



## The urgency of reformulating the legal protection of Balinese Traditional silver motifs as Traditional Cultural Expressions in the Intellectual Property Regime

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### Abstract

The protection of traditional cultural expressions (TCEs) within the intellectual property (IP) regime remains a critical legal issue, particularly in countries with rich communal cultural heritage such as Indonesia. This study examines the limitations of the existing IP framework in protecting traditional Balinese silver motifs, which are inherently communal, intergenerational, and culturally embedded. The current legal regime, primarily governed by Law Number 28 of 2014 on Copyright, adopts an individualistic approach that is incompatible with the collective nature of TCEs, resulting in ineffective protection and vulnerability to misappropriation. This research employs a normative legal method using statutory, conceptual, comparative, and case approaches to analyze the structural and conceptual weaknesses of the existing legal framework. The findings reveal that the absence of a *sui generis* system and the lack of operational mechanisms—such as community-based consent, equitable benefit-sharing, and effective enforcement have significantly undermined the protection of traditional silver motifs in Bali. To address these gaps, this study proposes an Integrative Communal Intellectual Property Model, which constitutes the main novelty of this research. The model integrates national law, customary law, and international standards into a coherent legal framework. It emphasizes the recognition of indigenous communities as primary rights holders, the implementation of prior informed consent, the establishment of transparent benefit-sharing mechanisms, and the development of a communal registration system. Additionally, the model promotes alignment with international instruments developed by the World Intellectual Property Organization to strengthen cross-border protection. This study contributes theoretically by advancing a shift from an individualistic IP paradigm to a communal rights-based framework, and practically by offering a policy-oriented model for legal reform in Indonesia. The proposed model is expected to enhance legal certainty, ensure distributive justice for local communities, and safeguard the sustainability of traditional cultural heritage in the era of globalization.

**Keywords:** Traditional cultural expressions, communal intellectual property, balinese silver motifs, legal protection, *sui generis* system

### Introduction

The development of globalization and digitalization has changed the position of culture from a mere collective identity to a strategic commodity in the global economy. Traditional cultural expressions (NRE), including craft motifs, are no longer only produced for local needs, but have been included in the global creative industry value chain. In this context, NRE faces a paradox: on the one hand it experiences an increase in economic value, but on the other hand it is increasingly vulnerable to exploitation, unauthorized commercialization, and unilateral claims by unauthorized parties. This phenomenon shows that legal protection of NRE can no longer depend on conventional approaches, but rather requires legal construction that is able to accommodate global dynamics and the communal character of the culture itself.

The traditional Balinese silver motif is part of the Traditional Cultural Expressions (TCE) which has been inherited from generation to generation by the Balinese artisan community. These motifs reflect local identity, spiritual symbolism, and unique aesthetics that are an integral part of Bali's cultural heritage<sup>[1]</sup>. As Communal Intellectual Property (KIK), Balinese silver motifs are not owned by any individual but by the community, thus requiring a different legal protection approach than individual copyright. In the framework of conventional intellectual property (IPR) law, traditional motifs often do not receive adequate protection because they do not meet the criteria of individual ownership and novelty. This is a

serious problem for indigenous communities such as Balinese silver artisans, because their traditional motifs are often copied, commercialized, and even claimed by other parties without permission or empowerment to the community of their owners<sup>[2]</sup>.

Balinese silver motifs are not just decorative ornaments, but a form of Traditional Cultural Expressions (TCEs) that reflect the value system and norms of indigenous peoples. In the international context, the World Intellectual Property Organization (WIPO) has emphasized the importance of protecting TCE as part of Traditional Knowledge and Genetic Resources<sup>[3]</sup>. The main problem in the protection of Balinese silver motifs lies in the absence of a legal scheme that specifically recognizes and protects this form of communal intellectual property. Indonesia's current IPR system still focuses on protection based on individual rights, such as copyrights, trademarks, and patents, which are not aligned with the collective characteristics of traditional cultural motifs<sup>[4]</sup>.

The national legal framework, the regulation regarding Traditional Cultural Expressions (TCE) as part of Communal Intellectual Property (KIK) has been expressly regulated in Law Number 28 of 2014 concerning Copyright hereinafter referred to as (UUHC), especially Article 38 paragraphs (1) and (4). The provision states that TCE is an intellectual property that is communal and owned by the state, which is responsible for protecting, preserving, and using it fairly on behalf of the community or community of its creators.

As a form of implementation of these provisions, the Government of the Republic of Indonesia has stipulated Government Regulation Number 56 of 2022 concerning Communal Intellectual Property, which regulates in more detail the types of KIKs, including TCE, Traditional Knowledge, and Geographical Indications. This regulation also establishes the mechanism for inventory, recording, and management of KIK by the Directorate General of Intellectual Property, as well as the principle of legal protection that guarantees the rights of indigenous peoples and local communities as owners of these cultural<sup>[5]</sup> expressions. However, these arrangements do not fully guarantee the protection of the economic rights and moral rights of indigenous communities as owners and heirs of the cultural expressions in question.

Academic studies such as those conducted by Samsithawrati *et al.* (2024) also confirm that the protection of TCE in Indonesia needs to be strengthened through a *sui generis* legal approach, considering its distinctive characteristics and not fully reachable by conventional IPR<sup>[6]</sup> regimes. As a form of strengthening the protection of communal intellectual property, the Government of Indonesia has issued Government Regulation Number 56 of 2022 concerning Communal Intellectual Property. This regulation expressly recognizes TCE as an integral part of Communal Intellectual Property, while establishing a defensive inventory mechanism as a preventive measure against potential foreign claims to traditional Indonesian cultural<sup>[7]</sup> expressions.

A defensive inventory of traditional cultural expressions, including traditional motifs, is a form of communal declaration that aims to establish evidence of the origin and collective ownership by indigenous communities. This mechanism serves as a preventive legal tool to reject claims of ownership by outsiders, especially in the context of cross-border cultural exploitation. However, defensive inventory does not necessarily confer exclusive rights such as patents, nor direct economic rights to the community of owners. This is due to the nature of TCE as a communal intellectual property that does not meet the criteria of individuality and novelty as required in the conventional intellectual property rights system. Therefore, legal protection of TCE is more declarative and moral, not commercial or monopolistic<sup>[8]</sup>.

Global pressure on unilateral claims by foreigners over Indonesia's traditional cultural expressions has raised serious concerns about national cultural sovereignty. This phenomenon is reflected in a number of cases, such as claims of the Pendet Dance by Malaysia, Coastal Batik motifs by China, and the performing art of Wayang by other countries, which show a pattern of cultural exploitation without the consent of the community of origin<sup>[9]</sup>. This condition creates a risky legal precedent for other cultural expressions, including Balinese silver motifs, which have high aesthetic value and communal identity. Therefore, a comprehensive legal protection mechanism based on the principle of communal intellectual property rights is needed, in order to prevent unilateral recognition and maintain the cultural integrity of the nation

Based on a study conducted by Muryanto *et al.* (2023), it was revealed that the Intellectual Property Rights (IPR) legal system in Indonesia is still individualistic and does not have adequate legal instruments to accommodate the protection of Communal Intellectual Property (KIK). The lack of regulation results in weak legal protection for

traditional cultural expressions, so cultural elements such as Balinese silver motifs are vulnerable to being abused, illegally exploited, or claimed ownership by unauthorized third parties, both at home and abroad<sup>[10]</sup>

Christiano (2020)<sup>[33]</sup> emphasized the urgency of establishing a *sui generis* legal regime, namely a special law that specifically regulates Communal Intellectual Property (KIK) in order to provide positive legal protection, not solely defensive. This approach aims to ensure the rights of indigenous and local communities to control, manage, and derive equitable economic benefits from the use of their traditional cultural expressions, including distinctive motifs that have been passed down from generation to generation.<sup>[11]</sup>

In traditional societies, hereditary knowledge is considered a cultural heritage that can be used by anyone, especially by members of their own community. For example, in Bali, which is communal, the concept of intellectual property (IP) that emphasizes private ownership feels very foreign. If someone imitates a work of art or other fields belonging to the Balinese people, they ask why they should prohibit the use of the work.

The life of the Balinese people is based on the principles of Purusha Arta Chess. For its part, dharma, artha, kama, and moksa serve as a value framework that balances individual interests with communal wealth, making common well-being rather than exclusive ownership the primary goal in resource and cultural management. The Dharma upholds the norms of justice, Artha leads to collective prosperity, Kama channels desires responsibly, and Moksha frees from selfish interests, so that community assets are sustainably maintained, divided, and enriched. The Dharma leads to norms that require everyone to perform actions that are beneficial to others. In science, the concept of *adnyanayoga* is a driving force for a person to spread knowledge to others, so that they can learn and become intelligent. Imitation is seen as a way of obtaining knowledge from others, so the presence of the concept of IP, which usually includes monopoly or exclusive rights, is confusing for Balinese.

In the study of customary law, there is the principle that the position of the individual in a communal society is not higher than the role of the collective; the individual is merely a part of his community. Although personal rights are recognized, they are not the main focus. The main value is peace and happiness together, so that IP claims feel foreign to traditional society. On the other hand, the Western view values traditional knowledge as an asset of economic value (intellectual property). For the West, ideas, feelings, and even emotions are considered patentable wealth, so the concept of IP protection grows and develops in Western countries.

This communal attitude is prone to misappropriation, which is the use of traditional knowledge or resources by outsiders without respecting the rights of the community, so that the results belong to individuals or corporations that only pursue personal gain. This is where the role of law becomes crucial: the law must determine who is entitled to cultural heritage and provide a protection mechanism that can be understood and accessed by the members of the community itself.

This *sui generis* legal concept is seen as a solution to the limitations of the conventional IPR regime which tends to be individualistic and unable to accommodate the communal

characteristics of KIK. In the Indonesian context, the discourse on the development of *sui generis* regulations has been driven by the need for a more inclusive and equitable protection system, as outlined in a study by Widyanti (2022) which states that *sui generis* provisions must include minimum elements such as the purpose of protection, the scope of objects, access and benefit sharing mechanisms, and rights enforcement procedures<sup>[12]</sup>.

A human rights-based approach is also an important cornerstone in designing a comprehensive legal protection model for KIKs, as described in a study by Susanti (2022), which emphasizes the need for integration between human rights principles and cultural protection within national legal frameworks. By placing intellectual property at the forefront of the second generation of human rights, we are creating an ecosystem where innovation, creativity, and cultural heritage can be used equitably to strengthen shared well-being.<sup>[13]</sup>

In empirical practice, these problems have been confirmed through various cases. The traditional Balinese silver motif, which developed in craft centers such as Celuk, is one of the real examples of cultural expression that has high aesthetic, philosophical, and economic value. However, these motives are vulnerable to being reproduced and claimed by other parties through formal legal mechanisms. Disputes between local artisans and foreign parties over jewellery design point to a gap in the national legal protection system, where communal cultural expressions can be appropriated through an intellectual property regime that is insensitive to traditional values. In addition, the polemic of the use of traditional Balinese motifs by global industry players also shows the absence of a fair benefit-sharing mechanism for the community of origin.

In the academic context, studies on NRE legal protection in Indonesia have developed, but still show fragmentation of approaches. The research can be mapped as follows. First, research by I Gusti Ayu Ketut Rachmi Handayani *et al.* (2020) published in the *Journal of Indonesian Legal Studies* highlights that NRE protection in the copyright regime is still declarative and not effective in implementation, especially due to the lack of operational mechanisms in inventory and supervision.<sup>[14]</sup> Second, research by Ni Ketut Supasti Dharmawan (2021)<sup>[34]</sup> in the *Udayana Journal of Master of Law* emphasizes the importance of integrating customary law, especially through *awig-awig*, as an instrument of communal protection that is more contextual to Balinese culture.<sup>[15]</sup> Third, a study by Dewa Gede Sudika Mangku (2022) published in *Kertha Wicara: Journal of Legal Science* identified a disharmony between national law and local practices in NRE protection, which has implications for the weak bargaining position of indigenous peoples.,<sup>[16]</sup> research by Ahmad Redi (2023) in the *Rechtsvinding Journal* stated that the conventional intellectual property approach is inadequate to protect NRE, so it is necessary to develop a *sui generis* regime based on communal intellectual property.<sup>[17]</sup> Meanwhile, a recent study by I Wayan Wirawan (2024) published in the *IUS Journal of Legal and Justice Studies* specifically shows that traditional Balinese handicraft motifs, including silver, are in a vulnerable position to individual claims due to the existence of a nationally integrated communal registration system.<sup>[18]</sup>

Although these studies have made important contributions, there are significant scientific gaps. First, most of the research is still partial, both normative and sociological, and has not yet constructed a comprehensive and operational legal protection model. Second, there is no conceptual formulation that systematically integrates the intellectual property regime with the principles of communal wealth in the specific context of the traditional Balinese silver motif. Thus, a reformulative approach is needed that not only criticizes existing legal weaknesses, but also offers an adaptive, contextual, and equitable model of protection. Based on this description, the problems in this study are formulated as follows: first, how are the structural and conceptual weaknesses in the Indonesian intellectual property legal regime in providing protection for the traditional motif of Balinese silver as a traditional cultural expression; and second, how to formulate a legal protection model based on communal intellectual property that is able to ensure effective protection, justice for the community, and the sustainability of the cultural heritage.

### Research Method

This study uses a normative legal research method, which focuses on the study of positive legal norms, legal principles, and legal doctrines relevant to the protection of the traditional motif of Balinese silver as a traditional cultural expression in the intellectual property regime. The selection of this method is based on the character of the problem that emphasizes the existence of conceptual inconsistencies and structural weaknesses in the applicable legal arrangement, thus requiring a prescriptive analysis to formulate an ideal legal protection model.<sup>[19]</sup>

The approach used in this study includes several main approaches. First, the statute approach, which is by systematically examining various laws and regulations related to the protection of traditional cultural expressions, especially Law Number 28 of 2014 concerning Copyright, as well as other relevant regulations in the field of intellectual property and cultural protection. Second, the conceptual approach, which is used to examine fundamental concepts such as traditional cultural expression, communal intellectual property, communal rights, and *sui generis* concepts in the protection of intellectual property. This approach also utilizes the doctrines and views of legal experts as a theoretical basis for analysis. Third, the case approach, which is carried out by examining court decisions, legal practices, and cases related to claims or disputes over traditional cultural expressions, especially those related to traditional Balinese silver motifs. This approach aims to identify how legal norms are applied as well as find implementing weaknesses in practice. Fourth, a limited comparative approach, namely by comparing the arrangements and practices of the protection of traditional cultural expressions in several other countries that have developed a protection model based on communal intellectual property or *sui generis* regimes, in order to obtain an alternative perspective in formulating a more ideal model for Indonesia.<sup>[20]</sup> The types of legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations, relevant international treaties, and court decisions. Secondary legal materials include textbooks, current scientific journal articles, previous research results, as well as the opinions of

legal experts related to intellectual property and traditional cultural expressions. The tertiary legal materials are in the form of legal dictionaries, encyclopedias, and legal indexes that support conceptual understanding. The technique of collecting legal materials is carried out through library research by inventorying, classifying, and systematizing legal materials that are relevant to research problems<sup>[21]</sup>. Furthermore, all legal materials are analyzed using a qualitative analysis method with a prescriptive-analytical approach. Analysis is carried out through the stages of legal interpretation, both grammatically and systemalogically, to identify weaknesses in existing norms and find a more appropriate legal construction. The results of the analysis were used to formulate an ideal legal protection model for the traditional Balinese silver motif in the perspective of communal intellectual property. This model is expected to be able to answer the problem of incompatibility between the communal character of traditional cultural expression and the prevailing intellectual property regime, while contributing to the development of national laws that are more responsive, fair, and adaptive to the dynamics of cultural heritage protection.

## Results and Discussion

### Problems of the Intellectual Property Regime on Traditional Motifs of Bali Silver

The development of modern intellectual property law (IPR) shows the dominance of an individualistic paradigm that emphasizes originality, private ownership, and exclusive rights as the basis for legal protection. This paradigm is essentially designed to protect intellectual works born from individual creativity in the modern economic system. However, in practice, the approach faces serious limitations when applied to traditional cultural expressions (NRE) that are communal, hereditary, and have no single identifiable creator.<sup>[22]</sup>

In the Indonesian context, NRE regulation has been accommodated in Law Number 28 of 2014 concerning Copyright, but its implementation still faces various structural obstacles. Research shows that the copyright regime has not been able to provide optimal protection due to the difference in character between the concept of copyright and the communal nature of NRE.<sup>[23]</sup> In addition, requirements in copyright law such as originality, fixation, and identification of creators are major obstacles to effectively protecting traditional cultural expression.<sup>[24]</sup>

The legal protection of the traditional Balinese silver motif shows the existence of a fundamental problem rooted in the inaccuracy of the epistemological construction of the prevailing intellectual property regime. The copyright regime, as codified in the UUHC, is built on philosophical assumptions regarding individual ownership, originality, and exclusivity of rights, which are historically rooted in John Locke's thought through labor theory. In this construction, exclusive rights are attached to the individual as a consequence of creative work that is personal. However, these assumptions have no correspondence with the character of traditional cultural expressions, particularly traditional Balinese silver motifs. The motif is not born from an isolated individual creative process, but from a social construct that is collective, cumulative, and intergenerational. Thus, the application of the copyright regime to such objects has essentially given rise to a conceptual dislocation, in which communal reality is forced

into an individualistic framework. In this context, the legal subjects who should be protected, namely indigenous communities, are not adequately accommodated in a positive legal structure.

This problem is even more evident in the case of traditional Balinese silver motifs. As part of the cultural identity of the Balinese people, this motif has high philosophical, aesthetic, and economic value. However, in practice, these motives are vulnerable to exploitation and commercialization by outsiders in the absence of adequate protection mechanisms. A similar phenomenon is also seen in the case of the use of Balinese endek weaving in the global industry, which shows the weak control and protection of the use of traditional culture.<sup>[25]</sup>

The provision in Article 38 of the Copyright Law that places the state as the holder of the right to traditional cultural expression is theoretically intended as a form of public protection. However, this construction actually gives birth to the problem of representation and legitimacy. The state is assumed to act as a trustee for the interests of the community, but without a normative apparatus that clearly governs such representational relations. There is no firm mechanism for how the state must obtain community consent, how economic benefits are distributed, and how controls on the use of motives are exercised. Thus, control by the state tends to be abstract and non-operational, thus failing to answer the need for concrete protection. Thus, the main problem lies in the incompatibility between the individualistic construction of IPR law and the communal character of NRE. This condition demonstrates the need for legal reformulation through a more adaptive approach, such as a *sui generis* regime, to ensure more effective, equitable, and contextual protection for indigenous peoples as cultural owners.<sup>[26]</sup>

This condition shows a deviation from the principle of distributive justice as formulated by Aristotle, which requires a proportionate distribution of benefits based on inherent contributions and rights. In practice, the artisan community as cultural bearers does not get equal access to the economic benefits of the use of traditional motifs, while external parties who have legal and economic capacity actually get greater benefits. This phenomenon shows that the existing legal regime has not been able to internalize the principle of substantive justice, but is still trapped in formal procedural justice.

The framework of the theory of communal ownership developed by Elinor Ostrom, that collective resources should be managed through local institutions with rules generated endogenously by the community. The traditional Balinese silver motif cannot be separated from the value system, norms, and social structure of Balinese society, so its management cannot be completely left to the state or formal external legal mechanisms. When the national legal regime does not recognize and integrate such communal management mechanisms, what happens is the marginalization of the local legal system, as well as the weakening of the effectiveness of the protection itself.

In the perspective of the legal system put forward by Lawrence M. Friedman, the weakness of protection against the traditional motif of Balinese silver can be understood as a systemic failure involving three main dimensions. On the substance dimension, legal norms have not been designed to accommodate the communal and intergenerational character of traditional cultural expressions. In the structural

dimension, a special institution has not been established that has the authority and capacity to manage, protect, and enforce the right to NRE effectively. Meanwhile, in the dimension of legal culture, there has not been a strong collective awareness of the importance of protecting communal intellectual property, both at the community level and law enforcement officials. These three dimensions interact with each other and reinforce existing weaknesses.

When placed in the context of comparative law, it can be seen that a number of countries have developed a more responsive approach to the character of traditional cultural expression. In India, the development of the Traditional Knowledge Digital Library (TKDL) shows a shift from a normative approach to a documentation-based operational approach. This system allows traditional knowledge to be registered and accessed internationally as defensive protection, thus preventing patent claims by foreign parties. Thus, protection depends not only on legal norms, but also on an integrated information infrastructure. In Panama, through Law No. 20 of 2000, the recognition of the collective rights of indigenous peoples to their cultural expression has been institutionalized. Communities are not only recognized as subjects of law, but are also given the authority to control use, grant permits,<sup>8</sup> and obtain direct economic benefits. This model shows a shift from a state-centered approach to a community-centered approach, where the community is placed as the main actor in cultural protection. Meanwhile, in Peru, the access and benefit sharing (ABS) mechanism is implemented by requiring prior informed consent from the community before the use of traditional knowledge is carried out. In addition, the sharing of economic benefits is explicitly regulated, thus creating a balance between commercial interests and justice for the community. This approach demonstrates the integration of legal protection, recognition of communal rights, and economic justice within one coherent framework. The regulation in Indonesia still shows significant limitations. The protection provided through the Copyright Law has not been accompanied by a concrete implementation mechanism, either in the form of communal registration, a licensing system, or a benefit-sharing scheme. Moreover, the absence of *sui generis* regimes specifically designed to protect traditional cultural expressions suggests that the approach used is still partially adaptive, not transformational.

Thus, it can be understood that the weakness of the protection of traditional Balinese silver motifs is not only technical, but reflects the limitations of the legal paradigm used. The prevailing intellectual property regime has not been able to accommodate the complexity of the communal character, has not provided adequate recognition of communities as subjects of law, and has not guaranteed a fair distribution of benefits. In such conditions, the legal protections available tend to be formalistic and ineffective, thus opening up a wide space for the exploitation of traditional cultural expressions.

### **Communal Intellectual Property-Based Legal Protection Model for Traditional Bali Silver Motifs**

The model of protection based on communal intellectual property (KIK) offers a more contextual approach, the application of which is inseparable from a number of conceptual and implementive problems. Normatively, this model is considered progressive because it is able to

accommodate the communal character of traditional cultural expression (NRE) and place indigenous peoples as the main legal subjects.<sup>[27]</sup> However, on a practical level, there are serious challenges related to the harmonization between national law and customary law. Studies show that legal pluralism in Indonesia often leads to conflicts of authority, especially in determining who has the right to represent indigenous communities in the licensing process and management of communal rights. Mechanism prior informed consent which is the main pillar in this model has the potential to face operational constraints. Not all indigenous communities have formal and well-documented institutional structures, so the approval process can be inefficient and vulnerable to abuse by certain parties. In the context of Bali, although there are customary institutions such as customary villages, there is no national standard that regulates the approval procedure uniformly. This has implications for legal uncertainty for users and the community itself.

From an economic perspective, the implementation of the benefit-sharing mechanism also faces challenges in terms of fair and transparent distribution. Recent research shows that without an accountable governance system, the economic benefits of the use of NRE tend to be uneven and have the potential to be monopolized by local elites or intermediaries. This condition can actually create new inequalities within indigenous communities, which is contrary to the social justice goals of the KIK model. Furthermore, although Government Regulation Number 56 of 2022 concerning Communal Intellectual Property has provided a basic framework for protection, the approach used is still defensive through inventory and recording. This model has not been fully able to provide positive protection, such as limited exclusive rights or effective law enforcement mechanisms against violations at the international level. In the era of digital globalization, where the reproduction of traditional motifs can be done massively and across countries, these limitations are becoming increasingly significant.<sup>[28]</sup>

On the other hand, the urgency of establishing a more comprehensive *sui generis* regime also faces political, legal and legislative challenges. Until now, there has been no special law that integrally regulates the protection of KIK-based NRE in Indonesia. In fact, the experience of other countries shows that the success of traditional cultural protection depends heavily on the existence of legal instruments that are specific, operational, and oriented towards the interests of the community. Critically, it can be concluded that the KIK-based protection model has great potential as an alternative solution, but still requires strengthening in institutional, regulatory, and implementation aspects. Without a clear integration between national law, customary law, and international mechanisms, this model risks remaining at the normative level without being able to provide effective and equitable protection for the Balinese silver artisan community.<sup>[29]</sup>

The limitations of the conventional intellectual property regime in providing protection for the traditional Balinese silver motif require a reconstruction of a more basic legal paradigm. The problems faced are not solely related to the emptiness of norms or weaknesses in implementation, but are rooted in the inability of the existing legal regime to accommodate the ontology of traditional cultural expression as a communal entity. In such conditions, the reformulation

of legal protection must be directed at the formation of a model that is not only corrective, but also transformative. From a theoretical perspective, the need for a communal-based protection model can be understood through a critique of the concept of private ownership in intellectual property law. Margaret Jane Radin through personhood theory emphasized that not all objects can be reduced to economic commodities, because there are certain objects that are closely related to the identity and existence of the subject. In the context of traditional Balinese silver motifs, the relationship between the community and these motifs is not instrumental, but existential. Motifs not only function as aesthetic products, but also as a representation of values, symbols, and socio-cultural structures of Balinese society. Therefore, if legal protection is still based on the logic of commodification alone, there will be a reduction in the cultural meaning inherent in the motif.

Departing from this premise, the placement of the community as the main legal subject is a necessity. In this case, the state is no longer positioned as a rights holder as constructed in Article 38 of the Copyright Law, but as a regulatory authority that functions to ensure the implementation of protection and fairness for the community. This argument is based on the assumption that communities have stronger cultural and historical legitimacy than the state in determining the use and management of traditional motives. An ideal model of protection needs to be constructed within the framework of a *sui generis* regime specifically designed to protect traditional cultural expressions. The absence of this kind of regime in the Indonesian legal system shows the existence of normative lag, i.e. legal lag in responding to social developments. In the author's view, the use of the copyright regime as an instrument to protect NRE is a form of legal transplantation that is not entirely successful, because it is carried out without considering differences in social and cultural contexts. Therefore, a regime is needed that has normative flexibility, is able to accommodate communal characteristics, and provides space for integration with customary law.<sup>[30]</sup>

Constructively, the model of communal intellectual property-based protection of traditional Balinese silver motifs can be formulated in three main pillars. First, recognition and affirmation of communal ownership. Within this framework, Balinese indigenous communities must be recognized as holders of collective rights to traditional motifs. This recognition is not only declarative, but must be followed by legal consequences in the form of the authority to control use, grant permissions, and prosecute violations. This approach is in line with the practice in Panama that provides direct recognition of the collective rights of indigenous peoples, but in the Indonesian context it needs to be adapted to a pluralistic national legal system. Second, a community-based control mechanism. Any use of traditional motives for commercial purposes should be subject to the principle of prior informed consent, where community consent is the main prerequisite. In this case, the authors argue that it is not enough for licensing mechanisms to be administratively regulated by the state, but must involve local institutions, such as customary villages or traditional institutions, that have cultural authority. This approach is important to prevent alienation between formal law and social practice.<sup>[31]</sup>

Third, the equitable benefit sharing mechanism. One of the main weaknesses in the existing system is the absence of a guarantee of the distribution of economic benefits to the community. Therefore, any use of traditional motifs must be accompanied by a fair and transparent benefit-sharing scheme. In this context, the principle of access and benefit sharing that is developing in international practice can be adopted with adjustments. The authors argue that without this mechanism, legal protection will lose its social legitimacy, as it does not provide real benefits to the community. In addition to these three pillars, supporting infrastructure is also needed in the form of a documentation system and communal registration. India's experience with the Traditional Knowledge Digital Library (TKDL) shows that systematic documentation can serve as an effective defensive protection tool. However, in the context of the traditional Balinese silver motif, registration should not be interpreted as a form of individualization of rights, but rather as a means of strengthening communal claims in the formal legal system. From a sustainability perspective, the principle of intergenerational justice as put forward by Edith Brown Weiss needs to be used as a normative foundation. The traditional Balinese silver motif is a cultural heritage that must be maintained for future generations. Therefore, excessive and uncontrolled exploitation must be prevented through strict regulation and effective oversight mechanisms.

The proposed model of communal intellectual property-based legal protection serves not only as an instrument of protection, but also as a mechanism for redistributing justice and cultural preservation. In the author's view, without a paradigm shift from an individualistic approach to an integrative communal approach, the protection of traditional Balinese silver motifs will remain in a formalistic framework that is unable to answer the complexity of existing problems. The legal reformulation carried out must be able to connect social norms, institutions, and practices in a coherent manner, so that the resulting protection is not only legally valid, but also socially and culturally legitimate.

## Conclusion

Based on the discussion that has been described, it can be concluded that the legal protection of traditional Balinese silver motifs in the Indonesian intellectual property regime still shows structural and conceptual weaknesses. Individualistic-based copyright regimes are not in harmony with the character of traditional cultural expressions that are communal, so the protection provided becomes ineffective and tends to be formalistic. The placement of the state as the holder of the right to traditional cultural expression has also not been able to guarantee substantive protection and equitable distribution of benefits to the community. Therefore, it is necessary to reformulate through a model of communal intellectual property-based protection with a *sui generis* approach, which places the community as the main legal subject and is supported by registration mechanisms, community-consent-based licensing, and equitable benefit-sharing.

First, legislators should establish *sui generis* regulations related to the protection of traditional cultural expressions. Second, the government should develop an inventory system and institutional management of communal intellectual property. Third, local governments and customary institutions should strengthen the role of

customary law in the management and protection of traditional motives. Fourth, the artisan community should increase awareness and participation in the protection of traditional motifs.

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