The Legal Protection Towards Traditional Clothes: Intellectual Property Regimes in ASEAN

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ABSTRACT

Traditional clothing is one of the essential identities in Southeast Asian countries, known as ASEAN members; it was once used to showcase individual status in the community. It is still important today and worn on particular occasions to preserve tradition, and now it's emerged as one of the commercial goods. Yet, it becomes a vulnerable commodity when it becomes the object of cultural piracy, dispute of ownership, and disagreement of origin. The problem will continue to be detrimental to indigenous peoples who own it and possibly rift the relationship between ASEAN countries. The protection of traditional clothing in ASEAN is still weak, and there has been no specific legal instrument to regulate it. The intellectual property right (IPR) regime protects traditional clothing as a traditional cultural expression (TCE). TCE protection is part of the international regulation of intellectual property; however, without it well-implemented at the domestic level, TCE can easily be claimed as belonging to other parties who first published and registered them. This research will examine the legal protection of traditional clothes under IPR regimes in ASEAN in their national legal regulations. This research uses a comparative approach that primarily examines the laws and regulations governing the protection of Intellectual Property Rights in ASEAN countries. This research indicates that no single country in ASEAN has a specific law related to traditional cultural expressions (TCE) protection on traditional clothes. The protection for traditional clothes will be embedded in other IPR regimes such as Copyright, trademark, or non-IPR legislation.

Keywords: Traditional Clothing; Intellectual Property Rights; Traditional Cultural Expression;

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INTRODUCTION

Southeast Asian countries are famous for having rich, diverse, and unique cultures commonly divided into two significant cultures: Malay and Indo-China as Indosphere Culture. These two primary cultural roots have shaped differences and similarities between members manifested unique traditional cultures across the region. (Fajarwati, 2021)
Declaration was established in 1967 is the most important instrument for ASEAN. The Preamble Declaration affirms the desire of member states to establish a solid foundation to promote regional cooperation, strengthen economic and social stability, and maintain security from outside interference. ASEAN’s goals and objectives are to promote economic growth, promote social and cultural development, promote regional peace and stability, promote active cooperation and mutual assistance in the economic, social, cultural, scientific, and technological fields, trade and promote cooperation with international organizations and other regions that have the same aims and objectives as ASEAN. (Adolf, 2019) One of the goals of social and cultural development is a framework for cooperation that is currently being developed by member countries. One of them is a traditional culture.

ASEAN understands how vital culture is in its development process and its member countries. The existence of culture conveys this as one aspect of the ASEAN Socio-Cultural Pillar to build regional integrity. (Indrawan, 2016) The respect for the ASEAN distinctive culture is not only assimilated as Socio-Cultural Pillar but it’s also integrated into ASEAN Economic Community (AEC) Blueprint 2025 that aims to transform ASEAN into a highly innovative and competitive region to utilize its modality including intangible assets such as ASEAN culture heritage and in the same time protect the culture. (W. Kariodimedjo, 2019)

ASEAN has experienced a rift which was happened between Singapore Vs. Malaysia on Pandan Cake and, Thailand v.s Myanmar on Konbaung, Indonesia v.s Malaysia on Songket are examples of conflicts in cultural heritage, from food to ceremonies to traditional clothing. However, the differences and the similarities of diverse traditional cultures also possibly raise tension and conflict; one of the examples is claiming the ownership of a particular culture as its own and refusing another claim. (Lim, 2019) This fact shows that the protection of ASEAN cultures is still weak. There has been no specific legal instrument to regulate it that leads the open or silent conflict between members. Intellectual Property Rights (IPR) regimes offer a framework for ASEAN to utilize and protect its abundance of cultures and prevent conflict among members.

IPR regimes derive from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) substantially protect individual rights on copyrights, industrial designs; integrated circuit layout-designs; patents; new plant varieties; trademarks; trade names. (Lim, 2019) The recent development of the IPR regime protects geographical indications; traditional knowledge, traditional cultural expression, and genetic resources which are the rights is owned by the state, group, or community. (Wedhatami & Santoso, 2014) The recent development of the IPR regimes that protect not only an individual right but an entire community is known as communal intellectual property rights. This type of IPR is expected capable to protect traditions potentials and the community may gain advantages by utilizing it. Primarily indigenous people, hopefully, can access, enjoy and share the benefit economically by protecting their own culture.
Priors to development of communal rights development, intangible property for traditional culture was protected under some types of IPR, however, TCE in some extent cannot be fitted or fulfilled the requirements such as who is the first creator, whit its started or how it’s the evidence. Oftenly to protect TCE, the community needs be sacrificed and accepted that their TCE was applied and registered by an individual in the community or if the worst situations it registered under to someone that the community does not know. Whereas, Indigenous peoples understand TCE as cultural heritages which owned communally and nurture an assumption that traditional knowledge and TCE are open and shared within the community itself. The communally owned and shared concept is the distinctive character of the indigenous community. They do not apply the concept of a monopoly on the use of TCE as the concept exists on the existential Intellectual Property Rights (IPR). (Organization, 2022) However, for decades, there is no distinctive protection for it. The protection for any traditional intangible product became late boomer to develop as its protection will be attached to other (industrial) IPR such as patent, trademark, and copyright. And there is a legal vacuum to protect TCE.

The nonexistence protection for TCE will continue to be detrimental to indigenous peoples in particular because the use of TCE can easily be claimed as belonging to other parties who first published and registered them. This creates a conflict of interest between developed and developing countries. Developed countries want TCE to be considered as common property so that it can be accessed. Meanwhile, developing countries consider that the existing Pregame has not been able to protect the interests of developing countries over traditional cultural expressions. (Arifuddin, 2019) Various forms of commercialization of TCE without the permission of the indigenous people of their owners even various forms of distortion, alteration or modification of TCE.

One example of the result of the legacy of TCE is cloth. Clothing is one of the products of human culture that has developed far. At first, clothes only functioned as a cover and body protection from the weather. (Sunarti, 209 C.E.) However, with the development of the era, clothing is not only a cover and body armor but also a symbol of the wearer's status. (Yunita Maya, 2021) Clothing raw materials are obtained not only from plant fibers, such as cotton or bark but also animal skins. (Marcelina & Saftiyaningsih, 2012) These materials are obtained from the environment itself and the outside. In the past decades, we can still find several ethnic groups in Southeast Asia who wear clothes in the form of loincloths or fringed skirts that only cover vital parts. The material used comes from the grass that is assembled. The invention of the loom in the New Stone Age (Neolithic) is a revolution in the manufacture of clothing today. In addition, the entry of other cultural elements into Southeast Asia has enriched knowledge about materials, techniques and technology for making clothes. For example, Chinese traders. All of this shows that almost most of Asia, especially in ASEAN countries, already have a certain form of clothing. (Chalid, 1991) In Southeast Asia, each country has its traditional fabrics,
such as Sampoot from Cambodia, Longyi from Myanmar, Songket from Indonesia and Malaysia, and so on.

This proves that ASEAN has a very diverse wealth of TCE as additional cultural heritage that must be preserved. Not only to pass it down to the next generations of a nation and as a precautionary measure to prevent disputes between members and the indigenous community. Considering that the issue of TCE is currently an important discussion at World Intellectual Property Rights Organization (WIPO) (Syafrinaldi, 2003), this research will also help determine the extent of efforts that have been made by countries in ASEAN, especially those with many cultures, in protecting their traditional culture in national legal regulations. However, the problem is how is the legal protection of traditional cloth in the IPR regime in ASEAN?

METHOD

This research is comparative legal research that mainly examines and compares national laws on the protection of intellectual property rights in ASEAN countries members and uses qualitative analysis. The approaching model used is the statute approach and uses secondary data. Secondary data consists of primary legal materials and secondary legal materials. (Soekanto & Mamudji, 2015) The primary legal materials used are international regulations and national laws that are relevant to the formulation of the problem to be discussed. In contrast, the secondary legal materials are books, journals, and articles that are relevant to the research focus. Data collection is carried out from library research by reading, quoting, taking notes, and understanding various literature related to the research. Data material is collected through the procedures for identification, inventory, classification, and systematization of data materials according to research problems.

ANALYSIS AND DISCUSSION

ASEAN countries have their traditional fabrics. Cambodia calls it sampoot, Myanmar calls it longyi, Pha biang comes from Thailand, Aodai from Vietnam, Philippines has Barot and Laos has sinh. Meanwhile, Indonesia, Malaysia, Singapore, and Brunei Darussalam, which are one Malay family, have similarities to traditional cloth such as the sarong of songket. Not only that, Indonesia which consists of 34 provinces has its traditional cloth. (Gede et al., 2017) We can see the various pattern and distinctive uniqueness of its traditional cloths such as examples as follows:

1. Sampot, Cambodia

   The influence of Chinese culture in the creation of sampots can still be seen in the patterns and colors of the silk used to make them. Generally speaking, sampots are made from a beautiful piece of embroidered silk. The fabrics are normally dyed with rich colors and decorated with gold embroideries. (So, 2020)
2. Longyi, Myanmar

A longyi is a sheet of cloth widely worn in Burma. It is approximately 2 meters long and 80 centimeters wide. The cloth is often sewn into a cylindrical shape. It is worn around the waist, running to the feet. It is held in place by folding fabric over without a knot. It is sometimes folded up to the knee for comfort. (Johnson & Gilligan, 2020)

3. Pha biang, Thailand

A Sabai, or Pha Biang, is a shawl-like garment or breast cloth. A Sabai is worn by both women and men. It is a long piece of silk that's about a foot wide and is draped diagonally around the chest by covering one shoulder while its end drops behind the back. (Junsongduang et al., 2017)
4. Aodai, Vietnam

Aodai is made individually to fit each customer’s shape to create the most graceful possible look. The pants should reach the soles of the feet and flow along the floor. The color is indicative of the wearer's age and status. Young girls wear pure white, fully lined outfits symbolizing their purity. Older but unmarried girls move into soft pastel shades. Only married women wear ao dai in strong, rich colors, usually over white or black pants. However, ao dai is rarely seen in places where manual work is practiced. The nineties saw a real resurgence of ao dai. It has become standard and common attire for girl students as well as female staff at offices and hotels. Traditionally, ao dai has become the most preferred dress on formal occasions. (Thi Phuong Hoa, 2021)
5. **Barot, Philippines**

The Barot saya is made of four parts. The Baro is a blouse made of lightweight material. The Saya is a skirt that falls anywhere below the knee or to the feet. The Panuelo or Alampay is a scarf draped on the shoulders, often secured by a brooch. The Tapiz is a short overskirt placed on top of the Saya. Through the decades and major events of our history, each component of the baro’t saya evolved in design. For example, because of the onset of world trade and the higher availability of intricate fabrics, the Saya became more and more elaborate in design. (Coo, 2019)

![Figure 5. Barot’s Saya,](https://exhibits.library.cornell.edu/in-search-of-costumes-from-many-lands/feature/baro-t-saya)

6. **Sinh, Laos**

The Lao traditional skirt called “sinh” is a wrap-around tube of skirt made of silk, cotton & silk, or cotton only. Most of the sinhs have special patterns woven directly into the fabric or embroidered on it. They reflect the culture and beliefs of different ethnic communities. (Legino et al., 2018)

![Figure 6. Laos Essential Artistry, Lao Textile, 2012.](https://seaif.typepad.com/seaif_weblog/lao-textiles/)
7. Songket, Indonesia-Malaysia-Singapore-Brunei Darussalam

*Songket* is a *Tenun* fabric that belongs to the brocade family of textiles of the Malay world (today, Brunei, Indonesia, Malaysia, and Singapore). It is handwoven in silk and cotton and intricately patterned with gold and silver threads the metallic threads are inserted in between the silk or cotton weft (latitudinal) threads in a technique called supplementary weft weaving technique. (Rigitta, 2021)

![Figure 7. Songket.](https://seputarlampung.pikiran-rakyat.com/nasional/pr-973261263/malaysia-klaim-songket-sebagai-warisan-budaya-ke-unesco-begini-sejarah-dan-asal-usul-songket-dari-palembang)

The establishment of the AEC seeks to deepen economic integration by transforming ASEAN into a single market and production base. To achieve this goal, the free movement of goods, services, investment, capital, and skilled workers within the community are required. (Pangestu, 2009) ASEAN build cooperation on IPR by adopting the Framework Agreement on IP Cooperation in 1995, the member states agree to strengthen their IP cooperation at the regional level and provide IP protection that is consistent with the international standards. (Yu, 2017)

Mostly, the early stage of IP development in ASEAN countries was influenced by the law that was brought by colonial, as for example, *ia* in Indonesia was derived from the Dutch Law. However, the ASEAN members that were members of the World Trade Organisation (WTO) were required to further reform their IP laws to conform to the TRIPs standard after 1995. TRIPs set the minimum standard of IP protection at an international level and required all WTO member countries to comply with it. ASEAN countries aware that cooperation between members on intellectual property and lead effort as follows: (Yean, 2017)

a. Internal Cooperation:

1) ASEAN Framework Agreement on Intellectual Property Cooperation: The main objective of the Framework Agreement is to promote cooperation on intellectual property within ASEAN, as well as promoting the protection of intellectual property by international standards

3) ASEAN Digital Integration Framework Action Plan (DIFAP) 2019-2025; ASEAN aims to develop coordination mechanisms to enhance the enforcement of IP rights in the digital environment.

b. External cooperation: ASEAN promotes cooperation with ASEAN partners to support and assisted ASEAN countries in strengthening ASEAN IP such as the World Intellectual Property Organization (WIPO), the European Union (EU), the United States (USA), and Japan. The EU is one of the most committed partners and already launched three consecutive ASEAN-EU Patents and Trademarks Programme (ECAP). ECAP I within the period from 1993 to 1997; ECAP II within 2000-2007; ECAP III (2010-2015). (Mueller, 2021)

The cooperation, internal and external, attempted to further assimilate ASEAN into the global economy and to facilitate IP incorporation and motivated regional IP harmonization in the areas of trademarks, industrial designs, GIs, including IP enforcement. However, none of the development focused on TCE yet. Therefore, to understand how the protection of IP for TCE on traditional clothing in the ASEAN region, we need to explore each protection for traditional clothing of ASEAN member countries, as follow:

A. Singapore

Singapore is a country in Southeast Asia that consists of the island of Singapore and 58 other islands. More than two islands in Singapore's territory are uninhabited. (Lum & Kang Min, 2021) One of the most remarkable aspects of Singapore is its cosmopolitan nature. Interested in a better future, immigrants come with their own culture, language, customs, and habits. Cross-breeding and cultural fusion also play a role in influencing the cultural diversity that is then formed in Singapore society from various aspects, thus creating a diverse and dynamic cultural heritage.

Singapore consists of multiethnic (Malay, Chinese, Indian, and European). The way of life of the people is a blend of Eastern culture and Western culture. Singapore has four official languages, namely English, Mandarin, Malay, and Tamil. This diversity of ethnic groups makes Singapore a multi-ethnic and multicultural country. Singapore's customs and culture have been built since 1970. This ethnic diversity has influenced Singapore to have many traditional cultures brought by the ethnic groups in Singapore, such as musical instruments and traditional dances. (Indrasari, 2019)

Singapore has signed UNESCO Conventions related to the protection of cultural heritage and the TRIPS agreement from the World Trade Organization and has been a member country
of WIPO since 1990. Singapore’s State Copyright Law is The Intellectual Property Office of Singapore (IPOS), formed on 01 April 2001 with Singapore government jurisdiction. IPOS advises and administers intellectual property (IP) law, promotes IP awareness, and provides the infrastructure to facilitate IP development in Singapore. One of the copyrights regarding Copyrights regulated in IPOS Copyright protects works such as novels, computer programs, plays, music, films, photographs, and paintings. (Ma, 2020) The copyright owner can control the commercial use and exploitation of these works has the right to prevent others from reproducing, publishing, performing, publicly communicating, or adapting the work. However, Singapore does not yet have specific laws governing TCE or cultural protection.

B. Myanmar

The Kingdom of Myanmar was the forerunner of the modern Burmese state known today. Myanmar’s culture is largely influenced by the majority religion adopted by its people, namely Buddhism. The community is still classified as a traditional society, there are still many people who still wear sarongs and smoke cigars. Some of the traditional arts in Myanmar are the Bagan Period Dance which is almost similar to traditional Indonesian dances. Most of the dance themes in Myanmar are closely related to beliefs and myths that are also characteristic of Indonesian dance.

Myanmar has not signed the Berne Convention but has signed the TRIPS Treaty of the World Trade Organization. The basic copyright laws in Burma are the Copyright Act of 1911 (promulgated in 1914 and sometimes known as the Act 1914) and the Trademarks Act of 1889. In 2004, new copyright law began to be drafted based on the WIPO model law but the law never came into effect. And it is also regulated in the Pyidaungsu Hluttaw Law Number 15/2009. However, as of now, Myanmar does not yet have laws and regulations regarding TCE and other cultural protections, according Law Number 15 Year 2019 on Copyright.

C. Indonesia

Indonesia is the largest archipelagic country in the world consisting of 17,504 islands. Indonesia's history is heavily influenced by other nations. From Sabang at the tip of Aceh to Merauke in Papua. (Soemarni & Indarti, 2019) Indonesia consists of 34 provinces which means it has various ethnic groups, languages, and religions. This social and cultural diversity forms a unified country. (Fadillah et al., 2020) Furthermore, Indonesia is second largest of biodiversity in the world. As a member country of the WTO and WIPO, Indonesia has ratified international agreements and promulgated it in domestic law, such as Law Number 28 Year 2014 on Copyright law and Law Number 5 Year 2017 on Promotion Culture to protect TCE. (Isdiyanto & Putranti, 2021) The Act deems that the Copyright of TCEs is held by the State, who is obligated to take inventory, preserve and maintain the TCEs is held by the State. However, Law of the
Republic of Indonesia Number 28 of 2014 on Copyright, Art 38 (1)-(2) Indonesia does not yet have a legal protection construction for communal IPR or traditional cultural expressions (TCE).

D. Philippines

The Philippines is an archipelago consisting of 7,641 islands. Traditional Filipino culture is heavily influenced by Austronesian traditions. The cultural landscape also has influences from Spanish, American, Japanese, Arabic, and Indonesian. The main religions in the country are Christianity and Islam which have played an important role in shaping Filipino culture. The ancient literature of the Philippines consists mainly of legends and folklore which were the main form of literature before the Spanish colonization of the country. These stories are based on specific themes and aim to pass down cultural traditions and beliefs through generations. Folklore exists as oral literature; written publications are mainly found during the Spanish colonial era. The Philippines has the Indigenous Peoples Rights Act of 1997 (Republic Act No 8371) and the Copyright Act (Republic Act Number 8293) to protect Indigenous Cultural Communities Rights. However, the legislation did not explain the protection of communal traditional cultural expressions. Besides that, the Philippines also has Rule 6 of the Joint IPOPHEL-NCIP Administrative Order No. 01, 2016 (or the Rules and Regulations on IP Rights Application and Registration Protecting the IKSP of the Indigenous Peoples and Indigenous Cultural Communities), which regulates the protection of TCE. (Montanez, 2021) The scope of protection in the regulation is Compulsory Disclosure when registering IP rights, a statement of compliance with the requirement of free, prior, informed consent. Where no registration is required, attribution of the source is necessary when IP is announced to the public.

E. Malaysia

Malaysia is a federation consisting of thirteen states and three union states which are included in the Southeast Asian region. On September 16, 1963, following UN General Assembly Resolution 1514 in the process of decolonization, Singapore, Sarawak, North Borneo or what is now better known as Sabah turned into states of the newly formed federation called Malaysia. Malaysia is also seen as one of the 18 largest biodiverse countries in the world. Malays make up the largest part of Malaysia's population. There are also sizable Chinese-Malaysian and Indian-Malaysian communities. The three main ethnic groups in Malaysia are Malays, Chinese, and Indians. (Kahn, 1998)

The country has a strong tradition of dance, half of which originate from Thailand, India, and Portugal. So that these ethnic groups heavily influence Malaysian culture. For example, musical instruments consist of drums, flutes, gongs, etc. Furthermore, there are also wayang kulit, silat, and crafts such as batik, embroidery, and silver and copper. The well-known luxury textile is songket. In Malaysia, laws on trademark rights, copyrights, industrial designs, and patents are regulated separately. It also has laws on traditional knowledge but integrates with
The Protection of New Plant Varieties and The Traditional Knowledge Act 634 Of 2004. TK is inseparable from TCE and The Geographic Indications as stated in the (Amendment) Act 2002. (Uphoff, 2019)

F. Brunei Darussalam

Brunei is the oldest country among the kingdoms in the Malay lands. The existence of Old Brunei is based on Arabic, Chinese and oral traditions. Brunei culture is similar to Malay culture, with strong Islamic influences, but seems more conservative than Malaysia and Indonesia. Approximately two-thirds of Brunei’s population is Malay. The most important ethnic minority group and who dominate the country’s economy are the Chinese (Han) who make up approximately 15% of the population. (Ghofur, 2015) Protection of IPR in Brunei is divided into 2 (two) namely copyright (copyrights order S 14/2000) and patent rights (patent order S 57/2011). The protection they provide is in the form of economic and moral rights. While the protection of culture and TCE does not yet exist even though Brunei is one of the countries that has also ratified international conventions related to the protection of cultural expressions.

G. Laos

The indigenous people of Laos are Austro-Hungarians, who loved hunting and gathering before farming. Laos has an official number of more than forty-seven ethnicities which are divided into 149 sub-groups and 80 different languages. Lao Loum has throughout history a country consisting of an ethnic and linguistic majority. In Southeast Asia, traditional Lao culture is considered one of the Indian cultures (along with Burma, Thailand, and Cambodia). (Kovecevic et al., 2018)Weaving is the predominant form of artistic cultural expression in Laos, common across all ethnicities and the most recognized cultural export abroad. Lao mothers will often pass on their weaving skills to their daughters as a sign of eligibility for marriage. Each region and tribe has its traditional weaving technique. (Chong, 2009) Laos integrates personal and communal IPR into one through Law No.38/NA OF November 15, 2017, on Intellectual Property. Protection regarding TCE is contained in Law No. 1 Year 2017 on Intellectual Property (as amended), which regulates traditional literary or artistic work. The scope of protection of this regulation is that the public can develop new works based on traditional works, but there are limits on trademark registration.

H. Vietnam

Vietnamese culture developed over the centuries since the ancient culture of ng Sơn which was based on the rice farming economy. Some elements of the national culture originate from China, which applies elements of Confucianism and Taoism to traditional political and philosophical systems. Lately, there has also been the influence of Western culture, especially from France and the United States. For decades, foreign cultural influences were avoided and
emphasis was placed on appreciating and sharing the culture of communist countries such as the Soviet Union, People's Republic of China, Cuba, etc. Since the 1990s Vietnam has been heavily exposed to Southeast Asian, European, and American culture and media.

Vietnam divides the intellectual property system into three parts: first, copyright is managed by the Vietnam Copyright Administration. Second, property rights Industrial or industrial property rights are managed by the State Intellectual Property Office (NOIP). Third, the rights of plant varieties are regulated by the Office for the Protection of Plant Varieties. Of the three divisions, the biggest role is NOIP because NOIP is not only a national institution but an institution that provides a database office by providing consulting services before submitting Copyright and Patent titles to prevent disputes or similarities with other inventions. Vietnam does not have legal regulations governing TCE but has a government policy of Guidance Document Decree No.59/2017/ND-CP on the management of access to genetic resources and the sharing of benefits arising from their utilization as the basis for TCE protection. (Nguyen, 2020)

I. Thailand

Thailand's origins are traditionally attributed to a short-lived kingdom, the Sukhothai Kingdom which was founded in 1238. This kingdom was later succeeded by the Ayutthaya Kingdom which was founded in the mid-14th century and was larger than Sukhothai. Thai culture is strongly influenced by China and India. The strong influence of Indian, Chinese, and other Southeast Asian cultures is still embedded in traditional Thai culture. Buddhism, Animism, and Westernization played an important role in shaping this culture. Buddhism in Thailand is heavily influenced by traditional beliefs about ancestral spirits and nature, which have been incorporated into Buddhist cosmology. Most Thai people own the spirit of the house, a miniature wooden house where they believe the household spirit lives. They serve food and drink offerings to the spirits to keep them happy. (Isdarmanto, 2016) As a country that has a variety of cultures, it seems that Thailand does not yet have a regulatory mechanism for traditional cultural expressions. Thailand only explains about national organizations related to culture through the National Cultural Act BE 2489 (1996) which must obtain permission and are under state supervision. If this is not done, the state will not grant rights and dissolve them. IPR is regulated in the Intellectual Property and International Trade court in Act Procedure BE 2539 (1996) which deals with copyrights, trademark rights, and patents. (Supasiripongchaid, 2018)

J. Cambodia

The golden age of Cambodia was between the 9th and 14th centuries AD under the period of the Angkor kingdom, which at that time was a strong and prosperous kingdom that succeeded in controlling almost the entire mainland of Southeast Asia. Cambodian society itself is divided into several different ethnic groups. The majority of Cambodian people or about 90% of the total population of Cambodia are people of the Khmer ethnicity, the indigenous people of
Cambodia. The rest or a small part of the Cambodian population are ethnic Vietnamese, Chinese, Cham-Malays, Burmese, Laotians, Japanese, Thais, Filipinos, Europeans, and tribal communities of seminomadic or better known as Khmer Loeu who usually inhabit the hilly areas of Cambodia. (Peou, 2016)

The art, architecture, music, and dance that exist in Cambodia today have received a lot of influence from many other kingdoms such as Thailand and Laos. Cambodia’s population is dominated by Buddhists with 90% of the population practicing Theravada Buddhism. There is 1% of the population adheres to Christianity and the rest are Muslims, atheists, or adherents of animist beliefs. Regulations related to IPR are regulated by independent laws on patents, models, industrial designs, geographical indications, and copyrights. However, interestingly, Cambodia has had laws on TCE since 2003; the Law on Copyright and Related Rights regulates the protection of Choreographic Works of Folklore. However, the cultural expression referred to here is not the work of a communal community as described by WIPO, but the expression of the work of Copyright that the creator is known. (Goddar & Ing, 2021) The following table shows the regulations on Cultural Expression even though it is in the same scope as IPR protection:

<table>
<thead>
<tr>
<th>Country</th>
<th>Regulation</th>
</tr>
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<tbody>
<tr>
<td>Singapore</td>
<td>No Regulation</td>
</tr>
<tr>
<td>Myanmar</td>
<td>The Law No. 15 Year 2019 on Copy Right</td>
</tr>
<tr>
<td>Indonesia</td>
<td>The Law Number 28 Year 2014 on Copyright and The Law Number 5 of 2017 on the promotion of culture</td>
</tr>
<tr>
<td>Philippine</td>
<td>Rule 6 of the Joint IPOPHL-NCIP Administrative Order No. 01, 2016 (or the Rules and Regulations on IP Rights Application and Registration Protecting the IKSP of the Indigenous Peoples and Indigenous Cultural Communities)</td>
</tr>
<tr>
<td>Malaysia</td>
<td>The Geographic Indications (Amandement) Act 2002</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td>No Regulation</td>
</tr>
<tr>
<td>Vietnam</td>
<td>No Regulation</td>
</tr>
<tr>
<td>Thailand</td>
<td>No Regulation</td>
</tr>
<tr>
<td>Cambodia</td>
<td>Law on Copyright and Related Rights</td>
</tr>
</tbody>
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Based on the table above, the following conclusions were found:
Table. 2. Differences in arrangements between ASEAN countries

<table>
<thead>
<tr>
<th>Regulate TCE (Communal Intellectual Property Rights)</th>
<th>Have Laws And Regulations Related To TCE That Are Separate From Copyrights, Trademark Rights, And Patents</th>
<th>Has No Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Into a Joint Regulation</td>
<td></td>
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</tr>
<tr>
<td>Indonesia</td>
<td>Philippines</td>
<td>Singapore</td>
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<td>Laos</td>
<td>Cambodia</td>
<td>Brunei</td>
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<td>Myanmar</td>
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<td>Malaysia</td>
<td>Thailand</td>
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</tbody>
</table>

ASEAN Countries have taken several approaches to extend copyright law to better protect Indigenous and Local Community rights to TCE. In a case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the (Berne Convention country), it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the (Berne Convention country). (Goldstein, 2001)

In many countries, trademark law has been used to actively protect and promote TCE. Businesses owned and run by people from Indigenous and Local Communities can proactively use trademark law to protect their branding. This is the best practice in the ethical commercialization of TCE. Geographical Indications (GIs) refer to mechanisms that indicate that a product comes from a specific place and possesses specific qualities or reputations particular to that region. In general, GIs work in conjunction with trademarks. GIs, either as an indirect function of a collective or certification mark or as sui generis legislation, which is linked products or expressions to place. [33] They also avoid some of the challenges involved in identifying a competent authority as the owner of the IP. (Goldstein, 2001)

In many countries, trademark law has been used to actively protect and promote TCE. Businesses owned and run by people from Indigenous and Local Communities can proactively use trademark law to protect their branding. This is the best practice in the ethical commercialization of TCE. Geographic Indications (GI) refers to mechanisms that indicate that a product comes from a specific place and possesses specific qualities or reputations particular to that region. In general, GIs work in conjunction with trademarks. GIs either as an indirect function of a collective or certification mark or as sui generis legislation-can link products, or expressions to place. (Janke et al., 2021) They also avoid some of the challenges involved in identifying a competent authority as the owner of the IP.
CONCLUSION

Based on the explanation above, it can be concluded that there is no single country in ASEAN that has a specific law for traditional cultural expressions. Even now, Indonesia and Laos regulate TCE (communal intellectual property rights) as part of Copyright. The regulation stipulates that national cultural property rights whose unknown creators belong to the State. Furthermore, the Philippines and Cambodia already have laws and regulations related to TCE that are separate from copyrights, trademark rights, and patents. However, in the Philippines, it is only regulated regarding the rights of indigenous peoples without an explanation regarding the regulation of cultural creations arising from these indigenous peoples whether there are moral and economic values currently being worked out by WIPO regulations. Furthermore, in Cambodia, the cultural expression referred to here is the expression of the work of a known creator and not the work of a communal community as described by WIPO. Conventional IP law inadequately protects communal rights in TCEs. There is a significant overlap between TCEs and Copyright. However, as demonstrated in the Comparative Study, copyright law frequently leaves gaps in protection. In particular, copyright law generally does not recognize communal rights in TCEs. Some countries have attempted to amend copyright law to identify these collective interests. The ASEAN countries should build a special law or sui guineris system that regulates and protect the cultural expression (TCE) in each ASEAN member jurisdiction and strengthen a regional cooperation framework on TCE to prevent cultural conflicts between members.

REFERENCE


