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Cultural Sovereignty in the Age of AI: A Postcolonial Critique of Intellectual Property Frameworks for Indonesian Traditional Arts

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Article

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Abstract

The emergence of generative artificial intelligence (AI) systems capable of ingesting, reproducing, and commercialising traditional cultural expressions (TCEs) has exposed a structural vulnerability at the heart of Indonesian intellectual property (IP) law. This article argues that the failure of existing IP frameworks to protect Indonesian traditional arts, including batik motifs, wayang iconography, gamelan compositions, and tenun textile patterns, from AI-mediated exploitation is not merely a technical deficiency but reflects a deeper epistemic inheritance from colonial-era legal architectures. Drawing on postcolonial theory, this article advances a dual contribution. First, it offers a critical diagnosis: the originality requirement, the individual-authorship model, and the state-as-rightsholder construct embedded in Law No. 28 of 2014 on Copyright and Government Regulation No. 56 of 2022 on Communal Intellectual Property reproduce colonial logics that systematically exclude collective, intergenerational forms of cultural creativity from meaningful protection. Second, it proposes a culturally sovereign regulatory framework built around community-based licensing, mandatory benefit-sharing, AI training-data transparency obligations, and Free, Prior and Informed Consent (FPIC) standards drawn from international indigenous-rights instruments. The article concludes that Indonesia, as custodian of one of the world's most diverse TCE repositories, is uniquely positioned to lead a normative shift in global AI governance toward epistemic justice for cultural heritage.

1. Introduction

In 2022, a commercial AI image-generation platform produced hundreds of decorative motifs marketed as "Javanese-inspired patterns." The motifs bore unmistakable resemblance to classic *parang* and *kawung* batik designs, geometries accumulated across centuries of Javanese court culture. No consent was sought from the Javanese communities who custodied those designs. No attribution was offered. No royalties were paid. The platform had simply scraped images from the internet, fed them into a training corpus, and allowed its model to generate outputs it described as "inspired by" traditional aesthetics. Under current Indonesian law, this transaction was entirely unregulated.

This scenario is neither isolated nor accidental. It illustrates a structural problem at the intersection of three forces: the accelerating power of generative AI to reproduce and transform cultural artefacts at scale[23, 24]; the organisational incapacity of existing IP law to protect non-individual, non-original, collectively held cultural expressions[1, 2]; and the continuation of a colonial-era epistemic hierarchy that defines which forms of creativity deserve legal recognition and which do not[5, 6]. Indonesia, with its extraordinary diversity of traditional arts, from Sundanese *angklung* to Balinese *kecak*, from Torajan *tau-tau* sculptures to Acehnese *rencong* metalwork, finds itself simultaneously as one of the world's richest repositories of TCEs and among the most exposed to AI-mediated cultural extraction.

Existing scholarship on TCE and IP law has examined the limitations of international frameworks such as TRIPS[9] and the slow progress of WIPO's Intergovernmental Committee[10, 11]. Studies on Indonesian copyright law have addressed the state-custodianship model under Article 38 of Law No. 28/2014[18]

and the ambitions of Government Regulation No. 56/2022[19]. However, the intersection of generative AI and Indonesian TCE protection has received limited systematic legal-theoretical attention. More importantly, existing analyses have rarely deployed postcolonial theory as an analytical lens to expose the ideological foundations of IP frameworks, not only their technical gaps.

This article addresses three interconnected research questions. First, to what extent do current Indonesian IP frameworks protect traditional arts from exploitation by generative AI systems? Second, how does postcolonial theory illuminate the structural ideological assumptions embedded in those frameworks? Third, what regulatory design would constitute a genuinely culturally sovereign response to AI-mediated TCE exploitation? The article's central claim is that the failure of existing law is not remediable through incremental technical adjustment alone. It requires a rethinking of the foundational categories of authorship, originality, and ownership that underpin Indonesian IP law and that were themselves constructed, directly or indirectly, through colonial encounters.

The article proceeds as follows. Section 2 sets out the research methodology. Section 3 develops the theoretical framework, drawing on postcolonial legal theory, the concept of cultural sovereignty, and data-colonialism scholarship. Section 4 provides a legal diagnosis of the Indonesian IP landscape, with specific attention to the gaps exposed by generative AI. Section 5 presents the postcolonial critique in detail, identifying three structural mechanisms through which current law perpetuates colonial logic. Section 6 proposes a culturally sovereign regulatory framework. Section 7 concludes.

2. Methods

This article employs a postcolonial legal analysis methodology, combining doctrinal legal analysis with critical theory to examine both the technical content of Indonesian IP frameworks and the ideological assumptions embedded within them. This approach treats law not as a self-contained technical system but as a socially produced discourse that encodes particular conceptions of knowledge, creativity, and ownership. The choice of methodology is itself a theoretical commitment: to investigate IP law's relationship to Indonesian traditional arts requires tools capable of making visible the colonial epistemological foundations that purely doctrinal analysis leaves unexamined.

The article draws on three categories of primary sources. The first comprises domestic Indonesian legal instruments, including Law No. 28 of 2014 on Copyright[18], Government Regulation No. 56 of 2022 on Communal Intellectual Property[19], and the Circular Letter of the Minister of Communications and Informatics No. 9 of 2023 on Artificial Intelligence Ethics[20]. These instruments are analysed in terms of both their explicit normative content and their structural assumptions regarding authorship, originality, and rights-holding. The second category comprises international legal instruments, including TRIPS[9], UNDRIP[32], ILO Convention No. 169[33], and the WIPO GRATK Treaty[10], as well as comparative regulatory instruments such as the EU AI Act[26] and the South African Intellectual Property Laws Amendment Act[37]. The third category comprises judicial decisions, specifically *Thaler v. Vidal*[27], analysed for what

they reveal about the structural treatment of AI-generated and AI-trained outputs within existing legal frameworks.

The article's secondary sources span four disciplinary traditions. Postcolonial theory provides the primary critical lens, drawing on the foundational works of Fanon[5], Said[6], and Spivak[7], as well as their applications to IP law by Sunder[1, 17] and Coombe[2]. The philosophy of epistemic justice, particularly Fricker's account of hermeneutical injustice[4], provides a conceptual vocabulary for analysing the structural unintelligibility of collective TCE claims within IP doctrine. Data-colonialism scholarship, principally Couldry and Mejias[28, 30] and Ricaurte[31], situates generative AI's relationship to TCEs within a broader critical political economy of data extraction. Indigenous rights legal scholarship, particularly Anaya[34] and Barelli[35], provides the normative architecture for the FPIC-based proposals advanced in Section 6.

The geographical scope of the study is primarily Indonesia, selected because it combines an exceptionally rich and diverse TCE repository with a relatively advanced domestic communal IP framework, making it an optimal site for analysing both the limits of existing protection and the possibilities for reform. Comparative material from India, South Africa, and the European Union is incorporated in the regulatory-proposals section to benchmark Indonesian options against existing models, but no claim is made that the Indonesian analysis is directly generalisable to other jurisdictions without contextual adaptation.

A note on the use of AI-assisted tools is required by the editorial standards of this journal. Claude (Anthropic), a large language model, was used during the preparation of this manuscript to assist with structural drafting and reference formatting. All substantive legal analysis, theoretical argumentation, and normative claims are the sole intellectual work of the author. The final manuscript has been reviewed and verified by the author, who accepts full responsibility for its content.

3. Theoretical Framework

3.1 Postcolonialism as a Legal Methodology

Postcolonial theory, as developed by Fanon, Said, and Spivak, is concerned fundamentally with the continuing afterlives of colonial domination in political, cultural, and epistemic structures[5, 6, 7]. For legal scholarship, this means attending not only to the explicit content of legal rules but to the deeper epistemological assumptions, about knowledge, creativity, and value, that law encodes and enforces. Law is not neutral technology but a form of cultural power that decides which social arrangements are visible, which interests are legible, and which communities are recognised as capable of exercising rights.

Applied to IP law, this postcolonial lens has been developed with particular clarity by Sunder, whose capabilities approach argues that IP rules shape the human capacity to participate in culture, not merely

economic incentives to produce[1]. Coombe's landmark ethnographic study demonstrates how IP law constructs authorship and alterity in ways that systematically marginalise collective and indigenous forms of cultural production[2]. Chander and Sunder's analysis of the "romance of the public domain" exposes how treating TCEs as free-for-the-taking resources enables systematic extraction by entities with the capital to exploit them, while the creative outputs of those entities are propertised and protected[3].

Miranda Fricker's theory of epistemic injustice provides a further conceptual tool[4]. Fricker distinguishes between testimonial injustice, the deflation of a speaker's credibility on identity-based grounds, and hermeneutical injustice, the gap in collective interpretive resources that renders a group's experiences unintelligible within dominant frameworks. Both forms operate in IP law's relationship to Indonesian adat communities: their testimony about custodianship and creativity is accorded reduced evidentiary weight, and the very concept of collective, intergenerational authorship lacks adequate expression in the categories that IP law makes available.

3.2 Cultural Sovereignty as an Analytical Concept

Cultural sovereignty is distinct from state sovereignty. Where state sovereignty concerns the juridical supremacy of a government over territory and population, cultural sovereignty concerns the right of communities, including communities that do not constitute states, to exercise control over the production, reproduction, and transmission of their cultural expressions, meanings, and practices. The concept has roots in the indigenous rights movement and has been elaborated in instruments including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169[32, 33].

For present purposes, cultural sovereignty encompasses four interrelated entitlements: the right to decide who may access and use TCEs; the right to determine the conditions under which such access and use is permitted; the right to benefit from commercial exploitation; and the right to refuse exploitation that conflicts with cultural protocols or community values. These entitlements are not absolute, but they must be recognised as a starting point for legal design, rather than as a residual interest that defers to market access and technological neutrality.

Anaya's account of indigenous peoples in international law provides the normative architecture within which cultural sovereignty claims can be articulated as legal rights rather than merely political aspirations[34]. The FPIC standard, elaborated under UNDRIP Article 19 and extensively theorised by Barelli[35], operationalises cultural sovereignty as a procedural requirement: communities must be consulted and must consent, freely, prior to, and with full information, before measures affecting their cultural expressions are adopted.

3.3 Generative AI as a New Vector of Data Colonialism

Couldry and Mejias have developed the concept of data colonialism to describe how the appropriation of human social life through data extraction extends and deepens historical colonial-capitalist accumulation[28, 30]. Where colonial regimes extracted land, labour, and natural resources, data colonialism extracts the social relations, behaviours, and creative expressions of human communities as raw material for capital accumulation. Ricaurte extends this analysis with a decolonial-feminist lens, arguing for the recognition of Indigenous and Southern data sovereignties as responses to dominant epistemologies of data[31].

Applied to generative AI and TCEs, data colonialism takes a specific cultural form. AI training corpora that ingest Indonesian batik designs, gamelan recordings, or wayang imagery without consent or compensation enact a logic structurally continuous with colonial natural-resource extraction: a resource-rich periphery provides raw inputs to a capital-intensive centre that processes those inputs into high-value outputs, captures the surplus, and faces no obligation of return to the communities from which the resource was drawn. Couldry and Mejias' subsequent work emphasises that resistance must focus on both legal and technical mechanisms, including data trusts and community-controlled data commons[29], pointing toward the regulatory proposals developed in Section 5 of this article.

Drahos and Braithwaite's analysis of information feudalism shows that TRIPS and post-TRIPS treaty-making converted public knowledge resources into private property predominantly held by Northern corporations through a systematic campaign of regulatory capture in multilateral forums[8]. The current AI training-data regime represents a third wave of such enclosure: where the first wave enclosed pharmaceuticals and the second enclosed entertainment content, the third wave is enclosing the cultural commons of the Global South.

4. The Indonesian Legal Landscape: A Diagnosis

4.1 Law No. 28 of 2014 on Copyright and TCE Protection

The primary domestic instrument governing TCEs in Indonesia is Article 38 of Law No. 28 of 2014 on Copyright[18]. Article 38(1) vests copyright in TCEs in the State. Article 38(2) requires the State to inventory, maintain, and preserve TCEs. Article 38(3) subjects use of TCEs by foreign parties to the approval of the relevant minister. Article 38(4) requires all parties using TCEs to pay attention to the values living in the TCE-bearing community.

Three structural problems attend this model. First, the State is not the community. Vesting copyright in the State transfers control from the adat communities that create, maintain, and transmit TCEs to a bureaucratic apparatus that may have divergent interests, limited cultural expertise, and incentives to prioritise economic exploitation over cultural protocols. As Brown has shown in the comparative context, this displacement of community by state authority reproduces patterns familiar from colonial-era cultural-property law[12]. Second, Article 38 provides no mechanism for community consent. A foreign entity seeking to use an Indonesian TCE must obtain ministerial approval, but there is no requirement

that the minister consult the TCE-bearing community, apply FPIC standards, or obtain community agreement. Third, the provision is wholly silent on digital and AI-mediated uses. There is no guidance on whether scraping TCE images for AI training datasets constitutes a "use" requiring ministerial approval, whether AI-generated outputs that mimic TCE aesthetics are covered, or whether automated reproduction at scale is regulated differently from manual reproduction.

4.2 Government Regulation No. 56 of 2022 on Communal Intellectual Property

Government Regulation No. 56 of 2022[19] represents Indonesia's most ambitious attempt to operationalise TCE protection. It establishes five categories of communal IP (TCEs, Traditional Knowledge, Genetic Resources, Indications of Origin, and Potential Geographical Indications), creates a national Communal IP Data System (PDN KIK), and assigns inventarisation roles to ministries, regional governments, and adat communities. Pratama and colleagues note that PP 56/2022 represents a significant step forward from the previous inventory-less model, though its implementation has been uneven across regions[21].

However, PP 56/2022 remains primarily a defensive protection instrument. Its core mechanism is documentation and inventarisation: TCEs are catalogued, described, and stored in a database that can be used to demonstrate prior art or resist foreign IP claims. This is analogous to India's Traditional Knowledge Digital Library (TKDL) model[38], which has proven effective in patent opposition proceedings but does not prevent downstream uses of documented knowledge once it is publicly accessible. Dutfield has argued in the comparative context that purely defensive approaches leave TCE communities vulnerable to appropriation through the very act of documentation[15], and this critique applies with particular force to generative AI, which can ingest inventarisation databases as training data.

Most critically, PP 56/2022 makes no reference to AI systems, generative models, training data, or automated cultural reproduction. It was designed for a regulatory environment in which TCE misappropriation primarily took the form of manual copying, trademark registration, or patent claims. The regulation's silence on AI is not merely an oversight but a symptom of the broader failure to anticipate how technological change transforms the threat landscape for TCE protection.

4.3 The AI Regulatory Gap

Indonesia's AI regulatory framework is currently governed by the Circular Letter of the Minister of Communications and Informatics No. 9 of 2023 on Artificial Intelligence Ethics[20]. This instrument establishes non-binding ethical principles for AI providers, including inclusivity, transparency, and IP protection, but creates no enforceable obligations and no specific provisions on training-data sources. The Ministry of Communications and Digital Affairs (Komdigi) prepared two draft Presidential Regulations on AI, covering the National AI Roadmap and AI Ethics respectively, in 2025, but these had not been signed into law as of the time of writing. Indonesia thus lacks binding AI-specific IP or cultural-heritage protection norms.

This gap is particularly pronounced when compared with the European Union's AI Act (Regulation 2024/1689[26]), which in Article 53 requires providers of general-purpose AI models to publish a sufficiently detailed summary of the training-data content expressly to enable rightsholder enforcement. Guadamuz has shown that this transparency mechanism, however imperfect, at least creates a documentary basis for cultural communities to identify whether their expressions have been ingested into commercial AI systems[25]. Indonesia currently has no equivalent requirement. Antons has noted the additional complexity that many Indonesian TCEs are trans-border, shared across the Indonesian archipelago and neighbouring states, making national-only solutions inherently incomplete[22].

The case of *Thaler v. Vidal* (Federal Circuit 2022)[27] illuminates a further dimension of the gap. The court's holding that AI systems cannot be recognised as inventors leaves open the prior and arguably more important question: what rights, if any, attach to the human cultural creators whose expressions were used as AI training inputs? The insistence that AI must not be treated as a legal author paradoxically reinforces the extractive dynamic by ensuring that training-data contributors, including TCE communities, have no clear claim on AI-generated outputs that draw from their expressions.

5. The Postcolonial Critique

5.1 Individualism versus Communalism: The Authorship Problem

The concept of authorship in copyright law presupposes a discrete individual who originates a work through an act of intellectual creation. This presupposition is not culturally neutral. It reflects a specific European liberal-humanist tradition in which creativity is understood as an individual cognitive achievement, expressed in a singular moment of origination, and rewarded through a temporally bounded exclusive right. As Coombe demonstrated, this model was constructed against and at the expense of collective, communal, and vernacular forms of cultural production[2].

Indonesian TCEs are paradigmatically ill-suited to this model. Batik, wayang, gamelan, and tenun are not created by identifiable individuals in discrete acts of origination. They are accumulated through iterative processes of community transmission, modification, and reinterpretation across generations. The *parang* motif did not have a single author; it emerged from centuries of aesthetic experimentation within Javanese court communities. The same is true of virtually all traditional arts: their value resides precisely in their collective, intergenerational character, which is what makes the individual-authorship model structurally inapplicable.

The consequence is systematic exclusion. Because TCEs cannot be attributed to an identifiable individual author, they fall outside the primary protection mechanism of copyright law. They enter the public domain by default, available for free use by anyone with the technical capacity to access and reproduce them, including AI training pipelines. Sunder has shown that this is not a neutral consequence

but a politically loaded one: it is precisely the cultural expressions of communities in the Global South, communities that have historically practised collective rather than individual creative regimes, that are systematically excluded[17]. The AI training-data economy merely accelerates and scales this exclusion.

5.2 The Originality Requirement as Colonial Epistemology

Copyright law requires that a protected work be original, meaning that it must originate from the author and display a minimal level of creative choice. The originality standard was not designed to accommodate works that derive their value from fidelity to tradition rather than departure from it. A batik maker who reproduces a classic *kawung* pattern with impeccable craft is doing something that the community values highly; copyright law, however, may withhold protection on the ground that the work lacks sufficient originality relative to the prior tradition.

Fricker's concept of hermeneutical injustice is directly applicable here[4]. The originality requirement is a hermeneutical tool, a conceptual framework for evaluating creative value, that has been developed within a tradition that measures creativity by novelty and individual departure. Communities whose creative practices emphasise continuity, transmission, and faithful reproduction are rendered unintelligible by this framework. Their creativity is not denied outright, but it is made structurally ineligible for recognition.

What makes this particularly pernicious in the AI context is the inversion it produces. An AI system trained on Indonesian TCE images can generate outputs that are novel in the narrow copyright sense, they differ from any specific training input by virtue of the model's generative architecture, and can therefore obtain copyright protection for those outputs. The community whose collective creativity provided the indispensable raw material is unprotected; the AI developer who extracted and processed that material obtains protection for the derivative. Guadamuz has analysed this inversion in detail in the European context[24], and it applies with even greater force in Indonesia, where the absence of clear training-data obligations leaves TCE communities without even the opt-out mechanisms available under EU law.

5.3 State Ownership as Surrogate Colonialism

The nomination of the State as copyright-holder for TCEs under Article 38 of Law No. 28/2014 might appear to offer a protective measure: at least, the argument goes, someone has rights to enforce. But the structure of state custodianship reproduces, in postcolonial form, the logic by which colonial administrations treated indigenous cultural property as res nullius or as public patrimony to be managed on behalf of supposedly incapable communities. The State becomes the intermediary between the cultural community and the market, a role structurally analogous to that of the colonial administrator who regulated indigenous cultural practices in the name of preservation.

This structural parallel has concrete legal consequences. Indonesian adat communities have no direct standing to bring legal action against parties who misappropriate their TCEs. Standing belongs to the State. The communities whose cultural sovereignty is at stake are thus rendered passive objects of administrative protection rather than active legal subjects with enforceable rights. Brown's comparative

analysis of indigenous cultural property regimes shows that state-custodian models consistently fail to protect community interests where state economic interests in cultural exploitation diverge from community cultural interests[12]. Von Lewinski's comprehensive comparative survey confirms that positive protection through community-held rights consistently outperforms state-mediated or purely defensive models[14].

Said's account of Orientalism is relevant here at a structural level[6]. The state-as-custodian model positions Indonesian adat communities as objects of legal knowledge and administration, communities whose cultural practices are to be documented, classified, and managed by others. This is the characteristically colonial posture of knowing the other on behalf of the other. A culturally sovereign framework would invert this posture, constituting TCE communities as legal subjects with primary authority over their own cultural expressions.

6. Towards a Culturally Sovereign IP Framework

6.1 Principles of Design

A culturally sovereign IP framework for Indonesian TCEs in the AI era must be designed around five core principles. First, community primacy: rights must vest in TCE-bearing communities, not in the State or in individual community members. This requires developing legal mechanisms for collective rights-holding that do not depend on the formal organisational structures that many adat communities lack. Second, automaticity: protection must attach automatically to TCEs without requiring formal registration, documentation, or administrative procedure. A registration-based model disadvantages communities with limited administrative capacity and creates perverse incentives to document TCEs in ways that facilitate rather than hinder appropriation.

Third, FPIC integration: any use of TCEs for commercial purposes, including AI training, must require compliance with FPIC standards drawn from UNDRIP Article 19 and operationalised through Barelli's procedural framework[35]. FPIC is not merely a consultation requirement; it is a substantive right to withhold consent. AI developers must engage in genuine, good-faith consultation with TCE-bearing communities before including TCE data in training corpora. Fourth, AI transparency: reflecting the model established by Article 53 of the EU AI Act[26], Indonesian law should require providers of AI systems trained on TCE data to disclose the nature and extent of that training data and to identify the communities from whose expressions the data derives. Fifth, benefit-sharing: commercial exploitation of AI outputs derived from TCEs must generate returns to the communities from whose expressions those outputs derive, structured as a percentage of revenue rather than a one-time payment.

6.2 Concrete Mechanisms

Building on these principles, three concrete regulatory mechanisms are proposed. The first is a Communal Licensing Regime (CLR) for AI Training Data. Modelled partially on the compulsory licensing

mechanisms in pharmaceutical IP but adapted to the cultural context, the CLR would require any AI developer wishing to include Indonesian TCE data in a training corpus to obtain a community licence. The licence would be granted by a designated community council (*Majelis Komunitas Adat*) recognised under a revised PP 56/2022, not by the State. Licence terms, including permitted uses, duration, attribution requirements, and compensation rates, would be negotiated between the developer and the community council under administrative oversight. Failure to obtain a licence would constitute a violation of the community's communal IP rights, enforceable by both the community and the State.

The second mechanism is a Cultural Sovereignty Benefit-Sharing Fund (CSBF). All revenues generated by AI systems that obtained CLR licences would be subject to a cultural royalty, calibrated to the significance of TCE inputs to the relevant AI output. Revenues from the cultural royalty would flow to the CSBF, administered by a tripartite body comprising community representatives, the Directorate General of Intellectual Property, and an independent academic panel. The CSBF would allocate funds to TCE preservation, intergenerational transmission programmes, and community capacity-building. Dutfield's comparative analysis of benefit-sharing models identifies administration as the critical failure point and recommends lightweight, community-accountable structures[16], a lesson the CSBF design must integrate.

The third mechanism is an AI Training Data Provenance Disclosure Obligation (ATPDDO). Reflecting the EU AI Act model[26] but extending it to cultural specificity, the ATPDDO would require any AI developer operating in Indonesia or marketing AI-generated products to Indonesian consumers to submit, to the Directorate General of Intellectual Property, a training-data summary identifying any Indonesian TCE categories represented in the training corpus, the communities from whose expressions that data derives, and confirmation of CLR compliance. Summaries would be published in the PDN KIK database alongside the relevant TCE inventarisation records, enabling communities to monitor compliance. The India TKDL model provides a partial precedent for this kind of database integration[38], though the ATPDDO is more active in requiring developer disclosure rather than relying on community detection.

6.3 International Alignment

The proposed framework aligns with and builds upon emerging international norms. The WIPO GRATK Treaty of 2024[10] establishes a mandatory patent-disclosure-of-origin requirement for inventions based on traditional knowledge. Goss has documented how the treaty's negotiating history reflects a growing international consensus that prior-use and prior-knowledge claims must be made visible in IP systems[11]. The proposed ATPDDO extends this transparency logic from patents to AI training data, filling a gap that the GRATK Treaty, focused on genetic resources and associated TK, does not address.

UNDRIP Article 31 explicitly recognises the right of indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, and their IP over such heritage, knowledge, and expressions[32]. Indonesia voted in favour of UNDRIP in 2007. The proposed CLR, CSBF, and ATPDDO collectively give domestic legal content to this international

commitment. Anaya's account of the normative architecture of indigenous rights in international law provides the theoretical grounding for treating community-held TCE rights as a matter of international legal obligation rather than merely domestic policy discretion[34].

Comparatively, the proposed framework draws lessons from both successful and failed models. The South African Intellectual Property Laws Amendment Act of 2013[37] demonstrates the viability of sui generis protection grafted onto existing IP legislation but also the risks of administrative complexity. Karjala and Paterson's comparative analysis of the Andean Community model[36] shows that regional cooperation amplifies the leverage of individual states. Given that many Indonesian TCEs are shared with Malaysian, Bruneian, and Timorese communities, an ASEAN-level TCE protocol, building on the existing ASEAN Intellectual Property Cooperation framework, would significantly strengthen the proposed domestic measures. Antons' regional analysis confirms the importance of this multilateral dimension[39].

7. Conclusion

This article has argued that the inadequacy of Indonesian IP law in protecting traditional arts from AI-mediated exploitation is not a technical gap awaiting a technical fix. It is a structural consequence of IP frameworks built on colonial epistemological foundations: the individual author, the originality requirement, and the state-as-custodian model all systematically exclude the collective, intergenerational creative practices that produce Indonesian TCEs. Generative AI has not created this exclusion; it has scaled and accelerated it, transforming what was once a problem of occasional misappropriation into a condition of systemic cultural extraction.

The postcolonial lens developed in Section 2 reveals that this structural exclusion is not politically neutral. It reflects the continuing afterlives of colonial epistemologies that defined valid knowledge, authentic creativity, and legitimate property in ways that privileged European liberal-individualist forms of social organisation. Fricker's concept of hermeneutical injustice names what is happening when TCE communities find that the law simply lacks the categories to recognise their cultural sovereignty[4]. Couldry and Mejias name the economic mechanism when they describe data colonialism as the new extractive frontier[28]. These are not merely theoretical observations; they are diagnoses of a legal system that is, in the present moment, failing the communities it claims to protect.

The regulatory framework proposed in Section 6, anchored in community-based licensing, mandatory benefit-sharing, AI training-data transparency, and FPIC standards, does not resolve every tension in TCE protection. Brown's caution against overly maximalist cultural-property claims remains apt[12]: the goal is not to enclose the cultural commons for the benefit of particular community elites, but to ensure that the communities who sustain traditional arts have genuine voice and genuine benefit in the decisions made about those arts. The framework is designed with this caution in mind, building in administrative oversight, academic review, and international alignment to guard against both extractive exploitation and protective overreach.

Indonesia's position in this debate is singular. As custodian of one of the world's most diverse TCE repositories, and as a democratic state with formal commitments to UNDRIP and an established communal IP regulatory tradition, Indonesia has both the normative standing and the practical interest to lead a Global South coalition for reform of AI governance norms at WIPO, within ASEAN, and in future WTO digital-trade negotiations. The pending Presidential Regulations on AI Governance and AI Ethics provide an immediate legislative vehicle for the domestic measures proposed here. Their enactment, if designed with cultural sovereignty at their centre rather than at their margin, would represent not merely an incremental improvement in IP law but a meaningful step toward epistemic justice for Indonesian communities whose creativity has sustained the nation's cultural identity across centuries.

Further research is needed on three fronts: the legal personality mechanisms through which adat communities can hold IP rights collectively without formal corporate structures; the technical modalities of training-data provenance disclosure that would be workable for AI developers operating at scale; and the political economy of ASEAN-level TCE harmonisation given the overlapping sovereignty claims to shared cultural expressions across the region. This article has established the theoretical and normative foundations; the detailed institutional design of each proposed mechanism warrants dedicated empirical and comparative legal study.

Declarations

Competing interests

The author declares no competing interests.

Ethics declaration

This article does not involve human participants, personal data, animal subjects, or any data collection requiring institutional ethical approval. No ethics approval was required for the conduct of this research.

Author Contribution

Author contributionsAMI: Conceptualisation, theoretical framework development, legal analysis, regulatory proposal design, comparative legal analysis, literature review, methodology, writing (original draft), writing (review and editing).

Data Availability

All data supporting the findings of this study are available within the article and its supplementary materials. The sources on which the analysis is based comprise publicly available documents, including

domestic Indonesian legal instruments (Law No. 28 of 2014 on Copyright; Government Regulation No. 56 of 2022 on Communal Intellectual Property; Circular Letter of the Minister of Communications and Informatics No. 9 of 2023 on Artificial Intelligence Ethics), international legal instruments (TRIPS Agreement; UNDRIP A/RES/61/295; ILO Convention No. 169; WIPO GRATK Treaty 2024; EU AI Act Regulation (EU) 2024/1689), peer-reviewed academic publications, and official government documents, all of which are fully cited in the reference list and reproduced in the supplementary file.

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