recommendations for legal reforms that align with community needs and cultural values [17]; (5) The normative method was applied through a systematic review of existing laws, analysis of case studies, and identification of inconsistencies in legal texts. This process culminated in recommendations to enhance the legal framework for TKTCE protection; (6) The normative approach is particularly suitable for this research as it thoroughly examines the alignment between legal protections and the communities' legal and economic needs of comm. By identifying legal gaps and proposing reforms, this research aims to contribute to developing a more effective legal framework for TKTCE in Indonesia.

3. Results and Discussion

3.1. Protection of Traditional Knowledge and Traditional Cultural Expressions Based on International Agreements on Intellectual Property

The legal principles of *pacta sunt servanda* and obedience to national law play crucial roles in the protection of TKTCE in Indonesia [18]. The principle of *pacta sunt servanda* underscores the necessity for Indonesia to honor its commitments under international treaties related to cultural heritage, such as the Convention on Biological Diversity. However, discrepancies between these international obligations and national laws can create challenges for effective TKTCE protection [19]. The Copyright Law was a follow-up and harmonization of Presidential Decree 18 of 1997 concerning the Ratification of the Berne Convention for the Protection of Literary and Artistic Works so that the minimum limits of the convention became a reference in the protection of works, commercialization, and law enforcement of works. -works of art,

literature, science, and related rights [20] see Fig. 1. The model used in copyright protection was known as the declarative principle, which means that protection is automatic after a work is announced. The rights holder recorded in the Creation Registration Letter was considered the exclusive rights holder as long as it is not proven otherwise. The registration letter could be used as proof of ownership.

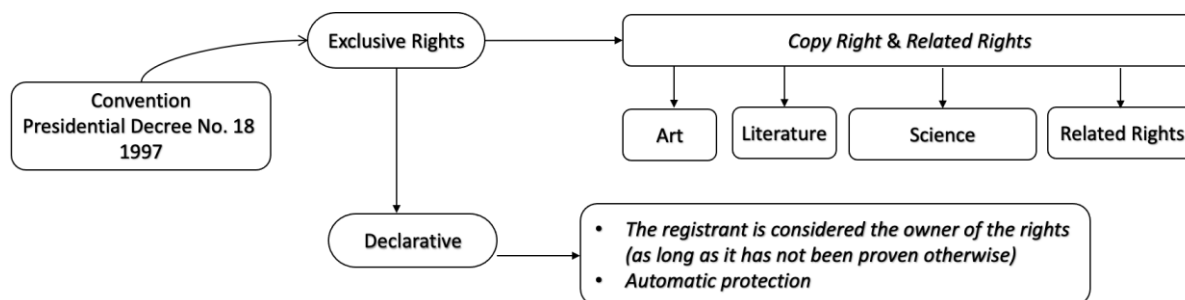


Fig 1. The IP protection scheme in Indonesia was based on the Berne Convention.

A critical analysis of Presidential Decree 24 of 1979 reveals significant limitations in its application to contemporary TKTCE issues. While the decree provides a framework for the protection of cultural heritage, it lacks specific provisions that address the communal nature of TKTCE and the economic rights of local communities [21], see Fig. 2. For instance, the decree does not adequately recognize the rights of Indigenous peoples to control and benefit from their cultural expressions, leading to potential exploitation by external entities. Case studies, such as the unauthorized use of traditional motifs in commercial products, illustrate the decree's shortcomings in safeguarding community interests.

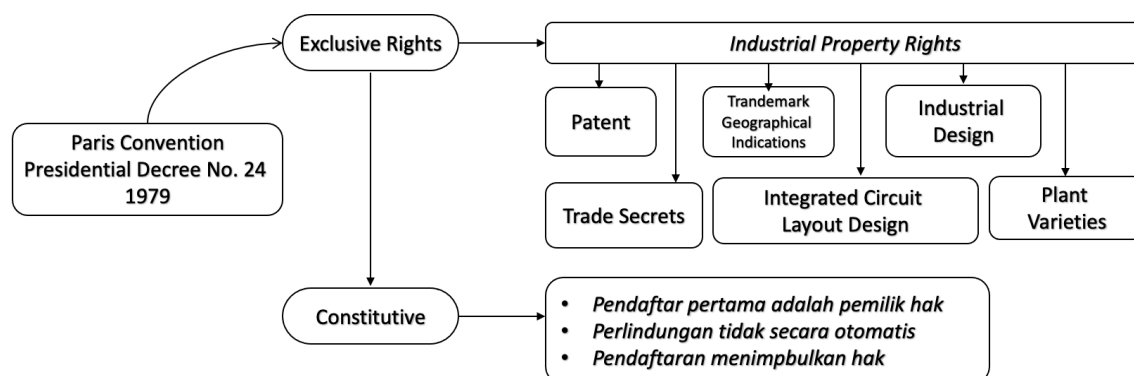


Fig 2. IP protection scheme in Indonesia based on the Paris Convention

The TRIPs Agreement was ratified and approved through Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization, which contained an attachment to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) [22]. The aim of following this Agreement was to increase IP protection for traded products, guarantee IP implementation procedures that did not hamper trade, formulate rules and discipline for implementing IP protection, and develop principles and provisions for international cooperation in handling goods resulting from counterfeiting or piracy [23]. TRIPs agreement created new standards for regulating 7 (seven) types of rights that applied to more than 100 (one hundred) countries. This mechanism was equipped with standards related to dispute resolution, threats and sanctions against violating countries, and control over anti-monopoly practices in IP licensing agreements [24]. The TRIPs Agreement did not provide a specific definition. Still, Article 1 Paragraph (2) stated, "For this Agreement, the term intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II [25]. For the TRIPs agreement, the term IP refers to all categories of IP regulated in Sections 1 to 7", as follows. Standards concerning the availability, scope, and use of intellectual property rights; copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits; protection of undisclosed information, control of anti-competitive practices in contractual licenses [26]. The provisions in

TRIPs became a reference internalized in national law by the Indonesian Government, see Fig. 3.

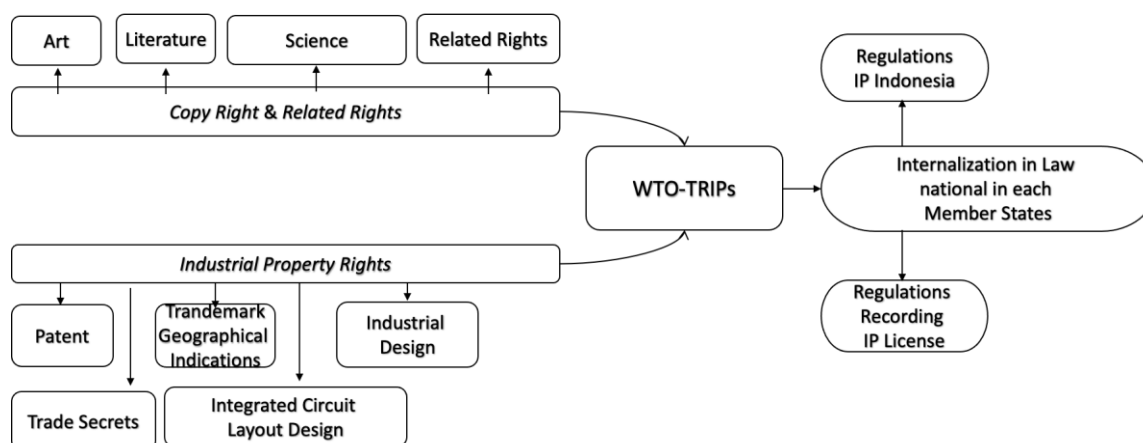


Fig 3. The IP protection scheme in Indonesia was based on WTO-TRIPs

International agreements in the IP field, which were the reference in the national IP protection system, namely the Berne Convention, Paris Convention, and TRIPs, did not explicitly regulate trade aspects related to IP, which intersect with TKTCE. Existing legal arrangements were still associated with IP protection in general and did not yet project protection for IP whose ownership is inclusive. However, constitutionally, it was the obligation of the state, in this case, the Government, to cooperate with the legislature in taking action against legal emptiness (*leemte*) to find the law through interpretation, analogy, or legal refinement (*rechtsverfijning*) [27], to protect human rights. The lives of many people [28]. Like the Indonesian TKTCE, which legal norms should regulate, it embodied governance in improving the community's economy fairly and legally.

3.2. Intellectual Property Legal Protection for Indonesian Traditional Knowledge and Expressions of Traditional Culture

In Salmond's theory, Fitzgerald stated that legal protection aims to integrate and coordinate the various interests of society caused by the traffic of interests so that specific interests could be protected by limiting the various interests of other parties. Legal protection was an agreement to regulate behavioral relations between members of society and individual relations with the Government as a representative of society's interests [29]. As social engineering, the law aimed to change people's behavior according to the objectives of the law itself [30] so that it obtained justice, benefit, and certainty in its application [31]. Ideally, efforts should always be made so that every rule and application of legal rules could create justice, benefit, and legal certainty. If protection does not occur, it is necessary to apply a priority scale [32]. This legal concept placed law as a combination of values that must be realized without violating values, especially the value of justice, which was highly upheld so that justice must be realized in factual and specific regulations as a form of the rule of law [33]. In labor theory, John Locke (1632-1704) explained that every person naturally had the right to himself and the results of his work (labor) because he had made sacrifices by discovering, processing, and adding personality to something [34]. He said giving awards was very important because someone had sacrificed to learn and process something from nature in property rights. His views were also related to ownership and rights that had been contained since humans were born by teaching the concept of ownership (property). In his opinion, "life, liberty, property," human ownership of the objects they produce, existed since humans were born. Objects in this context were tangible and intangible objects from human intellect. Furthermore, Georg Wilhelm Friedrich Hegel (1770-1831) developed the concept of "right, ethics, and state" as a justification for Locke's theory regarding the existence of something more profound to wealth (property) than just instinctive human behavior [35]. Wealth was an essential part of life. One way to build, develop, and understand the expressions it wished to control was for the state to establish boundaries between the community of origin and other assets of society more broadly. The

regulation of IP originating from TKTCE Indonesia was principally regulated so that the state could prevent misuse or unilateral monopoly over its use. This statement followed Gustav Radbruch's view of the legal ideal in laying down the principles of justice and legal certainty by emphasizing legal objectives related to legal benefits obtained from the state through regulations to create justice and legal certainty [36].

3.3. Intelektual Nasional Model for Regulation of Traditional Knowledge and Traditional Cultural Expressions Based on National Intellectual Property Laws

Law Number 28 of 2014 concerning Copyright had specifically regulated TKTCE in Article 38, Paragraph (1) to Paragraph (4), which stated as follows: (1) The state holds the copyright for traditional cultural expressions; (2) The State is obliged to inventory, preserve, and maintain traditional cultural expressions as intended in Paragraph (1); (3) The use of traditional cultural expressions, as referred to in Paragraph (1) must pay attention to the values that live in the community where they are used; (4) Further provisions regarding copyright held by the state for traditional cultural expressions as intended in Paragraph (1) are regulated by government regulations [37]. Article 38 states that the state is a legal subject and authority holder who manages and develops traditional cultural expressions by upholding the principles of the community of origin fairly and with legal certainty. This provision allowed everyone to obtain economic benefits in trade and as a source for creating new works, but the IP contained therein became the state's property entirely. Only the expression of the results of its development can be held by each creator. Law number 20 of 2016 concerning Marks and Geographical Indications had also included provisions related to TKTCE, especially in Chapter XII concerning the Removal and Cancellation of Registered Marks. The provisions in Article 72 Paragraph (7) point c state that "Removal of a registered mark at the minister's initiative can be carried out if; c. Has overall similarities with traditional cultural expressions, intangible cultural heritage (ICH), or names or logos that have been passed down from generation to generation [38]. The regulations contained in the provisions of Article 72 meant that the state, through the minister of law and human rights, could use its authority to delete registered marks to maintain the reputation, exploitation, and existence of TKTCE in the form of traditional cultural expressions and ICH as cultural heritage from generation to generation. From generation to generation so that it could be used more widely by the community of origin.

This arrangement positioned the state's presence in providing justice and legal certainty regarding the status of registered marks related to TKTCE. Registered marks had an exclusive and absolute legal force so that these rights could be defended against anyone, prosecuted against violations by anyone, so that the brand holder could not exercise a monopoly by exercising their rights by prohibiting anyone, including the community, from TKTCE, from trading in goods and services. Through Article 72, if there was a request to the minister of law and human rights by representatives of the community of origin, the minister could request the Trademark Appeal Commission to provide recommendations for the deletion of marks that had complete similarities with TKTCE. This provision also included space for communities from TKTCE to carry out collective trademark registration [39] by collectively granting trademark rights to a community or group of people with criteria in the form of nature, general characteristics, and quality of goods and/or services. This provision was a legal breakthrough in protecting brands that related to TKTCE by opening up space for communities of origin to obtain and regulate rights inclusively to become exclusive IP. Law Number 13 of 2016 concerning Patents regulated the use of genetic resources and/or traditional knowledge by inventors as stated in Article 26 Paragraph (1), Paragraph (2), and Paragraph (3); (1) If the invention is related to and/or derived from genetic resources and/or traditional knowledge, the origin of the genetic resources and/or traditional knowledge must be stated clearly and correctly in the description; (2) Information about genetic resources and/or traditional knowledge, as intended in Paragraph (1), is determined by an official institution recognized by the Government; (3) Sharing of results and/or access to the utilization of genetic resources and/or traditional knowledge as intended in Paragraph (1) is carried out under statutory regulations and international agreements in the field of genetic resources and traditional knowledge [40].

The explanation in Article 26 Paragraph (1) was that "*The reason for mentioning the origin of traditional knowledge in the description is so that other countries do not recognize traditional knowledge and to support Access Benefit Sharing (ABS)*". The Government's efforts to maintain the existence of traditional knowledge were also placed in Article 132 Paragraph (1) point b, which stated, "*The cancellation of patents based on court decisions as intended in Article 130 point b is carried out if patents originating from genetic resources and/or traditional knowledge do not meet the provisions as intended in Article 26*" [41]. This provision safeguarded genetic resources and traditional knowledge so that they were maintained through sharing results with the community of origin. Article 26 and Article 132 were essential parts regarding the presence of the state in filtering the use of the wealth of genetic resources and traditional knowledge, which should be a source of economic development and improvement for the community of origin without violating international principles. Three IP laws state that the state is the holder of rights and has the authority to regulate. However, other IP legislation also placed restrictions on IP that was public property or that had existed in society for generations, including Law Number 31 of 2000 concerning Industrial Design; Law Number 32 of 2000 concerning Integrated Circuit Layout Design; Law Number 30 of 2000 concerning Trade Secrets; and Law Number 29 of 2000 concerning Plant Variety Protection.

The Industrial Design Law did not yet regulate the use of traditional cultural expressions to create the external appearance of a product. However, it was implicitly stated in Article 2 Paragraph (1), "*Industrial design rights are granted for new industrial designs*" [42], and was emphasized through Article 4, "*Industrial design rights cannot be granted if the industrial design conflicts with applicable laws and regulations, public order, religion or morality*" [43]. Based on these provisions, it automatically provided an exception that traditional cultural expressions could not be registered and monopolized in an application. The statement was based on the existence of a substantive examination process following Article 26 Paragraph (5). It was confirmed through the explanation sheet that "*...substantive examination is an examination of applications based on Article 2 and Article 4 to determine the novelty aspect of the application, which can be carried out using references existing*" [44]. Through this provision, an application for industrial design rights with TKTCE elements for which comparative data was found would be rejected based on the novelty of the design and, at the same time, based on the provisions regarding control of TKTCE by the state based on Article 38 Paragraph (1) of the Copyright Law [45], so that it was exclusively not could be monopolized individually and/or by several people.

Integrated Circuit Layout Design (IC Layout Design) related to PTEBT has not yet been regulated. However, Article 2 Paragraph (1) of the Integrated Circuit Layout Design Law implicitly explained that "*IC Layout Design Rights are granted to original IC Layout Design,*" and Paragraph (2) clarified that "*an IC Layout Design is declared original if the design is the result of the designer's independent work, and when the IC Layout Design was created it was not something common to designers.*" Article 3 provided that "*IC Layout Design rights cannot be granted if the IC Layout Design conflicts with applicable laws and regulations, public order, religion or morality*" [46]. This provision automatically provided an exception for TKTCE from being able to be registered and monopolized as confirmed by Article 20 Paragraph (1), which stated that "*....the Directorate General checks the completeness of the administrative requirements as intended in Article 3, Article 10 and Article 11 on applications*" [47], in other words, the application would be rejected if it was not original and general so that control of TKTCE remained with the state. The Trade Secrets Law also did not regulate TKTCE specifically. Still, Article 2 explained, "*The scope of protection of trade secrets includes production methods, processing methods, sales methods, or other information in technology and/or business field which has unknown economic value. By the general public*", as stated in Article 3 Paragraph (2), "*This information is only known by certain parties or is not generally known by the public*" [48]. This provision emphasized that trade secrets could be registered if they were still confidential. In contrast, TKTCE was characteristic of being used by the general public for generations, so this provision acted as a filter for applicants who wished to exercise a monopoly on information originating from TKTCE, as has been said, regulated by Article 26 of the Patent Laws [11]. The Plant Variety Protection Law, which the Ministry of Agriculture implemented, regulated local varieties that had existed and been cultivated for generations by farmers and were the property of the community. Article 7

Paragraph (1) and Paragraph (2) explained that the state controls its treatment, and the Government is the executor of its control [49]. The point of contact with the use of TKTCE, especially towards traditional knowledge, was the system of cultivating plant varieties by farmers, which was carried out from generation to generation and became the community's property, so the state controlled the technological knowledge and plant varieties as legal objects.

3.4. Model of Defensive (Nonlegal) Protection of Traditional Knowledge and Expressions of Indonesian Traditional Culture

According to Teshager Dagne, legal protection through the IP regime for CIP could use a positive protection approach through a new IP system (extended from conventional IP), both outdated and existing ones, or through a defensive protection approach. A defensive approach was a non-legal approach that defended and prevented detrimental abuse or exploitation using a similar IP regime. This regulation was an effort to respond to the needs of Indigenous peoples and local communities who wished to benefit from TKTCE to maintain their reputation and obtain benefit sharing from other parties. Meanwhile, the positive protection approach encouraged the creation of protection using *sui generis* legal models, contractual agreements, and IP protection systems that supported indigenous peoples and local communities in promoting TKTCE [50]. Some of the models used by the Government to provide defensive protection for TKTCE Indonesia were as follows.

- Recording of traditional knowledge and expressions of Indonesian traditional culture through the Communal Intellectual Property Data Center: The Government, through the Minister of Law and Human Rights, issued Regulation of the Minister of Law and Human Rights Number 13 of 2017 concerning Communal Intellectual Property Data, see Fig. 4,[49] which was constitutionally based on the values contained in the 1945 Constitution in the context of managing cultural diversity and natural wealth of Indonesia. The regulation aimed to ensure Indonesia's cultural heritage and natural wealth can adequately support national development justly and with legal certainty. This regulation defined CIP as IP in the form of traditional knowledge, traditional cultural expressions, genetic resources, and potential geographical indications. This regulation was operationally enforced within the Ministry of Law and Human Rights through DJKI and all regional offices. The administration of TKTCE data spread throughout Indonesia was carried out through the CIP data center. Article 14 stated: "In carrying out the CIP inventory, the minister establishes a CIP inventory system as a data center" [51]. This data center was a model of non-legal protection that accommodated Indonesian TKTCE data sources. Several changes due to carrying out the inventory included those related to the organizational structure within the Ministry of Law and Human Rights, which oversees CIP. Therefore, its duties and authority needed to be adjusted [52] to adequately cover the process of administering CIP records. Such changes did not necessarily solve the problem, so they required some support in the form of adequate regulations, hoping that the inventory system in data centers could be implemented optimally to create legal certainty.

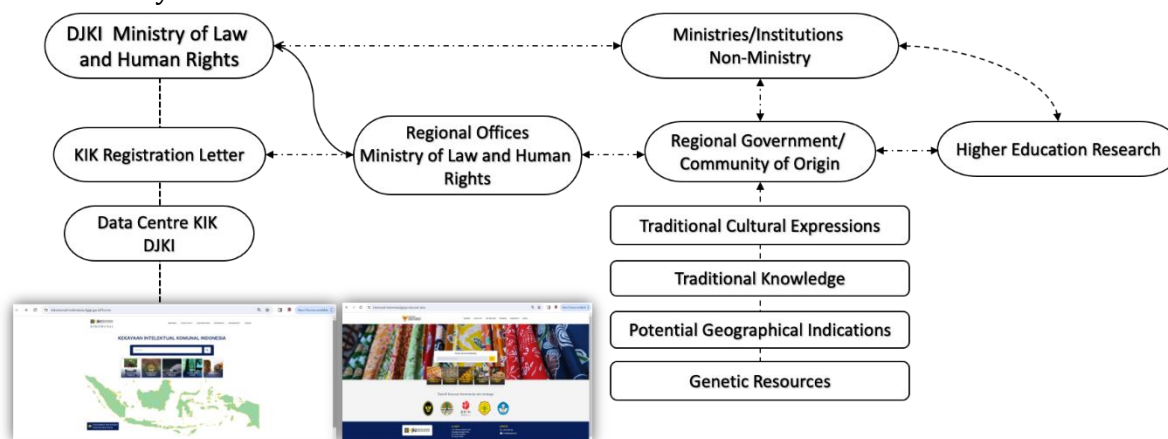


Fig 4. CIP inventory scheme based on Permenkumham No. 13 of 2017

Several obstacles to the weakness of regulations regarding CIP data could be observed from Article 7 Paragraph (2), which states that "The minister can cooperate with ministries/institutions and/or regional governments" [53]. This legal provision only stated the phrase "can cooperate," providing flexibility for related parties, such as ministries or non-ministerial institutions. Regional Government had not become part of the legal subject of the regulations being made because the subject being regulated was only under the authority of the primary duties and functions of the Minister of Law and Human Rights. This regulation was also crucial in starting a non-legal CIP protection system, which was manifested in a performance target for the Directorate General of Intellectual Property and regional offices of the Ministry of Law and Human Rights [54] and made into a national development priority program for 2020-2024 [55], in the context of mainstreaming social capital culture as a form of innovative and adaptive development, became a catalyst for development towards a prosperous, just and legal society. Indonesia Integrating Indonesian TKTCE data into the Indonesian Communal Intellectual Property Information System Realizing that TKTCE was the primary capital for development that must be regulated adequately, the Government promulgated Government Regulation 56 of 2022 concerning communal intellectual property, see Fig. 5 and Fig. 6 [56]. In this arrangement, CIP was defined as IP whose ownership was communal and had economic value while upholding the nation's moral, social, and cultural values, so it must be protected and utilized correctly. In this provision, CIP was described as an expression of traditional culture, knowledge, genetic resources, indication of origin, and potential geographical indications. Traditional knowledge was defined as all ideas and notions in society that contained local values resulting from experience interacting with the environment, which was developed continuously and passed on to the next generation. In contrast, traditional cultural expression was defined as all forms of expression of creative works, whether tangible or intangible or a combination of both, showing a traditional culture held communally and across generations [57].

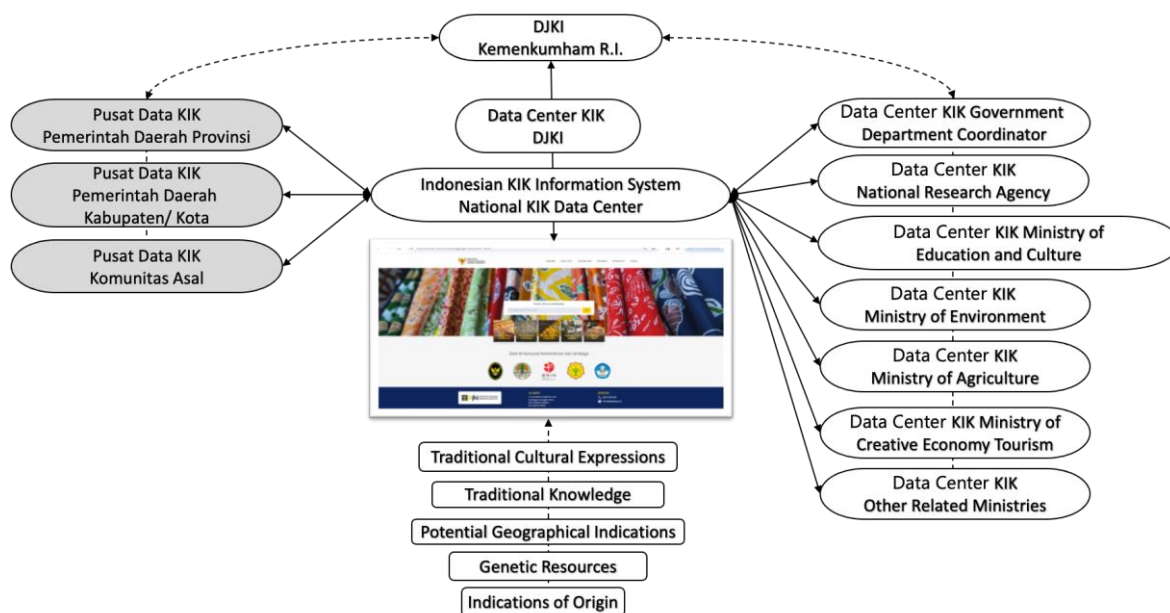


Fig 5. CIP inventory scheme based on Government Regulation No. 56 of 2022

The promulgation of this regulation was a form of strengthening Article 7 Paragraph (3), Regulation of the Minister of Law and Human Rights Number 13 of 2017 [58], in carrying out the constitutional mandate as it should, namely so that it could more broadly regulate and oblige all ministries/institutions and/or regional governments to cooperate, as in Article 3 Paragraph (2) and Paragraph (3) which stated that, "(2) The state is obliged to

inventory, safeguard and maintain CIP; (3) The obligations as intended in Paragraph (2) are carried out by ministers, ministers/heads of non-ministerial government institutions, and/or regional governments." Such obligations within the framework of the legal ecosystem had the aim of providing adequate protection for the preservation and development of TKTCE based on the constitutional mandate, as stated in Article 2 of this provision, "The protection, preservation, development, and utilization of CIP must be following the values that contained in Pancasila and the 1945 Constitution of the Republic of Indonesia." The existence of an additional field regulated through Article 4 point d, namely protection of indications of origin, was progress in strengthening the security of Indonesian CIP. Article 5 Paragraph (1) explicitly explains that the right to CIP is an inclusive moral right, guaranteed and/or carried out by the community of origin, which has economic benefits and is valid indefinitely. The regulation further explained that the protection of moral rights was exclusive, as stated in Paragraph (3), namely the potential for geographical indications after being registered to become geographical indications following the provisions of the Trademark and Geographical Indications Law [59]. Such provisions were the Government's commitment to protecting Indonesia's cultural diversity and natural wealth with a positive protection approach, both *sui generis* and protection using model laws to promote CIP belonging to indigenous peoples and local communities [50].

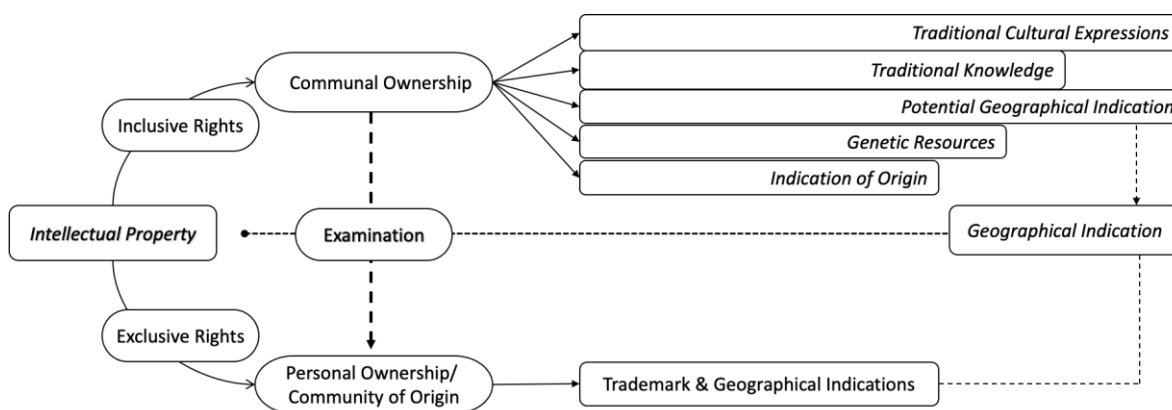


Fig 6. IP protection scheme in Indonesia Government Regulation No. 56 of 2022

The provisions related to CIP inventory in this regulation were regulated in Article 12 and were implemented through recording and integrating CIP data. Recording through the CIP data center was carried out before the promulgation of this regulation was incorporated into the CIP Indonesia information system. This situation aimed to provide defensive protection as stated in Article 27 Paragraph (2), which states that "Integration of CIP data in the Indonesian CIP information system as intended in Paragraph (1) is a form of defensive protection for CIP" [51]. Protection with a defensive protection approach like this could prevent misuse of TKTCE by other parties. Likewise, for TKTCE, which had not been registered, based on Article 35, it was emphasized that "The state continues to protect CIP which has not been recorded or CIP which has not been recorded following the provisions of statutory regulations" [51]. Considering that the rights contained in TKTCE were inclusive, the treatment of the Indonesian CIP information system was made open as stated in Article 31 Paragraph (2), except CIP data, which was sacred, confidential, or data held strictly based on the applicant's request, or because it was determined otherwise in statutory regulations, see Fig. 7.

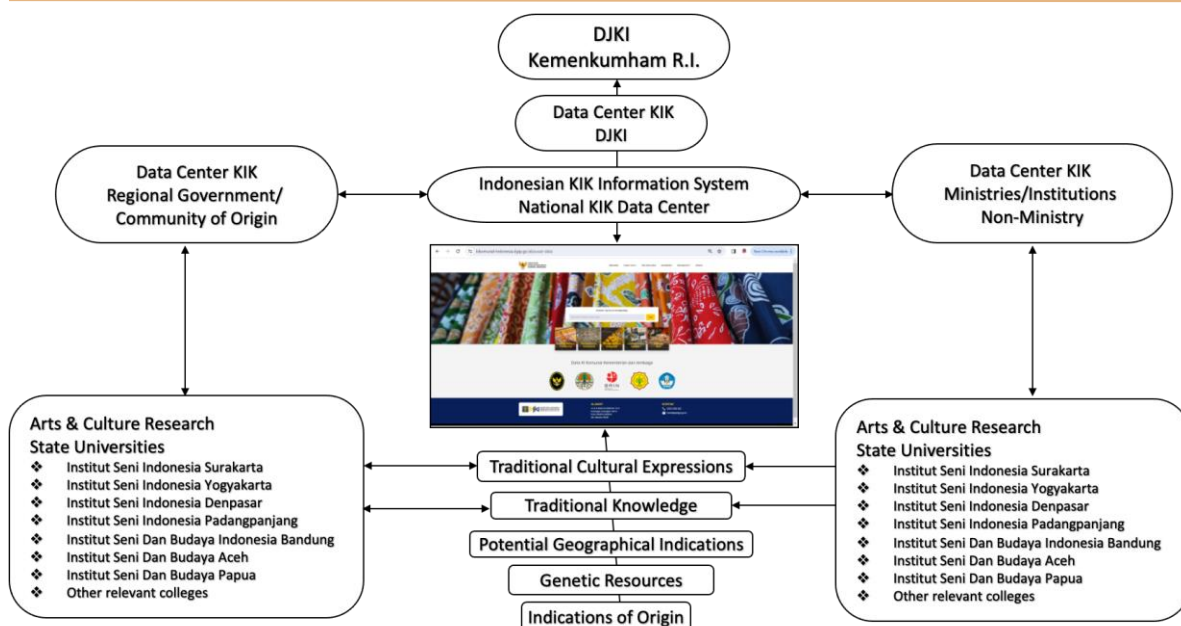


Fig 7. CIP inventory scheme through higher education involvement

- Safeguarding and maintaining traditional knowledge and expressions of Indonesian traditional culture: The community of origin could safeguard through its existence the development of existing cultural diversity and natural wealth, as well as being actively involved in monitoring its use by external parties as a control over the principles of justice, as well as providing space to not only obtain legal certainty, but space for justice. The principle of priority remained the first legal goal [60], hoping to create a benefit as the most basic desire of the community of origin. Conformity to the treatment of values, the maintenance of meaning, the maintenance of social identity characteristics, and the recognition of social institutions that were highly upheld were rights that the State constitutionally placed. Such arrangements for safeguarding TKTCE could be a breakthrough in cooperation based on shared responsibility between the Government as the implementer of the law and the community as the beneficiary, who was also a party related to the legal subject, so collaboration in safeguarding TKTCE could be established. The implementation of a defensive legal system sectorally was not fully capable of being implemented by the Government, so it required awareness and an active role from the community, especially the community of origin, to carry out recording and reporting, making it easier for the Government to guard against actions from other parties that were detrimental. Point a of Article 28 Paragraph (1) stated that safeguarding TKTCE could be carried out through "preventing exploitation of CIP that is not following the values, meaning, the identity of CIP, and/or social institutions that apply in the community of origin" [61]. The legal object in this provision was substantially similar to the provision in Article 28 Paragraph (2), but the difference lay in determining the Government as the legal subject. The provisions in Article 28 Paragraph (1), points b and c, also added related safeguards which could be carried out through: "b. mediation and/or advocacy on legal issues related to CIP; and/or c. diplomacy with other countries." This provision gave responsibility to the Government regarding handling legal issues that intersect with TKTCE, as well as diplomacy with other countries, as the inclusive protection model with a defensive system required support from different countries to recognize, respect, and value resources and cultural resources obtained from the community of origin country so that diplomacy was the most relevant method of handling TKTCE violations to use. Apart from guarding, TKTCE maintenance was also an effort to protect it using conservation methods. Maintenance, as stated in Article 29, explained that CIP maintenance was carried out by ministers, ministers/heads of non-ministerial government institutions, and/or regional governments and could be carried out through education, literacy, socialization, promotion, and utilization of CIP, which provided benefits to the community

of origin. Maintenance efforts could be made through formal, informal, and non-formal education, which instilled a mandatory model, as the Ministry of Education, Culture, Research, and Technology had done by laying out several areas of traditional cultural heritage. The regulation aimed at conservation efforts towards a culture that society abandoned was realized in study programs, study centers, and study centers, and it had been implemented in several study programs at seven state universities of arts and culture in Indonesia. Maintenance could also be carried out by providing adequate literacy, increasing public understanding through socialization, holding promotions, and encouraging development in the form of a creative ecosystem that supported the community of origin. Through these actions, the success of maintenance depended on the distribution of tasks and authority, which must be knitted by the Government simultaneously and concretely together with the community of origin.

- Indonesia Regulation of the Utilization of Traditional Knowledge and Expressions of Indonesian Traditional Culture through the Indonesian Communal Intellectual Property Information System: Regulations on the utilization of Indonesian TKTCE were based on Government Regulation No. 56 of 2022 concerning communal intellectual property Article 33 Paragraph (1) that, "*Everyone can utilize CIP contained in the Indonesian CIP information system with the following provisions: a. mention the origin of the CIP community of origin; b. maintaining the value, meaning, and identity of CIP; and c. pay attention to the values that live in the community of its carriers*". Substantially, this provision provided respect for the moral rights and economic rights contained in an IP, as stipulated in Article 6 of the Berne Convention, which stated: "*(1) 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 honor or reputation.*"[20]. This provision was the basis for regulating moral and economic rights in national IP law. The connection with moral rights was also explained in Article 33 Paragraph (2), "*If CIP is sacred, secret, and/or firmly held, the use of CIP as intended in Paragraph (1) must obtain permission from the community of origin*", then continued with Paragraph (3) also stating that, "*Utilization of CIP for commercial purposes must obtain permission following the provisions of statutory regulations.*" The provisions in this paragraph seemed to use a property ownership approach to prohibit other parties from using it without permission from the owner or right holder, namely the state through the community of origin. The legal provisions regarding the use of TKTCE through Article 33 Paragraph (1), Paragraph (2), and Paragraph (3), made it increasingly clear that the use of TKTCE, apart from commercial purposes, also gave freedom to everyone without exception to use it, including foreign citizens. Use it with notes per its provisions to maintain moral rights. Regulations that prohibit utilization were stipulated in TKTCE, which were closed and required permission to respect the values guarded and maintained by the community of origin. Utilization within a commercial framework by other parties should require the sharing of benefits, as confirmed in Article 33 Paragraph (4) that "*Utilization of CIP for commercial purposes as intended in Paragraph (3) was carried out by taking into account the agreed distribution of benefits following the provisions of statutory regulations.*" Such an arrangement should fulfill a sense of justice so that the community of origin is no longer the object of exploitation by the parties but can also obtain economic benefits from the rights contained in maintaining and preserving TKTCE for generations. Article 33 Paragraph (5) explained The form and procedures for obtaining permits and distributing benefits: "*..... determined by the minister and minister/head of non-ministerial government institution under their respective authorities*". Considering that the Government legally regulated the provisions regarding the instruments for granting permits and distribution of benefits through ministries or government agencies, further regulation was required so as not to create a legal vacuum that would hinder development and commercialization, resulting in the principles of justice, benefit and legal certainty not being fulfilled within the community of origin and society more broadly.

3.5. The role of the Government in improving the community's economy through the use of traditional knowledge and traditional cultural expressions

One of Indonesia's national goals was the realization of general welfare through economic and legal development. Its implementation included administering the state, national, and social life with an orientation towards community welfare arranged by legal norms [62]. A legal system built and implemented per national development goals boosted the strategy for encouraging a country's competitiveness. Likewise, in improving society's economy, the state, through the legal system, determined the success of something that had been resolved. An ideal IP legislation system would promote national development goals by improving the economy in line with the ideals of the law itself. The realization of the Copyright Law Article 16 Paragraph (3), which stated that "*Copyright can be used as an object of fiduciary security,*" aimed to encourage creativity in society, including developing traditional cultural expressions in the form of new creations and providing capital stimulation which was facilitated by the state. Article 108 Paragraph (1) of the Patent Law also stated that "*Patent rights can be used as an object of fiduciary guarantee,*" as well as being a liaison between inventors and industry to create a profitable ecosystem, including supporting capital facilitation for the development of traditional knowledge become a new invention so that it became a reference for exclusive technological innovation so that in its development it would encourage parties to carry out Access Benefit Sharing (ABS), thereby improving the economic level of the home community and broader society.

We could not separate the strategies from the efforts of neighboring countries with limited cultural heritage and natural wealth sources. We could develop more advancedly by relying on intellectual property management. Based on Singapore Brand Finance in 2014, as stated by Tan Weizhen, 42% of the value of this country's companies was intangible assets. This country had even developed a financing concept through the Intellectual Property Office of Singapore (IPOS) by appointing 3 (three) banks, namely The Development Bank of Singapore Limited (Bank DBS), Oversea-Chinese Banking Corporation Limited (Bank OCBC), and United Overseas Bank Limited (UOB Bank) to provide banking credit [63]. We hoped that many IP asset owners would open space for creative economy actors to develop the beneficial aspect seriously, especially for assets with high economic value. Law Number 24 of 2019 concerning the creative economy regulated the integration of creativity from Indonesia's cultural heritage, science, and technology. The regulation aimed to increase the added value of products through the connectedness of the creative economy value chain, including creation, production, distribution, consumption, and conservation, carried out by creative economy actors to strengthen product competitiveness, facilitate access, and provide adequate legal protection [64].

The Creative Economy Law was created to support a culture-based economy. Article 9 of the implementing regulations regulated the IP financing scheme. This scheme used IP as debt collateral. However, its implementation had several problems: the IP protection period was limited, and there was no concept of due diligence and relevant IP asset valuation. Juridical support for IP as an object of credit collateral did not yet exist. The Indonesian Government must resolve this problem immediately to implement the law effectively. Implementing IP as collateral to obtain credit in the financial services sector from such a legal ideal raised excellent hopes. It encouraged economic growth in society to create justice and certainty with benefits from the law itself. South Korea emerged from the economic crisis caused by the Korean War and the Asian crisis using IP based on local culture. World Bank data showed South Korea's gross domestic product (GDP) is only 4.8 million USD, while Indonesia's is 5.6 million USD. In 2017, Indonesia's GDP would be 1 billion USD, while South Korea's would be 1.5 billion USD [65]. South Korea had a developed economy and relatively high per capita income in East Asia because it had reached more than 33,000 US dollars. South Korea was also one of the countries that could expand its culture to the global realm with the Korean wave (k-wave) [66]. This fact showed that IP sourced from TKTCE could provide benefits to improve the community's economy if managed and developed adequately to support national development.

Law Number 05 of 2017 concerning the Advancement of Culture stipulated strategic steps to protect, develop, utilize, and foster objects of cultural advancement for the sake of an Indonesian society that was politically sovereign, economically independent, and had a cultural

personality [67]. Concerning TKTCE, in Part 2 Article 22 Paragraph (3) in its provisions, it regulated security measures which stated that "*Securing objects of cultural advancement is carried out to prevent foreign parties from making claims on IP objects of cultural advancement*" Following Paragraph (4) securing objects of cultural advancement culture was carried out by; (1) updating data in the integrated cultural data system continuously; (2) pass on the objects of cultural advancement to the next generation; (3) fight for objects of cultural advancement as world cultural heritage. The spirit was also balanced by the establishment of a joint database referring to the duties and functions of ministries/state institutions in the field of culture through the Directorate General of Culture of the Ministry of Education, Culture, Research, and Technology, which has the duty and authority to carry out an inventory of Intangible Cultural Heritage (ICH) data, as the conservation objectives in Presidential Regulation 78 of 2007 concerning the Convention for the Protection of Intangible Cultural Heritage, Ratification of the Convention for the Safeguarding of the Intangible Cultural Heritage, United Nations Educational, Scientific and Cultural Organization (UNESCO) of 2003 [68]. Many issues intersect with cultural and economic aspects, so the legal protection of TKTCE should be a shared responsibility. Even though culture and IP had different legal fields because human rights and IP rights covered cultural rights were covered by economic law, their linkage would avoid potential exploitation and abuse (*misappropriation*) from outside parties of the rights owned by the community of origin in a way that could take that potential easily and took it outside the region or abroad, and then multiplied its function [69], see Fig. 8.

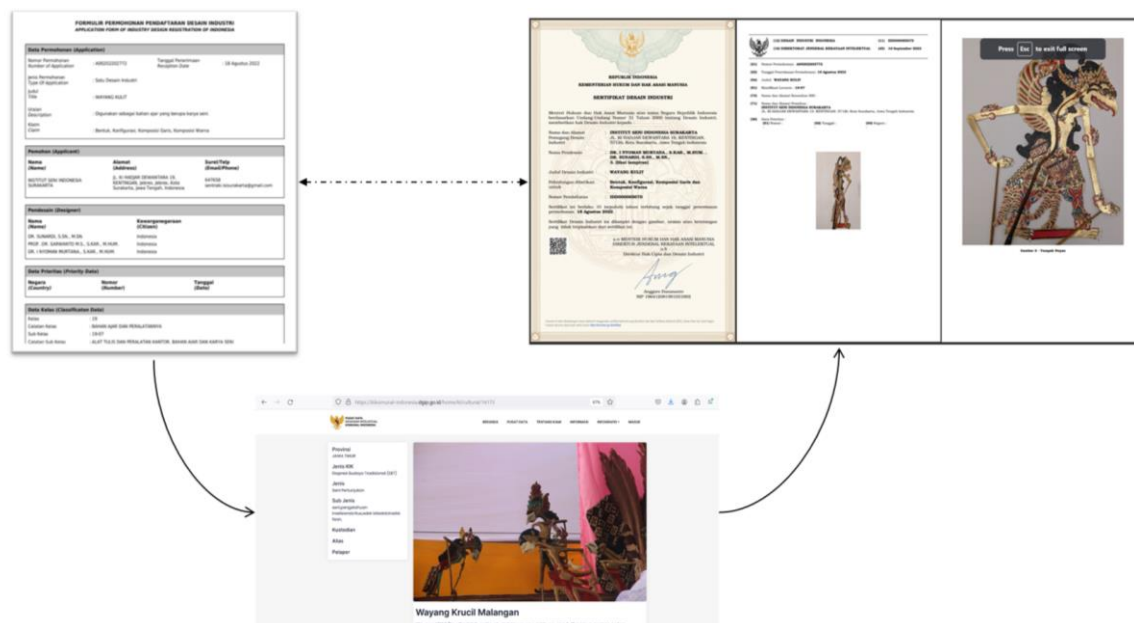


Fig 8. Utilization of the CIP data center in determining the novelty of industrial designs in applications that relate to traditional cultural expressions of *wayang kulit*

The TKTCE inventory was essential for defensive protection and ongoing TKTCE development. The TKTCE database supports exploring new ideas, developing new IPs, and building identity and reputation. The new IP could be created from developing traditional cultural expressions, inventions from traditional knowledge, industrial designs from traditional cultural expressions, and innovative trademarks from TKTCE. Through proper use of TKTCE, it was hoped that the development of new creative industry sectors would emerge to increase economic growth significantly. We could observe together that, fundamentally, in society, there were patterns of TKTCE utilization that had been carried out through a system of inter-generational inheritance, so it was not known when and who started it. Adequate TKTCE data would stimulate the community to participate in developments with high economic value. Furthermore, the interplay between national and international law is essential for understanding the current landscape of TKTCE protection. For example, while Indonesia has ratified international conventions to protect cultural heritage, implementing these frameworks

at the national level remains inconsistent. The administrative processes associated with Intellectual Property Rights (IPR) registration present additional challenges for TKTCE protection. Many communities face significant barriers, including high costs, complex bureaucratic procedures, and a lack of awareness about their rights. These challenges can result in delays in registration, leaving TKTCE vulnerable to unauthorized use.

4. Conclusion

This research has examined the protection of TKTCE in Indonesia through the lens of legal frameworks and community rights. The concepts of "das sein" (fact) and "das sollen" (norm) are critical in understanding the current state and the necessary reforms for TKTCE protection. Das sein reflects the existing challenges communities face, including inadequate legal recognition of TKTCE, ineffective enforcement of existing laws, and barriers to IPR registration. *Das sollen* emphasizes the need for a legal framework that aligns with international standards and prioritizes local communities' rights and economic interests. The implications of these findings extend beyond legal reform; they underscore the importance of TKTCE protection in preserving Indonesia's cultural heritage and identity. Effective legal frameworks can foster economic development by enabling communities to benefit from their cultural expressions, thus contributing to sustainable tourism and cultural industries. Furthermore, strengthening TKTCE protection can enhance Indonesia's international standing in cultural heritage and biodiversity discussions. This research highlights the urgent need for legal reforms that empower communities and protect their cultural heritage, ensuring that Indonesia's rich traditions are preserved for future generations.

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