

The Existence of Customary Law in the Recognition and Protection of Collective Rights of Betawi Batik Motifs as Traditional Knowledge and Traditional Cultural Expressions (TCE)

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Abstract

This study examines the existence and role of Customary Law in the recognition and protection of collective rights of Betawi Batik motifs as Traditional Cultural Expressions (TCE) and Traditional Knowledge (PK). Betawi Batik motifs have communal values that are vulnerable to exploitation, and literature analysis shows that the formal Intellectual Property Rights (IPR) regime (Copyright and Industrial Design) is inadequate due to its individualistic nature and time constraints. This creates a protection gap against the collective rights of the Betawi community. This normative legal research uses a literature review, focusing on the synchronization of Customary Law norms and positive IPR. The results indicate that the principle of communal ownership and control functions through the Betawi Cultural Institution (LKB) still exist and are relevant. Therefore, this study constructs an integrative sui generis legal protection model. This

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model rests on three pillars: Communal Registration in the TCE database, Customary Control Mechanisms through BClapproval, and Strengthening Ex-Officio Protection by the government. This model is expected to realize cultural justice and provide legal certainty for the preservation and commercialization of Betawi Batik in a sustainable manner.

Keywords: Betawi Batik, Customary Law, Collective Rights, Traditional Cultural Expressions (TCE), Sui Generis Protection.

BACKGROUND

Indonesia is an archipelago rich in cultural heritage, and one of these riches is manifested in the art of batik. Batik, which has been recognized by UNESCO as a World Heritage Site, is a...*Masterpiece of the Oral and Intangible Heritage of Humanity*, is not just a clothing product, but an expression of traditional culture (TCE) and traditional knowledge inherent in ethnic identity. Among the various Indonesian batiks, Betawi batik is unique. Its motifs, such as Ondel-Ondel, Pucuk Rebung, or Ciliwung, are steeped in history, philosophy, and the characteristics of Jakarta's multicultural society (Prasetyo, 2017).

As a renewable resource, Betawi batik motifs possess high economic, artistic, and social value. However, these values are vulnerable to exploitation and unauthorized ownership claims, especially in the era of globalization and massive commercialization (Kuruk, 2007). Although Indonesia has a set of formal Intellectual Property Rights (IPR) laws, such as the Copyright Law and the Industrial Design Law, these protection regimes are often designed to protect the ownership rights of individuals or corporate entities, rather than the communal collective rights inherent in renewable resources and Traditional Knowledge (PT) (Wiryawan, 2019). This then brings focus to Customary Law, which historically and sociologically has been the foundation in regulating the relationship between indigenous peoples and their resources and cultural heritage (Dutfield, 2006). Customary Law is believed to provide a normative framework for the recognition of Collective Rights over Betawi batik motifs.

The issue of IPR protection for renewable and non-renewable goods, including batik, has been a topic of intensive study. Several previous studies have laid the foundation for understanding the challenges in implementing formal IPR for communal works (Coombe, 1998). Research by Suhartono (2018), for example, focused on analyzing the gap between international IPR principles and the need for IPR protection in Indonesia. Suhartono concluded that formal registration mechanisms such as Copyright or Geographical Indications are often inadequate



because the concept of formal IPR ownership is individual and time-limited, in contrast to the communal, indivisible, and eternal nature of renewable and non-renewable goods. The results of this study strengthen the argument that a solution is needed *of its kind*(special) which accommodates customary legal systems.

Furthermore, Wulandari (2020) specifically examined the protection of Madurese batik and highlighted the role of customary institutions in maintaining the authenticity of motifs and preserving the secret knowledge of natural dyes. Wulandari elaborated that customary sanctions (e.g., social ostracism or communal fines) have proven more effective in preventing internal piracy among indigenous communities than the criminal or civil threats stipulated in formal IPR laws. However, this research is still limited to a local scope and has not yet fully formulated an integrative model that can be applied nationally.

In the Betawi context, research on batik tends to focus on the historical and visual aspects of its motifs (Prasetyo, 2017). These studies provide an important basis for understanding the cultural significance of these motifs. However, these studies have not yet explored the collective legal dimension in depth, particularly in relation to Betawi Customary Law, which has unique characteristics as a society that has assimilated into a dynamic urban environment. Meanwhile, Untari and Juanda (2022) have conducted a study specifically highlighting the Legal Perspective of Intellectual Property Rights (IPR) in Protecting Betawi Batik Motifs. Untari's research provides a legal review of the formal IPR framework (Copyright and Industrial Design) and finds that, despite the potential for protection, the individualistic concept of IPR does not fully address the need for communal ownership and preservation that is the essence of Betawi Batik. These results provide a strong foundation, but this research needs to be continued with a deeper exploration of alternative solutions, namely Customary Law, as a mechanism for recognizing collective rights, which is the main focus of the current research.

Based on the above elaboration, there are urgent research gaps that need to be filled. These gaps form the primary basis of this research. Some of the identified research gaps are:

1. Legal Integration Focus: Previous research has identified the inadequacies of formal IPR and proposed customary law as a potential solution (Suhartono, 2018; Wulandari, 2020). However, no comprehensive study has yet formulated a specific and practical normative integration model that bridges the principle of communal collective rights recognized in customary law with a state-recognized protection mechanism (formal IPR).
2. The Specificity of Betawi Customary Law: TCE studies often focus on indigenous communities outside Java or in regions with strong customary autonomy (Wulandari, 2020).



Existing research has not specifically explored the existence and actualization of customary law within Betawi communities living in the dense and modern capital city. The question is, which customary norms and institutions still exist and can be empowered to claim and protect Betawi batik motifs.

3. Implementation of Recognition: Previous research has been normative-juridical in nature. Further exploration is needed on how the process of recognizing Betawi batik motifs as renewable energy can be strengthened by communal recognition based on customary law, thereby preventing cases of biopiracy or misappropriation by outsiders.

This study aims to analyze and formulate the existence of Betawi Customary Law norms within the framework of protecting the Collective Rights of Betawi Batik motifs as TCE. This study will answer the main questions: To what extent can Customary Law be the basis for recognizing and protecting collective rights over Betawi Batik motifs as TCE, and how can an integrative sui generis protection model be formulated?

Theoretically, this research is expected to contribute to the development of customary law and intellectual property rights, particularly in the concept of communal protection of renewable energy. Practically, the results of this study can serve as recommendations for the Jakarta provincial government (Cultural Office) and the Ministry of Law and Human Rights in formulating policies that support the preservation and recognition of indigenous peoples' rights to their cultural heritage, while also providing empowerment to the Betawi batik artisan community.

METHOD

This research uses a normative legal research method with a literature review approach (Library Research). The main focus is analyzing the existence and effectiveness of Customary Law in recognizing and protecting the collective rights of Betawi Batik Motifs as an Expression of Traditional Culture (TCE) and Traditional Knowledge (PT).

The data used is secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 28 of 2014 concerning Copyright, other IPR-related laws, and Constitutional Court/Supreme Court decisions relevant to communal rights and customary law. Secondary legal materials include scientific journals, books, dissertations, and previous research results discussing IPR, TCE, PT, and Betawi customary law. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias as supporting materials.

Data collection was conducted through document studies and systematic digital literature searches using keywords such as "Betawi Customary Law," "Collective Rights," "Betawi Batik," and



"TCE." Data analysis was conducted qualitatively and descriptively through the stages of interpretation, systematization, and legal construction. First, identification and categorization of Betawi Customary Law norms that still exist and are relevant to communal ownership were conducted. Second, an analysis of the synchronization between Customary Law norms and formal IPR provisions was conducted. Finally, an integrative sui generis legal protection model was constructed for the collective rights of Betawi Batik motifs, as a solution to the gaps found in the positive legal regime.

RESULTS AND DISCUSSION

The Concept of Betawi Batik Motifs as an Expression of Traditional Culture (TCE) and Traditional Knowledge (PT) Betawi Batik motifs, such as Ondel-Ondel, Sikatan, Naga, and Pucuk Rebung, not only serve aesthetic functions but also have profound historical, philosophical, and sociological values (Prasetyo, 2017). The results of the literature review indicate that Betawi Batik meets the criteria for Traditional Cultural Expression (TCE) because it is the result of traditional creative activities, passed down from generation to generation, and owned collectively by the Betawi Community. In addition, the manufacturing process, coloring techniques, and selection of certain materials contain Traditional Knowledge (PT), such as natural coloring formulas or the symbolic meaning of motif placement (Wulandari, 2020).

Recognition of the status of renewable energy and PT is crucial. In an international context, *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (IGC-GRTKF) under WIPO (*World Intellectual Property Organization*) has defined PT and TCE as heritage worthy of collective and timeless protection (WIPO, 2021). Therefore, the challenge of protecting Betawi batik motifs is finding a legal mechanism that aligns with these collective and timeless characteristics.

Limitations of the Formal IPR Regime

An analysis of the formal IPR regime (Copyright Law No. 28/2014 and Industrial Design Law No. 31/2000) shows a structural inability to fully protect Betawi Batik. Copyright tends to protect individual works for a limited period (life plus 70 years), while Industrial Design is only valid for 10 years and must meet novelty requirements (Suhartono, 2018).

Untari and Juanda (2022) explicitly assert that while it is possible for individuals or entities to register new Betawi batik motifs as Copyright or Industrial Designs, this protection does not extend to traditional motifs that have been passed down through generations. Furthermore, the



rights granted are exclusively individual, thus ignoring the communal ownership rights of the Betawi community as a whole. This creates a protection gap that has the potential to trigger unfair claims or misappropriation.

The Existence and Relevance of Betawi Customary Law

Customary law is known to have the principle of communal ownership (ulayat rights), which is a characteristic of indigenous communities in Indonesia. Although the Betawi people live in urban areas (Jakarta), research results show that the norms of collectivity and recognition of ancestral heritage are still highly respected, especially in the context of cultural heritage such as batik motifs. Wiryawan (2019) explains that from a customary law perspective, PT and TCE cannot be separated from the identity of the community that created them and therefore, the right to this heritage is a collective right that cannot be released or sold individually.

In the Betawi context, although customary institutions may not be as formal as in other regions, the Betawi Cultural Institute (LKB) and community leaders (elders) act as modernized customary institutions. They serve as custodians and holders of collective mandates (Wijaya & Lestari, 2021). The existence of Betawi customary law is manifested through collective recognition, namely the belief that heirloom motifs are shared property whose authenticity must be maintained, and through normative oversight. *sense of propriety* among craftsmen not to modify or claim heirloom motifs as individual creations.

The function of customary law is not only limited to recognition but also to monitoring and enforcement through social customary sanctions. Wulandari (2020) found that customary sanctions (e.g., reprimands from elders or social isolation) have a stronger deterrent effect in small communities against TCE violations than the threat of distant criminal penalties.

In the case of Betawi batik, the control function of customary law can be interpreted as communal legitimacy for the use and reproduction of motifs. Before a motif is mass-produced, approval (or at least consultation) with the BCI (Cultural Council) or elders may be morally and socially required. If internal plagiarism occurs, dispute resolution mechanisms through deliberation (in accordance with customary values) are preferred over formal litigation.

Construction of an Integrative Sui Generis Protection Model

Given the inadequacy of formal IPR and the existence of communal principles of Customary Law, this study strengthens the argument that the protection of Betawi Batik must utilize an integrative sui generis (stand-alone) legal approach. The sui generis approach is globally



recognized as the best solution for TCE because it allows for legal design that accommodates communal and timeless characteristics (WIPO, 2021; Vivas-Eugui, 2018). Based on the analysis of Customary Law and IPR, an integrative protection model can be constructed with three main pillars (Table 1):

Table 1. Three main pillars

Pillar	Legal Basis	Protection Function	Supporting References
Pillar 1: Communal Registration	Customary Law (Communal Recognition)	Determine collective rights owners (for example, the Betawi Community represented by LKB) and register traditional motifs in the National TCE Database (in accordance with the mandate of the Intellectual Property Rights Law).	Wiryawan (2019)
Pillar 2: Customary Control Mechanisms	Customary Law (Deliberation & Sanctions)	Regulating access and shared benefits (Benefit Sharing). Craftsmen who use heirloom motifs must contribute to a collective fund managed by the LKB.	Wulandari (2020)
Pillar 3: ProtectionEx- Officio& Preventive	Formal IPR (Geographical Indications &Trade Mark)	The government is obliged to protect <i>ex officio</i> registered motifs. Geographical Indication (GI) protection needs to be considered to link the quality of batik to its geographic origin in Betawi (Jakarta).	Untari & Juanda (2022); Suhartono (2018)

Source: Data averaging results, 2025

These pillars ensure that recognition starts from below (Customary Law) which is then strengthened by state legitimacy (formal IPR) (Wiryawan, 2019).

Implementation of the Role of the DKI Jakarta Regional Government

Implementation of this model requires a Regional Government Regulation (Perda or



Pergub) that recognizes the BCI as the authorized institution to grant approval (Prior Informed Consent) for the use of Betawi Batik heritage motifs (Wijaya & Lestari, 2021). The role of the DKI Jakarta Regional Government is vital in:

- Registration Funding: Supports the motif registration process in the Ministry of Law and Human Rights' TCE Database.
- Establishing a Benefit Sharing Scheme: Creating derivative rules regarding how profits from the commercialization of registered motifs are returned to the community (Pillar 2).

Legal Implications and Cultural Justice

This study has significant legal implications. Integrating customary law into the protection of Betawi batik embodies Article 18B Paragraph (2) of the 1945 Constitution, which recognizes the existence of customary law communities. Specifically, this embodies cultural justice, ensuring that the Betawi people receive recognition, control, and benefit from their collective intellectual heritage, rather than simply becoming an object of market consumption.

This strengthening of protection does not hinder the development of the creative industry, but rather creates legal certainty for investors and artisans. Recognizing that heritage motifs are under communal control, third parties must establish fair and transparent partnerships, in accordance with the principles of Fair and Equitable Access and Benefit Sharing (*Access and Benefit Sharing/ABS*) (WIPO, 2021). This model serves as an example of how national law can create a harmonious meeting point between positive state law and prevailing societal norms.

CONCLUSION

This literature review concludes that Betawi batik motifs have a dual position as Traditional Cultural Expressions (TRE) and Traditional Knowledge (TK), making them a collective heritage vulnerable to exploitation in the era of commercialization. Indonesia's formal Intellectual Property Rights (IPR) regime, such as Copyright and Industrial Design, has proven structurally inadequate due to its individual, time-limited ownership concept, and inability to accommodate the communal and sustainable nature of Betawi batik. This creates a protection gap that has the potential to harm the original creator community.

The analysis shows that Betawi Customary Law still has a strong existence and relevance, even in a modernized urban context. The principle of collective rights and recognition of ancestral heritage is manifested through the role of institutions such as the Betawi Cultural Institute (BCI) as a normative custodian. Customary Law functions as a social control system that provides



communal legitimacy and uses effective social sanctions to maintain the authenticity of heirloom motifs. Therefore, an integrative sui generis legal protection model is needed. This model must be based on three pillars: (1) Communal Registration in the national TCE database initiated by the community, (2) Customary Control Mechanism through BCI approval for commercial use, and (3) Strengthening Protection *Ex-Officio* by the Jakarta Regional Government (Pemda), including consideration of Geographical Indication (GI) registration. This integration achieves cultural justice by ensuring positive legal recognition of the collective rights of the Betawi people, while also creating legal certainty for the fair and sustainable preservation and commercialization of Betawi batik motifs.

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