



## The integration of inclusive moral rights in the protection of genetic resources and traditional knowledge of indigenous peoples: The role and responsibility of the Indonesian government

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### Abstract

The protection of genetic resources and traditional knowledge associated with these resources is an urgent legal and ethical issue, particularly in Indonesia, which is rich in biodiversity and indigenous cultural heritage. This article examines the integration of inclusive moral rights concepts in safeguarding genetic resources and traditional knowledge within indigenous communities, emphasizing the role and responsibility of the Indonesian government. Using a normative-legal research method combined with a socio-legal approach, this study analyses the inadequacy of current legal frameworks to fully recognize moral rights dimensions, including the right to be acknowledged, respected, and protected in an inclusive manner. Findings show that the incorporation of inclusive moral rights strengthens the recognition of indigenous peoples' dignity and cultural identity while ensuring equitable benefit-sharing mechanisms. The paper argues that the Indonesian government must implement policies that uphold inclusive moral rights, establish clear regulations recognizing community moral rights over their genetic resources and traditional knowledge, and foster participatory mechanisms in decision-making processes. This integration is essential to protect indigenous cultural heritage from misappropriation and to promote social justice in biodiversity governance.

**Keywords:** Inclusive moral rights, genetic resources, indigenous peoples

### Introduction

Traditional knowledge encompasses all ideas and concepts within a community that contain local values derived from real experiences in interacting with their environment, continuously developed, and passed down to subsequent generations. Genetic Resources (GR) refer to biodiversity at the genetic level. GR and traditional knowledge are cultural heritages of communities that have been inherited and continuously developed, and they are inseparable from one another. Traditional knowledge and genetic resources have played a significant role in the development of GR to fulfil the needs of present and future human life. GR and traditional knowledge are interrelated in producing high-quality products (bioprospecting). One example of GR and traditional knowledge utilization for community welfare is traditional medicine. The intrinsic value of traditional knowledge and genetic resources, along with their ecological, genetic, social, economic, scientific, educational, cultural, recreational, and aesthetic values, form an important foundation for sustainable development and human well-being<sup>[1]</sup>.

In Indonesia, the management, regulation, and protection of natural resources are under the authority of the state, as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states: The land, water, and natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. Based on this provision, it is therefore very important and becomes the obligation of the state and the Government of Indonesia to protect all the wealth possessed by the Indonesian nation, including natural resources, biodiversity, mineral resources, genetic resources, as well as both traditional and modern culture and knowledge. One form of legal protection that can prevent unauthorized exploitation and safeguard economic and moral rights is intellectual property.

Intellectual property protection for genetic resources and traditional knowledge is specifically regulated in Law Number 13 of 2016 on Patents, which grants exclusive rights to inventors over their inventions that utilize genetic resources and traditional knowledge, and in Government Regulation Number 56 of 2022 on Communal Intellectual Property<sup>[2]</sup>, which grants inclusive rights to the holders of such genetic resources and traditional knowledge.

Indonesia is one of the most biodiverse countries in the world, with rich genetic resources and traditional knowledge embedded within indigenous communities. However, despite international and national recognition of indigenous rights, the protection of genetic resources and associated traditional knowledge remains inadequate, especially regarding moral rights that uphold cultural identity, dignity, and the inclusive participation of indigenous peoples. Previous legal frameworks have focused predominantly on economic rights and benefit-sharing, often neglecting the moral dimensions essential to safeguarding indigenous cultural heritage. This article seeks to analyse how inclusive moral rights can be integrated into Indonesia's legal system to protect genetic resources and traditional knowledge effectively while ensuring the rights and dignity of indigenous communities are respected.

Inclusive moral rights refer to the recognition of personal and communal rights that extend beyond economic interests, including the rights of attribution, integrity, and respect for cultural identity. In the context of traditional knowledge and genetic resources, moral rights ensure that indigenous peoples maintain control over how their knowledge and resources are used, preventing misappropriation and misuse by external parties. Indonesia's legal system recognizes aspects of traditional knowledge and genetic resources protection through Law No. 5/2017 on Advancement of Culture, recognizing cultural expressions and practice, Law No. 11/2013 on Ratification of the Nagoya Protocol,

emphasizing access and benefit-sharing, Draft Bill on Genetic Resources Protection (RUU SDG), which is yet to be enacted and currently lacks clear provisions on moral rights and indigenous peoples' participatory rights. However, these laws do not fully integrate moral rights that are inclusive of indigenous communities' personal and cultural connections to their genetic resources and knowledge.

The UNDRIP, particularly Articles 11 and 31, emphasizes indigenous peoples' rights to maintain, protect, and develop their cultural heritage and traditional knowledge, including moral rights such as attribution and integrity. The WIPO Intergovernmental Committee has also advanced negotiations to incorporate moral rights concepts in traditional knowledge protection regimes globally.

The integration of inclusive moral rights within Indonesia's legal framework is critical for effective protection of genetic resources and traditional knowledge. It ensures recognition of the cultural and personal dimensions of these resources, fostering respect, dignity, and equitable benefit sharing for indigenous peoples. The Indonesian government must revise existing and draft regulations to incorporate moral rights explicitly, establish participatory mechanisms for indigenous communities, and align national policies with international standards to prevent biopiracy and promote social justice in biodiversity governance.

### Method

This research uses a normative-legal research method combined with a socio-legal approach to comprehensively analyse the integration of inclusive moral rights within Indonesian legal frameworks. Type of Research Normative juridical, examining laws, regulations, and international instruments related to moral rights, genetic resources, and traditional knowledge, Socio-legal, exploring how indigenous communities perceive and exercise their moral rights within customary and state law intersections. Data Sources, Primary legal materials: Indonesian Constitution 1945, Law No. 11 of 2013 on Ratification of the Nagoya Protocol, Law No. 5 of 2017 on Advancement of Culture, Draft Bill on Genetic Resources Protection (RUU SDG), Relevant Constitutional Court decisions. Secondary legal materials: Journal articles, books, and commentaries on moral rights and indigenous rights, Statute approach to analyses relevant legislation, Conceptual approach to explore moral rights inclusivity concepts, Case approach to study jurisprudence or policy implementation cases involving indigenous peoples' rights over genetic resources and traditional knowledge.

### Material

Natural law is a philosophical theory that asserts that humans possess certain rights, moral values, and responsibilities that are universally accepted and inherent in human nature. According to natural law theory, all individuals and organizations have the right to freedom from government and political systems, regardless of culture or religion. The theory of natural law was pioneered by several philosophers, including Plato, Aristotle, who was also a student of Plato and Zeno, the founder of the Stoic school. According to the natural law school, all laws originate from God, and thus are universal and eternal. It can therefore be concluded that law and morality cannot be separated. Adherents of natural law theory believe that law

and morality reflect various internal and external rules arising from human life processes, which can be manifested through law and morality. As stated by Thomas Aquinas, natural law is a provision that arises from human reason, originates from God, is aimed at achieving good, is made by those who are authorized to govern society, and is intended to be promulgated<sup>[3]</sup>.

Recognition of Moral Rights within Indonesia's Legal Framework, Indonesia's current legal instruments for protecting genetic resources and traditional knowledge primarily focus on economic rights and benefit-sharing. The Nagoya Protocol (Law No. 11/2013), for example, regulates access and benefit-sharing but does not clearly articulate moral rights, such as the rights of attribution and integrity for indigenous peoples as knowledge holders. Similarly, Law No. 5/2017 on Advancement of Culture recognizes traditional cultural expressions but lacks enforceable provisions safeguarding moral rights against misappropriation or distortion. In contrast, moral rights in copyright law, such as in Law No. 28/2014 on Copyright, grant authors rights of attribution and integrity. However, these rights are conceptualized individually, not communally, and are limited to copyrighted works, excluding genetic resources and traditional knowledge. This reveals a normative gap where moral rights for communal knowledge systems remain unrecognized, undermining indigenous peoples' cultural dignity and autonomy.

Limitations of Existing Legal Protections Regarding Inclusive Moral Rights, the existing legal framework in Indonesia faces several limitations Individualistic orientation of moral rights, Current moral rights doctrine in Indonesia focuses on individual creators, ignoring communal holders such as indigenous communities whose knowledge is collectively inherited and practiced, Lack of recognition of non-economic interests: The legal focus remains on economic compensation or benefit-sharing without emphasizing rights to cultural integrity, respect, and control over the use of knowledge and resources, Absence of participatory mechanisms: Indigenous peoples often lack a formal role in decision-making processes concerning their genetic resources and traditional knowledge, leading to top-down policy approaches that risk marginalization, No clear sanctions for moral rights violations: Unlike economic rights infringements, there are no penalties for violations such as misattribution, disrespect, or culturally inappropriate uses.

These limitations hinder the protection of indigenous peoples' rights, perpetuating historical injustices and opening avenues for biopiracy and cultural exploitation. To address these gaps, Indonesia should adopt an inclusive moral rights approach aligned with international standards and indigenous perspectives as Legal recognition of communal moral rights: Laws should explicitly recognize indigenous communities' rights of attribution, integrity, and control over their genetic resources and traditional knowledge. This includes acknowledging collective authorship or ownership, Development of sui generis legal frameworks: Indonesia needs a *sui generis* system that integrates moral and economic rights for traditional knowledge and genetic resources protection, as recommended by WIPO and practiced in countries like India and Peru, Participatory policymaking and Free, Prior, and Informed Consent (FPIC): Policies must mandate FPIC procedures to ensure indigenous peoples' voices are

respected in decisions affecting their knowledge and resources, Capacity building and legal empowerment: Indigenous communities should be empowered with knowledge of their moral and legal rights to negotiate, assert, and protect their interests effectively, Institutional reforms: Establishing dedicated bodies or strengthening existing institutions (e.g. Badan Registrasi Wilayah Adat) to oversee the registration, management, and protection of traditional knowledge, including monitoring moral rights compliance.

International experiences offer lessons for Indonesia, compare to India, the Biological Diversity Act (2002) integrates benefit-sharing with recognition of community knowledge holders, although moral rights remain implicit, compare to Peru: The Law No. 27811 (2002) on Protection of Indigenous Peoples' Collective Knowledge explicitly recognizes the rights of communities to be identified as holders of traditional knowledge, an embodiment of moral

rights, compare to Philippines: The Indigenous Peoples' Rights Act (1997) enshrines cultural integrity and self-governance as key rights, operationalized through FPIC and recognition of communal moral rights over traditional knowledge.

These comparative frameworks demonstrate the feasibility and necessity of integrating inclusive moral rights to ensure justice for indigenous peoples in resource governance. Integrating inclusive moral rights will advance distributive and recognition justice, ensuring that indigenous peoples are not merely beneficiaries of economic rights but respected holders of cultural dignity. Inclusive moral rights frameworks strengthen biodiversity conservation efforts by centring indigenous knowledge systems as integral to sustainable resource management. Clear recognition of communal moral rights will reduce legal ambiguities in genetic resource and traditional knowledge governance, fostering fair partnerships and preventing conflict.

**Table 1:** Legal Frameworks and Gap Analysis

Legal Instrument	Scope	Recognition of Moral Rights	Gaps
Law No. 28/2014 on Copyright	Copyright works	Recognizes individual moral rights (attribution, integrity)	Does not apply to traditional knowledge or communal resources
Law No. 11/2013 (Nagoya Protocol Ratification)	Access and benefit-sharing of genetic resources	Focus on economic benefit-sharing	No provisions on moral rights (attribution, integrity, respect)
Law No. 5/2017 on Advancement of Culture	Traditional cultural expressions	General recognition of cultural heritage	Lacks enforceable moral rights protections
Draft Bill on Genetic Resources Protection (RUU SDG)	Genetic resources and TK protection	Emphasizes state control and benefit-sharing	Silent on moral rights and FPIC mechanisms
UNDRIP (ratified principles)	Indigenous rights	Strong recognition of cultural integrity and moral rights	Not fully domesticated into national laws

Legal protection for traditional knowledge has also been specifically recognized as a constitutional right, as stipulated in the Second Amendment to the 1945 Constitution in 2000. Article 18B paragraph (2) of the 1945 Constitution states that the state recognizes and respects traditional community units along with their traditional rights if they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. Furthermore, Article 28I paragraph (3) of the 1945 Constitution states that cultural identities and the rights of traditional communities shall be respected in accordance with the development of times and civilizations.

Based on these constitutional mandates, Indonesia, in principle, has regulated the rights, obligations, and protection of genetic resources and traditional knowledge. Specific protection regarding genetic resources and traditional knowledge is also regulated under Law Number 13 of 2016 on Patents, Article 26, which states that: "If an invention is related to and/or originates from genetic resources and/or traditional knowledge, the origin of such genetic resources and/or traditional knowledge must be clearly and correctly mentioned in the description." This provision was established due to concerns over frequent utilization by inventors or patent applicants, both domestic and foreign, of Indonesia's genetic resources and/or traditional knowledge to produce new inventions without honestly declaring the origin of the utilized genetic resources and/or traditional knowledge.

The requirement to disclose the origin of genetic resources and/or traditional knowledge in the description aims to support Access and Benefit Sharing (ABS) for the

utilization of such resources and knowledge. It is evident that the Patent Law only regulates genetic resources and/or traditional knowledge that are related to new inventions in the field of technology involving an inventive step and are industrially applicable, thus eligible for patent protection and utilization. Meanwhile, genetic resources and/or traditional knowledge not related to new technological inventions cannot be protected under the Patent Law. Therefore, the Patent Law cannot provide protection for all forms of genetic resources and/or traditional knowledge.

In 2017, the Indonesian government initiated the process of establishing *sui generis* legislation to protect the utilization of communal intellectual property by issuing Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 on Communal Intellectual Property Data. This regulation is intended to ensure that Communal Intellectual Property Data can be utilized for the purposes of protection, preservation, development, and/or utilization, which need to be managed and maintained through an inventory system.

The Communal Intellectual Property Data Centre currently consists of 1,414 records of Traditional Cultural Expressions, 455 records of Traditional Knowledge, 113 records of Geographical Indication Potentials, 8,533 records of Genetic Resources, and 18 records of Indications of Source (data retrieved from the KIKOMUNAL database as of May 19, 2024).

However, the Indonesian Communal Intellectual Property Database has only been integrated with data from several ministries and governmental institutions. At present, cultural heritage databases remain fragmented, which makes access difficult for the public. For example, intangible cultural

heritage data are still scattered across various government institutions. Likewise, genetic resources data from related institutional databases such as the National Agency of Drug and Food Control (BPOM), Ministry of Environment and Forestry (KLHK), Ministry of Education, Culture, Research, and Technology (Kemendikbudristek), Ministry of Agriculture, Ministry of Marine Affairs and Fisheries (KKP), and other relevant ministries have not yet been integrated with the KIKOMUNAL Data Center.

This fragmented data system significantly hampers public access. The Communal Intellectual Property Database currently only provides supporting data as an inventory result of Indonesia's communal intellectual property. The Communal Intellectual Property Data Centre has not yet been able to provide access for the purpose of effective legal protection of communal intellectual property, particularly genetic resources and traditional knowledge.

However, the implementation of inclusive moral rights to protect genetic resources and traditional knowledge in the form of an integrated database, prior informed consent and mutually agreed terms in contractual form, and fair and equitable benefit-sharing has not yet been realized or implemented in Indonesia. There is also no institution responsible for benefit-sharing arrangements in Indonesia, resulting in the suboptimal management of genetic resources across terrestrial, aquatic, and aerial ecosystems. Traditional knowledge, which constitutes cultural heritage, has not been comprehensively inventoried, leaving many traditional knowledge systems unrecorded in the KIKOMUNAL Data Centre. The implementation and realization of the inclusive moral rights concept in the protection of genetic resources and traditional knowledge remain limited to the recognition of the sovereignty over the origin of genetic resources and traditional knowledge, which is expressed in patent descriptions and the data recorded in the KIKOMUNAL Data Centre.

### Conclusion

The current Indonesian legal framework inadequately recognizes the moral rights of indigenous communities over their genetic resources and traditional knowledge, focusing predominantly on economic benefits while neglecting cultural integrity and personal rights. Integrating inclusive moral rights is essential to uphold indigenous peoples' dignity, ensure fair recognition, and prevent cultural and biological misappropriation. The Indonesian government must reform its laws to explicitly recognize communal moral rights, implement participatory mechanisms, and align national policies with international standards to foster a just, respectful, and equitable protection regime for indigenous knowledge systems.

Amend existing legislation or enact a *sui generis* law to recognize communal moral rights of indigenous peoples over their genetic resources and traditional knowledge, explicitly including rights of attribution, integrity, and protection against culturally inappropriate uses. Integration of FPIC: Mandate Free, Prior, and Informed Consent (FPIC) procedures in all policies relating to access and utilization of genetic resources and traditional knowledge to ensure indigenous peoples' participation and autonomy, institutional strengthening establish or empower specialized bodies to manage traditional knowledge databases, monitor moral rights compliance, and facilitate equitable benefit-sharing arrangements, develop legal empowerment

initiatives for indigenous communities to understand and assert their moral and legal rights effectively in negotiations with government agencies or commercial entities, harmonize national policies with UNDRIP and WIPO recommendations on traditional knowledge protection to prevent biopiracy and cultural exploitation.

The government and local communities must work together to prepare an integrated system within the KIKOMUNAL Data Centre. In addition, the government should immediately establish an institution responsible for facilitating prior informed consent and mutually agreed terms in contractual form, as well as fair and equitable benefit-sharing arrangements. Furthermore, all ministries, government agencies, educational institutions, research institutions, and local communities must collaborate in the care, safeguarding, maintenance, and development of genetic resources and traditional knowledge.

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