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Designing a *Sui Generis* Regime for Traditional Cultural Expressions in Indonesian Tourism: Lessons from the Philippines & Thailand

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Abstract: The increasing commercialization of Traditional Cultural Expressions (TCEs) within the tourism sector poses risks of misuse, cultural misrepresentation, and inequitable treatment of custodian communities. This study aims to compare the regulatory frameworks governing TCE protection in tourism across Indonesia, the Philippines, and Thailand, and to formulate an ideal regulatory design to strengthen TCE protection in Indonesia. The research employs a normative legal method, utilizing statutory and comparative approaches. Secondary data, consisting of legislative materials, were collected through library research and analyzed using comparative legal analysis and prescriptive analysis techniques. The findings indicate that all three countries recognize TCEs as intangible cultural heritage requiring protection; however, they differ in their legal constructions of control. Indonesia adopts a state-ownership model, reinforced through communal intellectual property registration and the Law on Cultural Advancement. The Philippines emphasizes a community ownership model grounded in the principle of Free, Prior, and Informed Consent (FPIC), while Thailand relies on institutional oversight through the Intangible Cultural Heritage Commission. Although Indonesia's framework aligns with Hadjon's Legal Protection Theory, it remains largely administrative, fragmented, and insufficient in ensuring effective control by custodian communities. Accordingly, an ideal regulatory framework should be directed toward a *sui generis* regulatory design incorporating FPIC principles; regulatory delivery through the integration of communal intellectual property registration with tourism licensing and benefit-sharing mechanisms; and regulatory inspection through the establishment of a dedicated TCE supervisory commission.

Keywords: Traditional Cultural Expressions, Cultural-Based Tourism, Communal Intellectual Property, Cultural Heritage Rights, Legal Protection.

INTRODUCTION

Traditional Cultural Expressions (TCEs) constitute a significant attraction for international tourists visiting various countries, particularly in Southeast Asia. According to the *World Tourism Barometer*, more than 1.1 billion people undertook international travel in 2025, representing 5% growth compared to 2024 (Suswanto, 2025). This indicates a positive trend in the tourism sector, particularly in cultural-based tourism (Karmin, 2025). Several ASEAN member states have actively promoted tourism based on cultural heritage. In the Philippines, international tourists are drawn to sites such as the San Agustin Church, a UNESCO World Heritage architectural landmark (Mesana et al., 2024), while also promoting traditional festivals, including Sinulog and Ati-atihan (Partosa, 2022). Similarly, Thailand highlights its historical, artistic, and cultural richness through destinations such as Ayutthaya and Sukhothai, as well as temples in Chiang Mai and Bangkok (Feng, 2025). In Indonesia, Bandung has been continuously developing its tourism sector, incorporating even elements such as halal tourism to accentuate its uniqueness and authenticity, combined with the local culture (Nurrachmi et al., 2024).

While the rise in tourist visits demonstrates the substantial economic potential of TCEs, it also exposes them to vulnerability, creating legal challenges related to their protection, particularly in developing countries (Agustianto et al., 2024; Saputri & Tongat, 2024). Various international instruments recognize the importance of safeguarding cultural heritage, including the *Convention for the Safeguarding of the Intangible Cultural Heritage 2003* (UNESCO 2003 Convention) and initiatives by the World Intellectual Property Organization (WIPO) concerning Traditional Knowledge and Traditional Cultural Expressions (Samsithawrati et al., 2024). Within ASEAN, the Philippines has adopted a sui generis framework through the *Indigenous Peoples' Rights Act of 1997* (IPRA). Thailand has also established regulatory measures for protecting communal intellectual property through the *Copyright Act 1994* (as amended, most recently by Copyright Act (No. 5) 2022) and the *Promotion and Preservation of Intangible Cultural Heritage Act 2016* (ICH Act). However, in practice, the commercialization of TCEs in both Thailand and the Philippines often exceeds acceptable limits, resulting in cultural degradation (Maharani & Dea Malinda, 2024; Salvador-Amores, 2020). These developments indicate that cultural misuse is increasingly prevalent in the tourism sector due to aggressive promotion strategies (Nendrawan & Rastika, 2021), creating an imbalance between the rights of indigenous communities and the applicable legal frameworks.

In contrast to the Philippines and Thailand, Indonesia regulates TCE protection under Law Number 28 of 2014 on Copyright. Article 38 paragraph (2) of the Copyright Law stipulates that “the State shall inventory, safeguard, and maintain traditional cultural expressions as referred to in paragraph (1),” thereby placing responsibility for TCE protection on the State (Adawiyah & Rumawi, 2021). However, the widespread circulation of imitation batik products demonstrates ongoing violations in the form of intangible cultural heritage exploitation (Azhar, 2025). This not only causes economic losses for traditional batik artisans but also undermines Indonesia’s cultural reputation globally (Tasyarani, 2025). In fact, Articles 18B paragraph (2) and 32 of the 1945 Constitution of the Republic of Indonesia implicitly mandate the State to preserve and protect national cultural heritage. This situation reflects a gap between normative regulation and empirical reality, highlighting the need for comparative legal analysis within the ASEAN region to formulate a fair, effective, and contextually appropriate protection model. While the country also has Government Regulation No. 56 of 2022 on Communal Intellectual Property, it does not categorically provide a sui generis form of protection and its subsequent commercialization mechanism, positioning the country to be reliant on the fragmented legal norms across its legal system.

The growing body of literature has discussed the surrounding issues relevant to the topic and focus of this study. For example, Purwandoko et al. 2021 have examined the normative

implementation of Article 38 of the Copyright Law without discussing how such norm can be expanded to holistically cover the inherent need for a sui generis protection of TCE (Purwandoko et al., 2021). Despite crucially highlighting the importance of materializing Article 38 of Indonesia's Law No. 28 of 2014 on Copyright (Copyright Law) to ensure the protection of TCE, the study was concluded with the urgency to enact the draft for a government regulation that was designed to address exactly that, which has now been enacted as Government Regulation No. 56 of 2022 on Communal Intellectual Property (GR CIP). Similarly, Novianti et al. 2025 highlighted the need for an implementing regulation to operationalize Article 38 of the Copyright Law, despite GR CIP already being enacted in 2022 (Hafizah Novianti et al., 2025). The study also did not expand on what a sui generis regime would look like, particularly for a country like Indonesia where TCE represents a major asset.

Similarly, discussion around TCE protection in Thailand has also addressed the need for a sui generis system. A study carried out by Unhavaithaya (2022) highlighted how the Thai framework for IPR protection is not designed to properly address the concerns surrounding the protection of TCE, particularly in the face of cultural commercialization (Unhavaithaya, 2022). However, the study did not describe on what a sui generis system ideally look like for Thailand, along with its unique challenges. On the other hand, studies that reference the protection of TCE in the Philippines have moved away from urging the creation of a sui generis protection of TCE, to discuss highly specific issues that are relevant to the country's TCE discourse. For example, study carried out by Violago (2022) noted that despite already having a legal framework that can be classified as a sui generis system to protect TCE in Indigenous Peoples' Rights Act (IPRA), the country still lacks concrete mechanisms for protection, specifically consent mechanisms and indigenous community involvements (Violago, 2022). Despite mentioning the gap of community involvement, the recommendations for legal development devised by the study largely left that same issue unaddressed.

Despite the extensive development of the literature, there is still a research gap in comprehensively aligning the need for a sui generis system and the practical needs of TCE protection in Indonesia, the Philippines, and Thailand within the context of commercialization through tourism. This research gap is also prevalent in the comparative context, particularly due to the fact that these three jurisdictions share the ASEAN context, cultural diversity, and the reliance on cultural heritage as one of the primary tourism assets. The divergent approaches taken between the three countries, where the Philippines adopts a community ownership model, Indonesia applies a state-ownership approach, and Thailand employs an institutional protection model (Widyanti, 2022), represents an added novelty value to the gap that this study is aiming to fill. These differences are particularly significant given that the Philippines has established a sui generis protection system for TCEs, whereas Indonesia and Thailand still rely largely on individualistic copyright frameworks (Manaswin, 2025).

Furthermore, the novelty of this study also lies in its focus on TCE protection within the tourism context through a comparative legal approach involving Indonesia, the Philippines, and Thailand, thereby addressing gaps in prior research. Additionally, this study is further enhanced by the addition of Legal Protection Theory, as devised by Philipus M. Hadjon (Yetniwati et al., 2024), which enables the construction of an ideal preventive mechanism required to address the protection of TCE and the interests of local communities through the IP Law domain. This study holds theoretical significance by contributing to the development of legal theory and strengthening the legal framework for TCE protection in Indonesia through comparative analysis with the Philippines and Thailand. Practically, it is expected to provide input for policymakers and regulators in formulating and improving legal policies on TCE protection, as well as to serve as a reference for future research employing more diverse methodological approaches. The study is limited to normative legal analysis and focuses only on Indonesia, the Philippines, and Thailand; therefore, its findings cannot be generalized to

represent global practices comprehensively. Accordingly, this research compares the legal frameworks governing TCE protection in tourism across the three countries, highlighting their strengths, weaknesses, and potential adoption of best practices to enhance TCE protection in Indonesia.

METHOD

This study employs a normative legal research method (doctrinal legal research) to analyze and scrutinize the relevant positive laws (Disemadi, 2022), particularly those that are relevant to the protection of TCEs in the tourism sector, particularly in Indonesia, the Philippines, and Thailand, in order to identify similarities, differences, and their legal implications (Sukmawan & Damayanti, 2025). This method is selected because the study focuses on a comparative assessment of normative constructions across the three jurisdictions to formulate an ideal regulatory design for TCE protection in Indonesia. Accordingly, the analysis emphasizes legal norms governing authority, consent or licensing mechanisms, and remedial frameworks, while also evaluating their conformity with Philipus M. Hadjon's Legal Protection Theory. The study adopts a prescriptive orientation, as its central concern lies in regulatory design and the allocation of authority or control over rights as constructed by legal norms. Therefore, it does not involve empirical field measurement of policy effectiveness; case examples are used solely to illustrate urgency and assess normative adequacy, rather than as empirical evidence.

The research applies both a statute approach and a comparative approach (Zainuddin & Karina, 2023). Through the statute approach, the study examines written legal norms forming the basis for TCE protection. Through the comparative approach, the three jurisdictions are analyzed across several key aspects: recognition of collective rights of indigenous communities over TCEs; the locus of control over such rights; preventive and repressive legal protection mechanisms; and supervisory institutions and their linkage to tourism governance. Each aspect is derived from the respective legal materials of each country and systematically compared to identify similarities, differences, and legal implications. Preventive and repressive indicators serve as the primary analytical framework, grounded in Hadjon's Legal Protection Theory. Legal equivalence is established across the three jurisdictions by outlining statutory mechanisms that are compared not by their formal doctrinal categories, but by their shared regulatory function in governing the locus of authority, commercial consent, and state protection of TCEs within the tourism sector. To maintain the consistency of doctrinal-comparative analysis, this study employs a concrete comparative matrix, consisting of locus of authority, mandatory state obligations, preventive licensing and consent mechanisms, equitable benefit-sharing requirements, and repressive remedial frameworks.

This study relies on secondary data consisting of legal materials, including: the 1945 Constitution of the Republic of Indonesia; Law Number 28 of 2014 on Copyright; Government Regulation Number 56 of 2022 on Communal Intellectual Property; Law Number 5 of 2017 on Cultural Advancement; the *Indigenous Peoples' Rights Act of 1997*; Joint Administrative Order No. 1 of 2016; Republic Act No. 10066 (*National Cultural Heritage Act of 2009*) as amended by Republic Act No. 11961 of 2023; the *Copyright Act 1994* (as amended, most recently by Copyright Act (No. 5) 2022); the *Promotion and Preservation of Intangible Cultural Heritage Act 2016*; the *Convention for the Safeguarding of the Intangible Cultural Heritage 2003*; and the *United Nations Declaration on the Rights of Indigenous Peoples 2007*. Data were collected through library research by identifying, reviewing, and analyzing relevant legal and scholarly materials (Disemadi, 2022). The data are analyzed using two legal analysis techniques: comparative legal analysis and prescriptive analysis. Comparative legal analysis is employed to examine TCE protection frameworks in Indonesia, the Philippines, and Thailand based on the subjects holding rights or locus of control, forms of preventive and repressive

protection, consent or licensing mechanisms prior to commercial utilization, and the authority of supervisory institutions (Tan, 2021). Prescriptive analysis is then used to formulate an ideal regulatory design for Indonesia based on these comparative findings, particularly through the framework of regulatory design, regulatory delivery, and regulatory inspection, ensuring that TCE protection is not merely normative but also operational and effectively integrated into cultural tourism governance.

RESULTS AND DISCUSSION

Comparative Regulation of TCEs Protection as Cultural Heritage in the Tourism Sector in Indonesia, the Philippines, and Thailand

In the context of protecting Traditional Cultural Expressions (TCEs) as part of cultural heritage, international legal instruments serve as important normative benchmarks for assessing national regulatory frameworks. A primary reference is the *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003*, which emphasizes safeguarding through identification, documentation, protection, research, promotion, transmission, and revitalization, while respecting communities as cultural custodians (Articles 1 and 2(3)). Similarly, Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples 2007* (UNDRIP) affirms the rights of indigenous peoples to maintain, control, protect, and develop their cultural heritage and traditional expressions. These instruments underscore that TCE protection must extend beyond preservation to include recognition of and respect for custodian communities as holders of cultural value. Accordingly, conceptual clarity regarding TCEs is essential.

In this regard, WIPO defines TCEs broadly to include performing arts, music, dance, designs, symbols, and handicrafts. Under Indonesian law, TCEs are defined as living intangible cultural heritage that is practiced and transmitted intergenerationally within a community, as stipulated in Article 1(2) of Government Regulation No. 56 of 2022 on Communal Intellectual Property (*Peraturan Pemerintah Kekayaan Intelektual Komunal/PP KIK*). From an international legal perspective, indigenous communities function as cultural custodians, serving as primary guardians of cultural meaning, value, and use. Consequently, TCE ownership is inherently communal rather than individual (Hasibuan et al., 2025). This communal character positions TCEs more appropriately as collective rights attached to communities rather than as individual copyrightable works (Manuel, 2025). Therefore, the notion of “communal” should not be equated with state ownership or the public domain. Under the principle of equity in international law, fair treatment of TCEs requires not only preservation but also recognition of equal rights for indigenous communities as legitimate authorities over their cultural expressions (Triadi et al., 2025).

With the expansion of tourism, the use of TCEs has intensified. It is therefore necessary to distinguish between cultural promotion, commercial exploitation leading to commodification, and cultural misappropriation. Cultural promotion positions TCEs as instruments of education and preservation while maintaining cultural integrity and proper attribution. In contrast, exploitation treats TCEs as profit-oriented tourism products, often resulting in commodification that shifts cultural meaning and typically excludes equitable benefit-sharing (Gunawan, 2025). Misappropriation, however, occurs when TCEs are used without community consent, without attribution, or without fair distribution of benefits. This distinction is critical given the growing economic value of TCEs in tourism, where they function as attractions, destination identities, promotional content, and derivative products such as souvenirs and digital media. Such economic value often drives intensive and repeated use, increasing the risk of unauthorized exploitation, cultural distortion, and erasure of community identity (Dzikri & Zulkifli, 2025).

Accordingly, TCE protection cannot rely solely on individualistic intellectual property regimes, particularly copyright. Copyright law typically requires identifiable authorship, originality, and provides protection for a limited duration. In contrast, TCEs are intergenerational and continuously evolving cultural practices embedded within communities, making it difficult to identify a single creator or classify them as individual works. Their enduring nature is incompatible with time-limited protection, as expiration would place them in the public domain, allowing unrestricted use without consent or benefit-sharing (Wiro, 2024). Applying such a framework to TCEs risks undermining community control and facilitating exploitation. Given these characteristics, a comparative examination of legal frameworks in Indonesia, the Philippines, and Thailand becomes essential, particularly regarding rights holders, state obligations, consent mechanisms, and institutional arrangements.

Table 1. Comparative Regulation of TCE Protection in Indonesia, the Philippines, and Thailand

No.	Aspect	Indonesia	Philippines	Thailand
1	Legal Basis	• Law No. 28 of 2014 on Copyright; • Government Regulation No. 56 of 2022 on Communal Intellectual Property; • Law No. 5 of 2017 on Cultural Advancement	• Indigenous Peoples' Rights Act of 1997 (IPRA); • Joint Administrative Order No. 1 of 2016; Republic Act No. 10066 as amended by Republic Act No. 11961 of 2023	• Copyright Act 1994 (as amended, most recently by Copyright Act (No. 5) 2022); • Promotion and Preservation of Intangible Cultural Heritage Act 2016
2	Rights Holders / Locus of Authority	• The State holds copyright over TCEs (Article 38(1) Copyright Law; • Article 3(1) PP KIK)	• Indigenous communities hold rights to control, protect, and utilize TCEs (Sections 32–33 IPRA)	• No explicit ownership; control exercised through institutional oversight (Sections 5 and 10 ICH Act)
3	State Obligations	• Obligation to inventory, safeguard, and maintain TCEs (Article 38(2) Copyright Law; • Article 3(2)–(3) PP KIK; Article 43 Cultural Advancement Law)	• Obligation to recognize and protect indigenous rights, prevent exploitation, and maintain cultural registries (Sections 2, 29, 33 IPRA; Section 14 RA 11961)	• Oversight by the ICH Commission to monitor, evaluate, and prevent harm to cultural heritage (Section 10 ICH Act)
4	Limitations on Use	• Use must respect community values (Article 38(3) Copyright Law; PP KIK)	• Requires Free, Prior, and Informed Consent (FPIC) (Section 3(g) IPRA; Rule 5 JAO No. 1/2016)	• Compliance ensured through institutional supervision (Section 10 ICH Act)
5	Licensing Mechanisms	• Ministerial permits for large-scale or foreign commercial use; administrative sanctions apply (Articles 37–38 Cultural Advancement Law)	• FPIC-based consent mechanism	• Approval of utilization and promotion plans by the ICH Commission (Section 10(9) ICH Act)
6	Institutional Framework	• Ministries, government agencies, and regional governments (Article 3(3) PP KIK)	• National Commission for Culture and the Arts (NCCA); • National Commission on Indigenous Peoples (NCIP)	• Intangible Cultural Heritage Commission

Source: Author's analysis based on legal materials

Fundamentally, all three countries recognize Traditional Cultural Expressions (TCEs) as intangible cultural heritage of significant value for strengthening cultural identity and enhancing tourism appeal, and therefore requiring legal protection. However, each jurisdiction adopts a distinct regulatory model that assigns the “locus of control” over TCEs to different subjects. These differences produce varying legal consequences, particularly in three key aspects: the authority to grant permission, entitlement to economic benefits, and standing to seek remedies in cases of misuse. Indonesia adopts a state-ownership model, as stipulated in Article 38(1) of Law No. 28 of 2014 on Copyright and reinforced by Article 3(1) of Government Regulation No. 56 of 2022 on Communal Intellectual Property (PP KIK). Under this framework, the state exercises formal authority to regulate, register, and control the use of TCEs. Consequently, commercial utilization is largely treated as an administrative matter under state control, while custodian communities are not explicitly positioned as mandatory consent-givers. This approach also affects benefit distribution, which remains oriented toward sustaining the broader cultural ecosystem rather than ensuring direct allocation to custodian communities, as reflected in Article 37(3) of Law No. 5 of 2017 on Cultural Advancement. Furthermore, the legal standing of communities to object, demand cessation, or seek compensation for misuse remains relatively weak compared to systems recognizing community ownership.

Furthermore, in cases of TCE misuse, the legal standing of communities to lodge objections, demand cessation of use, or seek compensation remains less clearly defined in systems that do not recognize communities as primary rights holders. In contrast, the Philippines explicitly recognizes the collective rights of indigenous peoples under Sections 32 and 33 of the *Indigenous Peoples’ Rights Act of 1997* (IPRA), indigenous communities are entitled to protect, use, and control their cultural heritage, including TCEs. Consequently, the protection of TCEs in the Philippines is more strongly oriented toward the direct legitimacy of communities in granting consent for the utilization of their cultural expressions (Widyanti, 2022). This model positions communities not merely as objects of preservation but as principal decision-makers who determine whether TCEs may be used, under what conditions, and how economic benefits are distributed.

By comparison, Thailand does not explicitly define ownership of TCEs. Instead, it adopts a general regulatory approach through the *Copyright Act 1994* (as amended) and emphasizes institutional strengthening to oversee cultural commercialization (Wongburanavart, 2023). Under this framework, TCEs are managed by the state through the *Promotion and Preservation of Intangible Cultural Heritage Commission* (ICH Commission), established under Section 5 of the ICH Act, while copyright law serves as a general protective regime. As a result, authorization and control over TCE utilization are not centered on explicit claims of community ownership or state ownership, but rather on the state’s supervisory function to monitor, evaluate, and prevent actions that may harm cultural heritage. This distinction in the locus of control significantly shapes how protection mechanisms respond to the rapid and often problematic commercialization of TCEs in tourism.

Despite differences in ownership models, all three countries impose substantial obligations on the state to safeguard TCEs. Indonesia mandates the state to inventory, safeguard, and maintain TCEs, as stipulated in Article 38(2) of the Copyright Law and Article 3(2)–(3) of PP KIK, thereby assigning supervisory and protective functions to government institutions (Lumbansiantar & Siahaan, 2025). Additionally, Article 43 of the Cultural Advancement Law requires the government to ensure TCE protection within cultural development policies. Similarly, the Philippines obliges the state to recognize, respect, support, and protect the rights of indigenous communities, as provided in Sections 2(b) and 29 of IPRA. Although ownership is vested in indigenous communities, the state retains a continuing responsibility to safeguard these rights.

The obligations in question include the adoption of effective measures to prevent the exploitation, loss, or destruction of cultural heritage, as stipulated in Section 33 of the *Indigenous Peoples' Rights Act of 1997* (IPRA). Furthermore, the Philippines has established a cultural heritage registry under Section 14 of Republic Act No. 10066 (*National Cultural Heritage Act of 2009*), as amended by Republic Act No. 11961 of 2023, to ensure that cultural heritage is properly identified, documented, and monitored. In addition, cultural agencies and local governments are required to conduct cultural mapping of heritage assets to ensure the timely and effective implementation of protection measures, facilitate cross-sectoral integration, and prevent misuse. This framework reflects the Philippines' emphasis on collaborative governance between the state and indigenous communities in safeguarding TCEs.

Although Thailand does not explicitly define ownership of TCEs, it places strong emphasis on the state's obligation to protect cultural heritage. This is primarily operationalized through the Intangible Cultural Heritage Commission (ICH Commission), established under Section 5 of the *Promotion and Preservation of Intangible Cultural Heritage Act 2016* (ICH Act). The Commission's functions, as set out in Section 10, include monitoring, supervising, and evaluating the promotion and safeguarding of intangible cultural heritage, preventing actions that may harm registered heritage, and issuing recommendations to users. Notably, Section 10(12) provides incentives for individuals, groups, or organizations contributing to cultural preservation, indicating that safeguarding efforts extend beyond the state to society at large. This demonstrates that, despite the absence of explicit exclusive ownership, Thailand accords significant importance to the preservation of cultural heritage.

Each country also establishes limitations and authorization mechanisms governing the use of TCEs. In Indonesia, TCE utilization must respect the values upheld by custodian communities, as provided in Article 38(3) of the Copyright Law. Accordingly, such use is permissible only insofar as it does not contravene customary norms, moral values, or indigenous legal principles that may harm the community (Dwisvimiar, 2022; Kurniawan, 2023; Kusuma & Roisah, 2022). In addition, Article 37 of Law No. 5 of 2017 on Cultural Advancement requires large-scale industries and/or foreign entities to obtain ministerial approval prior to commercial utilization, with administrative sanctions imposed under Article 38 for non-compliance. While this framework establishes a basic licensing regime, its scope remains limited, as it does not encompass all actors within the tourism sector.

By contrast, the Philippines adopts the principle of Free, Prior, and Informed Consent (FPIC) as a central mechanism governing TCE utilization, particularly for commercial purposes such as tourism, in line with UNDRIP (Gunawan, 2025). Article 19 of UNDRIP requires states to consult and cooperate with indigenous communities to obtain their consent before adopting measures that may affect them, while Article 32(2) mandates consultation prior to approving projects affecting their lands, territories, or resources. These provisions underscore the centrality of community consent. Accordingly, FPIC must be obtained without coercion or manipulation and only after full disclosure of the purpose and scope of the proposed activity in terms understandable to the community. This requirement is further reinforced by Rule 5 of Joint Administrative Order No. 1 of 2016, which affirms the rights of indigenous peoples to regulate access to their cultural heritage and to control, develop, and protect their cultural expressions across temporal contexts.

An illustrative example is the 2021 dispute involving Nas Academy and Apo Whang-od, in which the National Commission on Indigenous Peoples (NCIP) intervened following allegations of misappropriation and exploitation due to the absence of valid community consent. The NCIP found that the purported consent was not properly obtained and that the contractual terms were disproportionately burdensome, granting perpetual and exclusive rights over cultural content, including rights of modification and transfer without community approval (Embudo, 2021). The Commission emphasized that Kalinga tattoo art constitutes a

TCE and that its commercialization risked distorting its cultural meaning and transferring control from the custodian community to commercial actors, in violation of FPIC standards and indigenous rights (Cabreza, 2021). The dispute was ultimately resolved through customary reconciliation facilitated by the NCIP, and the agreement was declared void (National Commission on Indigenous Peoples, 2021). This case demonstrates that FPIC operates not only as a procedural requirement but also as an effective remedial mechanism.

In contrast, Thailand does not explicitly define the permissible limits of cultural utilization. However, the ICH Act assigns comprehensive supervisory authority to the ICH Commission to ensure that no actions result in harm to cultural heritage. Similar to Indonesia and the Philippines, Thailand emphasizes that TCE utilization must not be detrimental. This is implemented through a licensing mechanism under which the ICH Commission reviews and approves action plans and programs for cultural promotion and safeguarding proposed by the Department of Cultural Promotion (Section 10(9) ICH Act).

Institutionally, the Philippines has established specialized bodies, including the National Commission for Culture and the Arts (NCCA), created under Section 3(i) of Republic Act No. 11961, which serves as the principal agency for cultural protection, preservation, and promotion (Viray, 2025). Additionally, the National Commission on Indigenous Peoples (NCIP), established under Section 38 of IPRA, is specifically mandated to protect the rights and welfare of indigenous communities. The distinction between these institutions lies in their respective mandates: the NCCA addresses general cultural governance, whereas the NCIP focuses on indigenous rights, FPIC, ancestral domains, and TCE-related matters.

By contrast, Indonesia's state-ownership model assigns responsibility for TCE protection to existing governmental structures (Sulistiorini, 2022). Article 38 of the Copyright Law establishes state control over TCEs, further operationalized by Article 3(3) of PP KIK, which assigns responsibilities to ministers, government agencies, and regional governments. Consequently, Indonesia adopts a decentralized model, with regional governments playing a central role in documentation, development, and supervision of TCE utilization within tourism contexts. However, this structure requires strong inter-sectoral and multi-level coordination to avoid fragmented implementation.

Overall, the Philippine framework can be regarded as the most comprehensive among the three jurisdictions, given its integration of FPIC as a core legitimacy requirement, the existence of cultural registries, specialized institutions, and enforcement mechanisms governing commercial utilization. It firmly positions TCEs as collective rights of indigenous communities and ensures their authority over cultural use. The Nas Academy case illustrates that this framework is not merely declaratory but operational in practice. Nevertheless, its effectiveness depends on institutional capacity, community awareness, and compliance by tourism actors. The Philippine model of community control and FPIC represents the widest coverage of Legal Protection Theory, as it fulfills the need to balance the inherent disadvantage that local communities have, such as resources and understanding of bureaucratic hurdles, in the face of potential exploitation of their cultural heritage that does not benefit them fairly, particularly in regard to authenticity and reputation of their heritage. More importantly, it positions local communities as active legal gatekeepers of any TCE commercialization, to ensure better oversight (Sánchez-Lasaballett & González, 2024).

While Thailand's framework is less comprehensive in terms of ownership recognition, it demonstrates notable strengths in institutional oversight. Through the ICH Commission, Thailand ensures systematic monitoring, evaluation, and control of cultural commercialization, thereby emphasizing preservation and regulatory supervision. Moreover, where TCEs are embodied in new works or recorded performances, copyright law provides an additional layer of protection and enforcement. Thus, despite the absence of explicit collective ownership, Thailand maintains a relatively robust system of protection through institutional governance.

Under Hadjon's theory, this represents a more narrow coverage of legal protection needs, as institutional oversight functions primarily as a repressive legal instrument, which while necessary for state authority to penalize unauthorized commercialization and correct cultural distortions after they occur, does not provide enough room for local community involvement despite their crucial role in maintaining the authenticity of TCEs through their first-hand knowledge and cultural tradition.

Indonesia's regulatory framework is notably progressive, as it provides layered protection through state ownership, communal intellectual property registration, and cultural governance mechanisms. However, it remains predominantly administrative and insufficiently operational in regulating TCE utilization within the tourism ecosystem. Key aspects—such as detailed licensing procedures, implementation mechanisms, and community consent—are not yet clearly defined or systematically enforced, unlike the FPIC framework in the Philippines or the institutional clarity of Thailand's ICH Commission. Furthermore, reliance on existing governmental structures creates coordination challenges across sectors and levels of governance, potentially resulting in inconsistent implementation. Consequently, while Indonesia's state authority theoretically provides preventive protection through administrative registration, its failure to mandate direct community control renders the framework weak. Because these mechanisms bypass the custodian communities, the system lacks accessible repressive protection for those communities to seek remedies when commercial exploitation occurs.

Accordingly, Indonesia should develop a *sui generis* regulatory framework that incorporates FPIC principles, establishes a dedicated supervisory body, integrates communal intellectual property registration with tourism licensing systems, ensures equitable benefit-sharing mechanisms for custodian communities, develops community-based TCE databases with differentiated access for sacred or restricted elements, sets clear compliance standards for TCE use in tourism, and provides explicit sanctions for exploitation, misappropriation, and unauthorized commodification (Nurdin et al., 2025). Such reforms would transform TCE protection from a predominantly administrative function into an effective regulatory system capable of governing cultural commercialization in a consistent and enforceable manner.

The Ideal Regulatory Framework for the Protection of Traditional Cultural Expressions as Cultural Heritage in Indonesia's Tourism Sector

Culture-based tourism has developed on the premise that culture constitutes a primary attraction offered to tourists, whether in the form of attractions, living culture, or cultural heritage. The utilization of cultural heritage, particularly Traditional Cultural Expressions (TCEs), which occurs rapidly, massively, and repeatedly in various forms of tourism commercialization, renders such expressions increasingly vulnerable. Such patterns of utilization heighten the risks of misappropriation, shifts in values and meanings, erosion of community identity, and inequitable distribution of economic benefits (Disemadi et al., 2023). Meanwhile, the Sustainable Development Goals (SDGs) emphasize that tourism should not solely pursue economic gains but must also ensure the preservation of cultural sustainability (Fitrah et al., 2025). This is reflected in SDG 11.4, which underscores the importance of strengthening efforts to safeguard and preserve cultural heritage, as well as SDG 8.9, which promotes the development of sustainable tourism capable of advancing local culture and products. Accordingly, the protection of TCEs within the tourism sector must be positioned as an integral part of tourism governance, namely a governance framework that not only regulates destination promotion but also establishes standards for cultural utilization, involves custodian communities, requires attribution of cultural origin, and ensures equitable benefit-sharing in order to preserve cultural sustainability and protect the rights of indigenous communities.

In practice, violations of TCEs do not always manifest as inter-state claims but may also arise from cumulative, everyday acts that are difficult to detect. This is evident in the phenomenon whereby cultural objects are frequently repackaged to enhance their attractiveness to tourists, thereby creating the risk of deviation from their original cultural values in the absence of clear compliance standards (Sari et al., 2023). One example illustrating the vulnerability of TCEs within the tourism sector is the Kecak dance performance in Bali, which is highly favored by tourists. In tourism practice, such performances are often packaged into shorter and more entertaining formats, accompanied by scenic settings, in order to accommodate tourist preferences. In fact, the Kecak dance originally constitutes a sacred ritual intended to ward off evil spirits and disease within the community, thus any transformation in its form requires careful scrutiny.

The adaptation of the Kecak dance within the tourism sector cannot automatically be regarded as a cultural violation. Where modifications are carried out by or in collaboration with the custodian community, while maintaining attribution of cultural origin, preserving the core values of the performance, and providing economic benefits to the custodian community, such changes may be understood as adaptive commercialization that remains permissible within tourism practices. However, such modifications may evolve into cultural distortion where they exceed acceptable limits, eliminate sacred meanings, alter socio-cultural functions, or reduce cultural elements to mere commercial spectacle. Furthermore, such utilization may be categorized as cultural misappropriation where it is undertaken without the consent of the custodian community, without proper attribution, and without fair benefit-sharing.

On the one hand, such modifications generate economic benefits and strengthen the image of cultural destinations; on the other hand, they raise concerns that TCEs may experience a shift in cultural values or a loss of meaning that ought to be safeguarded by both the custodian communities and the State (Bertha & Larasati, 2022). Although custodian communities have sought to maintain a distinction between the Kecak dance as a tourism performance and as a sacred expression, such vulnerabilities remain relevant, particularly as cultural preservation depends not only on the separation of performance forms but also on the continuity of spiritual and philosophical value transmission amid modernization, globalization, and the growing economic orientation of younger generations.

These vulnerabilities necessitate a legal protection framework that is not merely normative but also capable of safeguarding TCEs both prior to and following violations. In the absence of clear regulation governing the commercial utilization of TCEs, such expressions risk being continuously treated as public goods that may be freely used by any party in any form. Accordingly, the State must establish compliance standards for tourism actors in the utilization of TCEs, particularly with respect to the consent of custodian communities, attribution of cultural origin, protection of sacred elements, and equitable distribution of economic benefits.

According to Philipus M. Hadjon's Theory of Legal Protection, the law should function to protect citizens' rights from arbitrariness, injustice, and legal uncertainty through both preventive and repressive legal instruments (Syahnakri et al., 2025). Furthermore, in order to ensure that such protection is realized in a just manner and with legal certainty, regulatory frameworks must be designed in a gradual yet systematic manner. In other words, in strengthening the legal protection of TCEs, Hadjon's theory must be combined with and translated into a more operational regulatory framework through the model of regulatory design, regulatory delivery, and regulatory inspection. At the first level, regulatory design should be employed to formulate regulatory frameworks aimed at addressing the actual needs of custodian communities as the guardians of cultural values, meanings, and sustainability (Disemadi, 2026). At the second level, regulatory delivery ensures that the regulatory design can be effectively implemented in practice, including through the recording of communal

intellectual property, integration with tourism licensing systems, community consultation procedures, and benefit-sharing mechanisms. At the final level, regulatory inspection serves to strengthen supervision and remedial measures by regulating how the State conducts oversight, compliance audits, complaint mechanisms, cessation of activities, imposition of sanctions, and recovery measures in cases of misuse of TCEs. Thus, the State must not only position indigenous communities as protected subjects but also recognize them as key actors who exercise control over the utilization of their cultural heritage, ensuring that economic benefits do not come at the expense of cultural identity and values.

Within Hadjon's Theory of Legal Protection, preventive legal protection fundamentally serves to ensure that the State has established legal mechanisms that guarantee indigenous communities can retain control over their TCEs prior to any misuse (Ramadani et al., 2025). Conversely, repressive legal protection functions as a remedial mechanism following violations of TCEs, ensuring that the rights and dignity of cultural owners remain protected in accordance with principles of legal justice (Suryani, 2024). Accordingly, the assessment of TCE protection cannot be based solely on the existence or absence of preventive and repressive instruments in safeguarding TCEs from harmful tourism commercialization. It must also evaluate whether such instruments have been systematically designed, effectively implemented, and properly supervised through the framework of regulatory design, regulatory delivery, and regulatory inspection. In other words, Hadjon's Theory of Legal Protection constitutes the normative foundation for assessing TCE protection in Indonesia, while regulatory design, regulatory delivery, and regulatory inspection serve as the operational framework for formulating an ideal model of TCE protection within the tourism sector.

The distinction between preventive and repressive protection designs is significant, given that violations of TCEs may occur rapidly and repeatedly, ranging from misuse to outright exploitation. The more a legal protection framework aligns with Hadjon's theory and is capable of being concretely operationalized through regulatory design, regulatory delivery, and regulatory inspection, the more it reflects the adequacy of protection afforded to TCEs. Within the Indonesian legal framework, the initial construction of TCE protection is situated within the copyright regime through the principle of state ownership (Setiawan, 2023). Article 38 of the Copyright Law designates the State as the rights holder responsible for ensuring the continued protection of TCEs and requires that their utilization respect the values upheld within the custodian communities. This provision demonstrates that the State possesses a legitimate basis to regulate and control the commercial utilization of TCEs. However, from the perspective of contemporary international law, an overly state-centric approach may be subject to criticism for being insufficiently aligned with the principles of community-based rights and the right to self-determination of indigenous peoples as recognized under Article 31 of the UNDRIP. Accordingly, the state-ownership approach must be carefully formulated so as not to create a disconnect between the State as the formal rights holder and the custodian communities as the actual custodians who possess the most comprehensive understanding of the values, meanings, and sacred boundaries of TCEs (Disemadi, 2026; Viray, 2025).

This concern is further reinforced by the concept of authorized heritage discourse, which tends to interpret cultural heritage from national, scientific, and institutional perspectives, thereby rendering it less compatible with local community understandings that view cultural heritage as living practices, oral traditions, and integral components of social identity. Therefore, an ideal normative design must not merely position the State as the rights holder but must also affirm the status of custodian communities as rights-bearing subjects entitled to grant consent, determine the limits of utilization, receive economic benefits, and seek remedies in cases of misuse of TCEs. While the State may continue to function as protector, facilitator, and regulator of TCE utilization, the regulatory framework must ensure that custodian communities do not lose control over the cultural heritage they have inherited. In this regard, Indonesia's

regulatory design should be directed toward the establishment of a *sui generis* legal framework for TCE protection that incorporates the obligation of Free, Prior, and Informed Consent (FPIC), safeguards sacred or confidential elements, regulates attribution of origin, prohibits cultural distortion and misappropriation, and establishes measurable benefit-sharing mechanisms.

Preventive instruments in Indonesia are already reflected in provisions concerning the obligation of the State to undertake the inventory, safeguarding, and maintenance of TCEs, as stipulated in Article 38 paragraph (2) of the Copyright Law. These obligations are further reinforced by the Government Regulation on Communal Intellectual Property (PP KIK), which affirms that rights over communal intellectual property are held by the State and mandates ministries, agencies, and/or regional governments to carry out inventory and maintenance functions pursuant to Article 3 of the PP KIK.

In governance practice, the mechanism of registration or recordation of communal intellectual property, as provided under Articles 12 and 16 of the PP KIK, has functioned as an initial protective instrument to map TCEs frequently utilized in tourism performances, promotional activities, and derivative products. This mechanism is significant as it establishes formal legal recognition of communal cultural identity and serves to prevent unilateral claims, misuse, or exploitation of cultural heritage (Dzikri & Zulkifli, 2025). However, within an ideal regulatory design, communal intellectual property recordation should not be confined to mere administrative data collection or formal recognition. Rather, it must form part of regulatory delivery by linking cultural data to tourism utilization permits, user verification, community consent mechanisms, and the monitoring of economic benefits.

Hadjon emphasizes that governmental authority plays a crucial role in ensuring legal protection of communal rights over cultural heritage to prevent exploitation that disadvantages indigenous communities as rightful owners (Consoleo et al., 2024). In Indonesia, beyond the copyright regime and communal intellectual property recordation, the Cultural Advancement Law also provides a preventive framework grounded in cultural governance that is relevant to TCEs as objects of cultural advancement. Article 22 of the Cultural Advancement Law obliges the central and/or regional governments to safeguard cultural advancement objects in order to prevent violations, including claims over such objects—among them TCEs—by foreign parties. This is carried out through updating data within an integrated cultural data system, transmitting cultural heritage to future generations, and pursuing recognition as world cultural heritage. Furthermore, Article 24 stipulates that maintenance efforts must prevent damage, loss, or extinction of cultural objects through the preservation of noble values and wisdom, their use in everyday life, the safeguarding of diversity, and the revitalization of cultural ecosystems. These provisions demonstrate that Indonesia places significant importance on the preservation of cultural advancement objects, including TCEs.

Beyond safeguarding and maintenance, Article 28 of the Cultural Advancement Law mandates the publication of information relating to the inventory, safeguarding, maintenance, and rescue of cultural objects through various media. This aims to disseminate information on cultural advancement objects to both domestic and international audiences in order to anticipate claims by foreign parties. Meanwhile, Article 30 encourages the development of cultural objects through dissemination, study, and enrichment of diversity. Article 32 paragraph (2) further provides that the utilization of cultural advancement objects must aim to strengthen national character, enhance cultural resilience and public welfare, and increase Indonesia's active role and influence in international relations. These provisions indicate that Indonesia has established a foundational framework for cultural protection and advancement. However, from the perspective of regulatory delivery, such norms must be translated into concrete implementation procedures directly linked to the commercial utilization of TCEs within the tourism sector, as they currently remain predominantly administrative in nature.

Nevertheless, cultural governance under the Cultural Advancement Law still predominantly emphasizes protection through preservation and cultural advancement efforts (Hernandi, 2022). Therefore, the regulatory framework must be more comprehensively connected to commercial utilization within the tourism sector. For instance, while Article 28 emphasizes the dissemination of cultural information and allows public participation, such dissemination must be accompanied by technical regulations that ensure oversight and sensitivity to cultural values. This is essential to prevent the exposure of sacred or confidential knowledge that could facilitate exploitation, particularly within digital spaces. Accordingly, cultural publication should be accompanied by access classifications—such as public, restricted, and confidential—consistent with the communal nature of TCEs. Furthermore, in the context of tourism, safeguarding and maintenance must be complemented by detailed compliance standards capable of being tested within commercial utilization permits. Within the framework of regulatory delivery, such access classification ensures that communal intellectual property data functions not merely as a promotional tool but also as a mechanism for controlling utilization, distinguishing between TCEs that may be publicly disseminated, those requiring limited authorization, and those that must not be commercialized due to their sacred or confidential nature.

Fundamentally, communal intellectual property recordation cannot be treated as an end in itself, as tourism operates within a commercial ecosystem that necessitates mechanisms for controlling utilization. Although formal recognition has been granted through recordation, the resulting protection remains largely administrative and does not yet fully guarantee the substantive rights of indigenous communities (Dzikri & Zulkifli, 2025; Hasibuan et al., 2025). Consequently, recordation does not automatically resolve critical issues, such as determining who is authorized to utilize TCEs for tourism commercialization, digital promotion, or derivative products, and how the resulting benefits are to be distributed. In this regard, the Cultural Advancement Law has, in fact, regulated commercial utilization mechanisms under Article 37, which imposes an obligation to obtain utilization permits for large-scale industries and/or foreign parties from the Minister, subject to requirements including prior informed consent, benefit-sharing, and attribution of origin. This provision is further reinforced by Article 38, which stipulates administrative sanctions for violations or misuse of such permits, ranging from warnings to suspension of activities and revocation of permits.

Through these provisions, Indonesia has acknowledged the importance of consent and benefit-sharing in the commercial utilization of cultural heritage. However, the scope of regulated subjects remains limited to large industries or foreign entities. From the perspective of regulatory delivery, such licensing mechanisms must be expanded and further elaborated to ensure systematic implementation and practical effectiveness. They should not be confined to large industries or foreign actors but must also encompass key actors in cultural tourism commercialization, including event organizers, small and medium-sized enterprises producing souvenirs, destination managers, tour operators, commercial content creators, digital platforms, and other creative industry participants. Such regulatory strengthening is necessary to ensure that utilization permits function not merely as administrative requirements but as enforceable compliance standards capable of verifying community consent, attribution of origin, limitations on the use of sacred elements, and equitable benefit-sharing.

Conversely, Article 37 paragraph (3) of the Cultural Advancement Law directs that the proceeds derived from benefit-sharing shall be utilized by the Central Government to sustain and maintain the ecosystem of cultural advancement objects, which is normatively important for cultural sustainability. However, this provision requires a more comprehensive regulatory framework to ensure that economic benefits arising from the utilization of TCEs are distributed in a more measurable and equitable manner to custodian communities, rather than being confined to general or diffuse benefits (Wiro, 2024). In practice, certain parties frequently

invoke the pretext of “cultural promotion” to utilize TCEs without providing adequate compensation to the communities that own them (Onibala et al., 2025). Accordingly, within an ideal regulatory design, benefit-sharing mechanisms must clearly regulate the beneficiaries, the forms of benefits provided, the timing of payments, the proportion or basis for calculating compensation, the allocation of funds for community sustainability, and reporting obligations. By addressing these elements in detail, benefit-sharing evolves from a general principle into an enforceable mechanism that can be supervised and ensures that indigenous communities receive equitable benefits, in line with Hadjon’s theory and the framework of regulatory design, regulatory delivery, and regulatory inspection (Situmeang et al., 2024). In this ideal regulatory model, state authority functions not to monopolize control, but to enforce benefit-sharing as a strict preventive licensing standard prior to use, and as a mandatory repressive remedial obligation if communities are financially bypassed.

If the control over the utilization of TCEs is not comprehensively structured and does not extend across all societal actors, TCEs risk continuing to be treated merely as economic objects without adequate protection. In such circumstances, where tourism-driven commercialization causes harm to communities, the absence of operational mechanisms may hinder communities from seeking cessation of such commercialization or obtaining compensation. Therefore, it is imperative for Indonesia to strengthen the operational aspects of TCE protection, particularly by clarifying consent requirements as a prerequisite for utilization and reinforcing control and supervision through a competent authority or commission to prevent harmful commercialization practices, as exemplified in the regulatory frameworks of the Philippines and Thailand. Indonesia must translate general norms into concrete procedures that clearly determine who holds protective rights, when permits are required, which authority is responsible for issuing such permits, who bears responsibility in the event of disputes, who is entitled to economic benefits, what standards govern limitations of use, and what legal consequences arise in the event of violations (Putri, 2022; Wiro, 2024). This demonstrates that Indonesia must formulate a regulatory design that genuinely responds to the actual needs of custodian communities in protecting TCEs. However, such a design must not only address these needs normatively but must also ensure that it is capable of effective implementation in practice, in accordance with the concept of regulatory delivery, which serves as a bridge between protective norms and everyday tourism practices.

Furthermore, the predominance of a top-down approach in Indonesia’s policy framework constitutes a significant issue (Suryati et al., 2025). While the registration of TCEs with governmental authorities, the State, or UNESCO represents a positive step, the process often lacks meaningful involvement of indigenous communities as the legitimate owners of such cultural heritage and has yet to encompass many local TCEs that remain undocumented. This condition results in registration processes that are often slow and ineffective, given the vast cultural diversity across Indonesia and the limited legal literacy among indigenous communities. Although Articles 37 and 38 of the Cultural Advancement Law regulate permits for commercial utilization, such provisions remain confined to governmental authority and do not sufficiently involve indigenous communities as primary actors. In contrast, the Philippines adopts the principle of Free, Prior, and Informed Consent (FPIC), whereby indigenous communities are directly involved in negotiation processes to grant consent for commercial utilization.

As custodian communities, indigenous peoples possess the most comprehensive understanding of cultural values, symbolic meanings, and sacred elements inherent in their cultural heritage. Their involvement in consent or licensing processes for commercial utilization is therefore essential to prevent distortions of value, deviations in meaning, or the loss of cultural essence. Although Indonesia has established progressive regulatory measures, weaknesses remain in the limited robustness of communal intellectual property registration

systems, the lack of comprehensive regulation on commercial utilization permits, and the insufficient involvement of indigenous communities in decision-making processes (Pebrianto et al., 2026). In this regard, Indonesia may adopt the FPIC concept from the Philippines as the foundation for granting consent in the commercial utilization of TCEs within tourism. This principle emphasizes that consent must be given freely, without coercion, prior to utilization, based on transparent and comprehensible information, and collectively in accordance with customary law. Such a framework must be supported by national legal instruments, supervisory mechanisms, and certification of consent to ensure that the utilization of TCEs does not undermine the rights and cultural values of custodian communities.

Importantly, FPIC does not merely position indigenous communities as protected objects but as primary subjects who actively manage the utilization and preservation of TCEs. It also ensures that discussions on benefit-sharing occur at the outset of the consent process, thereby ensuring that economic benefits are equitably distributed to custodian communities rather than confined to general cultural ecosystem interests. Nevertheless, FPIC must be complemented by clear standards governing commercial utilization, detailed regulation of indigenous community rights, supervisory mechanisms, certification processes, and equitable benefit-sharing arrangements to ensure comprehensive protection. Thus, Indonesia must further strengthen its preventive protection mechanisms for TCEs. However, the enhancement of preventive measures alone is insufficient; repressive protection mechanisms remain necessary to ensure the availability of effective pathways for cessation of unlawful utilization and restoration of community rights in cases of violation.

Repressive protection mechanisms for TCEs in Indonesia do exist but are dispersed across various legal instruments. Under the Cultural Advancement Law, Article 38 paragraph (3) provides that misuse of utilization permits by large industries and/or foreign entities may be subject to administrative sanctions, including verbal warnings, written warnings, administrative fines, temporary suspension of activities, and revocation of permits. Additionally, criminal sanctions are imposed for acts that damage cultural advancement infrastructure, as stipulated under Article 53, with penalties of up to five years' imprisonment and fines of up to ten billion rupiah under Article 55. Furthermore, the Copyright Law provides dispute resolution mechanisms through alternative dispute resolution, arbitration, and civil litigation for damages before the Commercial Court, as stipulated in Articles 95 and 99, as well as criminal sanctions for violations of economic rights under Article 113. Normatively, these provisions indicate that Indonesia possesses repressive legal instruments to respond to violations.

However, a misalignment persists between the communal nature of TCEs and the design of existing repressive instruments, constituting a key weakness in Indonesia's protection framework (Gunawan, 2025). Criminal sanctions under Article 55 of the Cultural Advancement Law primarily address damage to cultural infrastructure rather than violations of commercial utilization permits or remedies for exploitation of TCEs. Similarly, sanctions under Article 38 remain limited in scope to large industries and foreign entities. Moreover, dispute resolution mechanisms under the Copyright Law are more readily applicable to individually owned copyrights than to communal TCEs, resulting in evidentiary burdens and challenges in determining the appropriate legal subject entitled to bring claims (Arijasakinah & Harimurti, 2025). This issue is exemplified by the experience of woodcarving artisans from Tondano, who were required to prove copyright ownership when a souvenir company used ancestral motifs in mass-produced products, despite such motifs constituting inherited cultural heritage with no identifiable individual creator (Onibala et al., 2025). From the perspective of Hadjon's theory, this gap is significant, as repressive protection must provide realistic and accessible remedies for communities in weaker positions. Similarly, within the framework of regulatory inspection, effective protection requires clear answers to questions concerning supervisory authority,

complaint mechanisms, applicable sanctions, avenues for community redress, and legal standing. Accordingly, the design of repressive protection should be structured as a multi-layered remedial system accessible to communities, beginning with swift administrative measures—such as cessation of use, suspension of activities, and revocation of permits—and extending to civil or criminal proceedings for serious violations. Such a system must also be supported by clear rules on community representation to prevent legal standing obstacles, ensuring that recognition of communal ownership is accompanied by mechanisms enabling meaningful participation in dispute resolution (Tantimin et al., 2025).

Comparative experience may be drawn from the Philippines, where the IPRA provides criminal sanctions and compensation obligations payable by individuals or legal entities to indigenous communities (Sections 72 and 73), alongside institutional oversight by the National Commission on Indigenous Peoples (NCIP). Similarly, Thailand demonstrates that repressive protection is not solely dependent on sanctions but also on institutional oversight through the Intangible Cultural Heritage Commission, which supervises and approves cultural programs and restrains excessive commercialization (Sections 5 and 10 of the ICH Act). In this context, Indonesia may consider establishing a specialized supervisory body for the commercial utilization of TCEs, functioning as a single-window authority for licensing, supervision, and complaints. Such a commission should be empowered to review utilization permits, assess compliance with FPIC, ensure attribution of origin, oversee benefit-sharing implementation, evaluate allegations of cultural distortion and misappropriation, monitor digital uses of TCEs, and recommend cessation of activities or revocation of permits where utilization is found to harm custodian communities. Additionally, it should be authorized to provide legal assistance and facilitate dispute resolution for affected communities. Through such institutional arrangements, the state-based protection model may be preserved while ensuring that the fundamental rights of custodian communities as cultural owners are effectively protected.

Overall, Indonesia's TCE protection framework is directionally aligned with Hadjon's Theory of Legal Protection, as it incorporates both preventive and repressive instruments. However, such alignment remains incomplete. Preventive mechanisms have not consistently functioned as compliance gateways for all tourism actors nor ensured active community participation in commercial utilization permits. Meanwhile, repressive mechanisms have not always provided rapid and accessible remedies, particularly given the communal nature of TCEs and persistent challenges in evidentiary standards and legal representation. Therefore, the ideal regulatory framework in Indonesia should be directed toward a three-tiered strengthening approach. First, at the level of regulatory design, Indonesia should establish a *sui generis* legal framework for TCEs that affirms custodian communities as actual custodians, mandates FPIC-based consent, protects sacred elements, regulates attribution of origin, prohibits cultural distortion and misappropriation, and establishes measurable benefit-sharing mechanisms (Gunawan, 2025). Second, at the level of regulatory delivery, communal intellectual property registration should be integrated with tourism licensing systems and benefit-sharing mechanisms, ensuring that all commercial utilization of TCEs is verified through cultural data, community consultation, and contractual arrangements. Third, at the level of regulatory inspection, Indonesia should establish or designate a Supervisory Commission with authority to conduct compliance audits, receive complaints, monitor the use of TCEs in both physical and digital spaces, recommend cessation of commercialization, and link violations to administrative, civil, or criminal sanctions.

This *sui generis* legal framework for Indonesia can be operationalized by assigning the relevant institutions to ensure regulatory delivery and inspection. For this, Indonesia's Directorate General of Intellectual Property (DGIP) can serve as the database handler, verifying and registering TCEs as communal IPs. To connect the DGIP to the relevant commercialization channel, the proposed TCE Supervisory Commission can audit the relevant processes,

providing key legal advice and benefit-sharing calculations that are fair for local communities. Within the tourism sector, for example, this can happen between the DGIP and Ministry of Tourism, or any of the subsidiaries under the Ministry of Tourism. This way, the DGIP can gather extensive information on the enforcement data of the proposed sui generis legal framework, which is crucial in assessing the regulatory delivery and inspection. This can also be integrated into the country's Online Single Submission (OSS) business licensing system, with authority granted to the proposed TCE Supervisory Commission to hit a "kill-switch" to any licensing requirement should an over-commercialization that breaches the benefit-sharing agreement or other regulatory requirements happen. More importantly, the TCE Supervisory Commission can also act as the primary facilitator of alternative dispute resolution should a legal conflict happen, while maintain emphasis on local customs.

CONCLUSION

The protection of TCEs within the tourism sectors of Indonesia, the Philippines, and Thailand is similarly grounded in the recognition that TCEs constitute intangible cultural heritage of strategic value. However, each jurisdiction places the locus of control within distinct legal constructions. The Philippines stands out through its sui generis framework under the IPRA, which positions indigenous communities as primary rights-bearing subjects, with FPIC serving as a prerequisite for legitimate utilization, reinforced by institutional oversight through the NCCA and the NCIP. In contrast, Thailand does not explicitly affirm exclusive ownership of TCEs but relies on institutional oversight through the Intangible Cultural Heritage (ICH) Commission and utilizes the copyright regime where TCEs have been embodied in works, recordings, or derivative products. Consequently, its regulatory approach is more institutionally driven. Meanwhile, Indonesia tends to position TCEs within a state-ownership framework under the Copyright Law, further supported by the registration of communal intellectual property and cultural governance under the Cultural Advancement Law. However, control over commercial utilization remains uneven, as certain licensing and sanction mechanisms apply only to specific subjects and are not yet fully integrated within the broader tourism ecosystem.

For Indonesia specifically, the regulatory landscape has incorporated both preventive and repressive elements consistent with Hadjon's Theory of Legal Protection, but the mechanisms remain unaligned with the communal nature of TCEs, which the Philippines have regulated perhaps more accurately. Therefore, it is advised for Indonesia to direct its legal development toward a three-tiered strengthening approach, which serves as the primary practical contribution of this study. First, at the level of regulatory design, Indonesia should establish a sui generis legal framework for TCE protection that affirms custodian communities as the actual custodians and mandates FPIC as a prerequisite for utilization. Second, at the level of regulatory delivery, the KIK registration system should be integrated with tourism licensing and benefit-sharing mechanisms, ensuring that the utilization of TCEs is verified through cultural data, community consultation, and benefit-sharing agreements. Third, at the level of regulatory inspection, Indonesia should establish a supervisory commission for TCEs with the authority to conduct compliance audits, receive complaints, oversee the utilization of TCEs, recommend the cessation of commercialization, provide legal assistance, and facilitate dispute resolution. Theoretically, this study advances the growing body of literature by demonstrating that traditional state-centric administrative protection may not fully cover the needs of legal protection in a world where tourism development carries significant risks of TCE over-commercialization. However, the study is nevertheless limited by the lack of empirical evidence to confirm the risks highlighted around the identified legal gaps. Future research can explore this empirical angle to concretely outline the decentralization mechanisms needed relative to the problems that local communities actually face, while emphasizing the need for

a preventive mechanisms to custodian communities through FPIC and specializing repressive measures for collective rights.

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Regulations:

Convention for the Safeguarding of the Intangible Cultural Heritage 2003
Copyright Act 1994 as amended, most recently Copyright Act (No. 5) 2022
Joint Administrative Order No. 1 of 2016
Peraturan Pemerintah Nomor 56 Tahun 2022 tentang Kekayaan Intelektual Komunal
Promotion and Preservation of Intangible Cultural Heritage Act 2016
Republic Act 10066 National Cultural Heritage Act of 2009 as amended by Republic Act 11961 2023
The Indigenous Peoples' Rights Act of 1997
Undang-Undang Dasar Negara Republik Indonesia tahun 1945
Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta
Undang-Undang Nomor 5 Tahun 2017 tentang Pemajuan Kebudayaan
United Nations Declaration on the Rights of Indigenous Peoples 2007