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WHEN TRADITIONAL KNOWLEDGE IS UNRECORDED: RECONSTRUCTING LEGAL PROTECTION OF COMMUNAL INTELLECTUAL PROPERTY IN INDONESIA

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Abstract

Traditional knowledge is part of communal intellectual property that has cultural, social, and economic value for the communities that hold it. However, traditional knowledge passed down from generation to generation without administrative registration faces challenges in proving its origin, recognizing its community, and ensuring legal protection against its use by others. This study aims to analyze the legal status of unregistered traditional knowledge and formulate a reconstruction of its protection mechanisms within the Indonesian legal system. The study uses a normative juridical method with a statutory and conceptual approach. Primary and secondary legal materials are analyzed qualitatively through literature review and systematic interpretation of provisions on communal intellectual property protection. The results indicate that Government Regulation Number 56 of 2022 provides a normative basis for the protection of unregistered traditional knowledge, thus administrative registration cannot be positioned as the sole basis for legal recognition and protection. However, the effectiveness of protection still faces challenges in proving communal ownership, identifying the community of origin, monitoring utilization, and inter-institutional coordination. This research confirms that the reconstruction of protection mechanisms needs to be directed at recognizing non-administrative evidence, strengthening community participation, regulating access to and use of documentation, and integrating authority between institutions. Thus, the protection of traditional knowledge should not only rely on recording procedures but also ensure the recognition of the rights and interests of community members in a just and legally certain manner.

Keywords: Traditional Knowledge; Communal Intellectual Property; Legal Protection; Administrative Recording; Legal Reconstruction.

INTRODUCTION

Traditional knowledge is part of communal intellectual property formed through experiences, social practices, and interactions between communities and their environment, passed down through generations. This knowledge encompasses traditional medicine, food processing, agriculture, natural resource utilization, and various cultural practices that have social, scientific, and economic value. Unlike individual intellectual property, which emphasizes the identity of the creator and formal ownership, traditional knowledge develops through the collective contributions of communities, so its origins and ownership cannot always be determined by a specific individual. These characteristics require a legal protection approach that accommodates collective rights, customary values, and the community's historical relationship with the inherited knowledge (Dutfield, 2004; Baskoro & Hafizhah, 2023; Wijaya et al., 2024). However, this collective character creates problems when the legal protection system prioritizes administrative evidence over recognition of social practices and the inheritance of knowledge within the community.

A fundamental problem arises when traditional knowledge that has been preserved and utilized for generations is not recorded in the state administration system. The lack of recording does not eliminate the community's historical connection to the knowledge, but it can complicate the verification of origins, identification of the community that holds it, and recognition of legal interests in the event of its use by others. This situation is further complicated when similar knowledge is held or practiced by several communities with interrelated cultural backgrounds. Research by Fitri et al. (2023) shows that limited inventory, outreach, and institutional support remain obstacles to the protection

of communal intellectual property. This situation demonstrates a gap between the existence of socially recognized and maintained traditional knowledge and the ability of the legal administration system to identify and provide certainty of protection to the community that holds it. The urgency of protection is increasing as the use of traditional knowledge in research, the pharmaceutical, food, and cosmetics industries, and natural resource-based innovations, expands. This economic potential opens up opportunities to improve community welfare, but simultaneously raises the risk of unauthorized use, disregard for origins, and unfair benefit sharing. This issue is related to the practice of *biopiracy* , particularly when traditional knowledge related to genetic resources is exploited without regard for the interests of the communities of origin. Putranto and Sulistiyono (2025) and Samsithawrati et al. (2025) emphasize the importance of recognizing origins, controlling access, and protecting community interests in the development of intellectual property regimes. However, this need for protection faces challenges when the host community lacks formal documentation to defend its interests. Thus, there is a gap between the increasing economic value of traditional knowledge and the readiness of legal mechanisms to guarantee recognition, approval for use, and equitable benefit sharing.

Normatively, the protection of traditional knowledge in Indonesia has a constitutional basis through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which recognizes the rights of indigenous legal communities and respects the cultural identity and rights of traditional communities. These regulations are strengthened through Law Number 5 of 2017 concerning the Advancement of Culture and Government Regulation Number 56 of 2022 concerning Communal Intellectual Property. Specifically, Article 35 of Government Regulation Number 56 of 2022 provides the basis for protection for communal intellectual property that has not been or is not registered in accordance with statutory provisions. This provision shows that administrative registration is not the sole basis for legal protection. However, this normative recognition still leaves issues regarding the mechanism of proof, determination of the community of origin, verification of claims, and control of use by third parties. The legal gap lies in the recognition of objects that have not been registered, while the operational mechanism for realizing effective protection still requires clarity.

This issue can be analyzed through Hadjon's (1987) legal protection theory, which distinguishes between preventive and repressive protection, and Rahardjo's (2000) thinking regarding the function of law in protecting human interests. Preventive protection is necessary to guarantee the recognition of non-administrative evidence, community identification, access regulation, and utilization agreements before violations occur. Meanwhile, repressive protection is needed to resolve disputes over origins, inter-community claims, and unauthorized use. In this context, customary law and the concept of *living law* are relevant because communities' relationships with traditional knowledge are often evidenced through oral traditions, testimonies of traditional leaders, and ongoing social practices (Ehrlich, 1936; WIPO, 2023). However, it is unclear how this evidence can be objectively assessed and verified within formal legal protection mechanisms. Therefore, the research issue relates not only to the recognition of rights but also to the need to establish evidentiary mechanisms that provide legal certainty without ignoring the collective character and customary values of communities.

Previous research has addressed the protection of communal intellectual property from various perspectives. Dwijayanthi et al. (2022) examined the protection of traditional cultural expressions, Fitri et al. (2023) identified barriers to protection in the Enggano community, while Baskoro and Hafizhah (2023) discussed the balance between tradition and innovation. Widiarsa and Mayasari (2024) linked protection to community economic development, while Wijaya et al. (2024) emphasized the social justice dimension. Research by Samsithawrati et al. (2025) and Putranto and Sulistiyono (2025) focused on the development of international instruments and the protection of knowledge related to genetic resources, while Ramadhan et al. (2025) discussed the data sovereignty of indigenous communities. Studies by Darwance (2026), Thalib et al. (2026), and Yulia et al. (2026) also expanded the discussion on the need for special regulations, collective rights, and the protection of traditional medicinal knowledge. Despite contributing to strengthening the protection of communal intellectual property, based on the focus of the study, there is still room for research that specifically integrates legal recognition, non-administrative evidence, identification of the host community, and control over the use of traditional knowledge that has not been recorded in a single legal protection framework.

This research gap highlights the need for studies that not only explain the existence of norms but also analyze the capacity of legal regulations to address the issue of protecting unrecorded traditional knowledge. While recording and inventory can essentially support documentation and recognition of origins, they do not necessarily guarantee a community's authority to determine access, grant consent, and obtain benefits from the use of their knowledge. Furthermore, uncontrolled disclosure of documentation can pose risks to confidential or sacred knowledge. Therefore, protection mechanisms need to consider historical and social evidence, community involvement in

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verification, recognition of customary norms, and arrangements for consent and benefit sharing. This need demonstrates the importance of a protection approach that links legal certainty with substantive justice for the community, so that protection extends beyond administrative recognition and can be implemented effectively.

Based on this description, this study raises two main questions. First, what is the legal status and justification for unregistered traditional knowledge within the communal intellectual property protection system in Indonesia? Second, how can the legal protection mechanism for unregistered traditional knowledge be reconstructed based on the principles of recognition by the community of origin, legal certainty, and fairness in utilization?

METHOD

This study uses normative legal methods through a statutory approach *and* a conceptual *approach* to analyze the adequacy of regulations and the construction of legal protection for traditional knowledge that has not been recorded as communal intellectual property. The statutory approach is carried out by examining Law Number 28 of 2014 concerning Copyright, Law Number 5 of 2017 concerning Cultural Advancement, Government Regulation Number 56 of 2022 concerning Communal Intellectual Property, and related regulations, while the conceptual approach is used to examine the principles of legal protection and certainty, communal ownership rights, and the position of administrative records in recognizing the rights of the community bearer (Marzuki, 2017).

Primary and secondary legal materials were collected through a literature review and then analyzed qualitatively using systematic interpretation and prescriptive analysis to identify gaps between normative recognition and available protection mechanisms. The analysis focused on issues of proving origin, determining the host community, and controlling the use of unrecorded traditional knowledge in order to formulate recommendations for strengthening legal protection that is certain and just. Therefore, the research conclusions are limited to normative legal arguments without claiming empirical findings regarding the effectiveness of its implementation in society (Soekanto & Mamudji, 2015).

RESULTS AND DISCUSSION

The Legal Status of Unrecorded Traditional Knowledge in the Communal Intellectual Property System

Traditional knowledge has a different legal standing from individual intellectual property because it is formed through collective experience, passed down across generations, and maintained based on the values and social institutions of its host community. This characteristic raises legal issues when legal recognition and protection are confronted with administrative mechanisms that prioritize formal documentation. Article 1 number 3 of Government Regulation Number 56 of 2022 concerning Communal Intellectual Property defines traditional knowledge as community ideas and concepts that contain local values, develop through experiences interacting with the environment, and are passed down to the next generation. Furthermore, Article 4 letter b places traditional knowledge as part of Communal Intellectual Property (KIK), while Article 8 regulates its scope, which includes technical knowledge, medicine, agriculture, ecology, and the social system of the community. This construction emphasizes that the legal standing of traditional knowledge is determined by its character and collective relationship with the host community, not solely by the existence of recorded documents. In line with Graham Dutfield's (2004) view, the protection of traditional knowledge must consider the knowledge system, cultural values, and collective interests of the community. Thus, making administrative recording an absolute requirement for protection has the potential to ignore the basic character of the legal object to be protected.

Constitutionally, the protection of traditional knowledge is legitimized through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which recognizes and respects the unity of customary law communities and their traditional rights with specified constitutional requirements, and Article 28I paragraph (3) which guarantees respect for the cultural identity and rights of traditional communities. These provisions are reinforced through Article 5 of Law Number 5 of 2017 concerning the Advancement of Culture, which places traditional knowledge as an object of cultural advancement. This regulation shows that the protection of traditional knowledge is not only derived from economic interests, but also constitutes part of the state's responsibility for the sustainability of the community's cultural identity. Therefore, the lack of recording cannot automatically be used as a basis for eliminating protection for knowledge that is factually still alive and inherited. Satjipto Rahardjo's (2000) thinking regarding law as an instrument for protecting human interests strengthens the argument that the existence of norms must result in substantive protection, not merely the fulfillment of administrative procedures. Thus, the legal status of unrecorded traditional knowledge must be interpreted based on the principles of respect for traditional rights, legal certainty, and justice for the bearer community.

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This legal position is most concretely affirmed through Article 35 of Government Regulation Number 56 of 2022, which stipulates that the state continues to protect traditional knowledge that is not registered or has not been registered in accordance with statutory provisions. This norm has the legal consequence that registration is not a constitutive requirement for the protection of traditional knowledge. This means that protection does not arise only after knowledge is entered into the traditional knowledge information system; rather, it retains a legal basis as long as it meets the characteristics of traditional knowledge objects under applicable provisions. The elucidation of Article 35 even accommodates unrecorded traditional knowledge due to its confidential nature, thus demonstrating that not all traditional knowledge must be published to receive protection. However, this provision cannot be interpreted as automatic recognition of every community's ownership claim. Normative recognition of legal objects must be distinguished from proving the identity of the community of origin and its authority to utilize it. Thus, the legal issue lies not in the existence or absence of a basis for protection, but rather in the unclear operational mechanism that can link normative recognition with concrete proof and implementation of protection.

In the construction of legal relations between the state and society, Article 3 paragraph (1) of Government Regulation Number 56 of 2022 stipulates that the right to KIK is held by the state, while Article 5 paragraph (1) stipulates that the right to traditional knowledge is a moral right that is inclusive, maintained and/or carried out by the Community of Origin, has economic benefits, and is valid without a time limit. Both provisions need to be interpreted systematically so that the state's position as the rights holder is not interpreted as eliminating the interests of the community of origin. The state has the responsibility to regulate, inventory, maintain, and preserve KIK, while the community of origin remains the party that has a historical, social, and cultural relationship with the knowledge. Zainul Daulay (2012; 2022) emphasizes the importance of understanding the pattern of control of traditional knowledge based on the character and norms that apply within the community, including distinguishing knowledge that can be shared openly from knowledge whose use is restricted by custom. This view shows that the concept of communal ownership cannot be standardized into exclusive control by the state or freedom of access for all parties. Therefore, the protection of unrecorded traditional knowledge must place state authority and community interests in a complementary, not mutually exclusive, relationship.

Recording in the KIK system is essentially an inventory instrument, not the sole basis for rights recognition. Articles 12 to 17 of Government Regulation No. 56 of 2022 regulate inventory through data recording and integration, based on both requests and government assessments, with requirements including descriptions, community identity, territory, and supporting documentation. Furthermore, Articles 22 to 24 regulate inspection and verification to ensure that the proposed object meets the qualifications for KIK. These regulations demonstrate that recording serves important administrative and evidentiary functions, but cannot yet be equated with establishing undisputed exclusive rights. Bryan Eduardus Christiano (2023) criticized the limitations of defensive protection based solely on inventory, as data collection does not guarantee communities' ability to control utilization or obtain economic benefits. This argument is relevant to unrecorded traditional knowledge, as limited documentation can weaken communities' evidentiary position even if its protection has been normatively recognized. Therefore, recording needs to be positioned as a means of strengthening legal certainty, while protection must still be available through other mechanisms that can accommodate the character of traditional knowledge.

The issue of evidence is a direct consequence of the difference between normative recognition and the implementation of protection. Traditional knowledge is often passed down through oral traditions, customary practices, the testimony of community leaders, and collective experiences that do not always result in written documents. If evidence relies solely on administrative documents, communities that maintain their knowledge through social mechanisms risk experiencing unequal access to legal protection. Eugen Ehrlich's (1936) thinking on *living law* provides a conceptual basis that living law within a community is a normative reality that is important to consider in understanding social relations. In the context of traditional knowledge, this approach supports the use of oral history, customary testimony, continuity of practice, and community recognition as relevant evidentiary materials. However, the recognition of non-administrative evidence should not eliminate the need for objective verification, especially when similar knowledge develops in multiple communities. Thus, an evidentiary construction is needed that integrates administrative and socio-historical evidence proportionally, so that protection does not depend on the community's ability to produce documents, but still ensures legal certainty and prevents unfounded claims.

Legal protection for unrecorded traditional knowledge must also consider the distinction between communal and public interests. Not all knowledge developed within a community can be declared the exclusive property of one community, especially if it has spread through social interaction, migration, trade, or intergenerational cultural exchange. Doris Estelle Long (2006) examines the tension between the protection of traditional knowledge and the

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public domain , demonstrating the need for a balance between respecting the interests of the community that holds it and public access to knowledge and culture. This view aligns with Daulay's (2022) critique of the generalization that all KIK can be treated as a shared heritage with uniform access patterns. In national law, Article 31 paragraph (2) of Government Regulation Number 56 of 2022 recognizes restrictions on the disclosure of information on KIK that is sacred, confidential, and/or held dear based on the request of the applicant. This provision demonstrates that protection is not synonymous with the publication of all information or the granting of an unlimited monopoly. Therefore, the legal status of traditional knowledge must be determined by considering the character of the object, inheritance patterns, customary norms, and the possibility of legitimate interests from more than one community.

The international legal perspective further strengthens the recognition of the interests of host communities, particularly in traditional knowledge related to genetic resources. Article 8 letter j *of the Convention on Biological Diversity* , ratified by Indonesia through Law No. 5 of 1994, emphasizes respect, preservation, and maintenance of indigenous and local knowledge, as well as consent, involvement, and benefit sharing from its utilization in accordance with the provisions of the convention. Furthermore, Articles 7 and 12 *of the Nagoya Protocol* , ratified through Law No. 11 of 2013, place free, prior, and *informed consent* , community consent and involvement, and respect for customary law as important aspects in regulating access to traditional knowledge related to genetic resources. These principles demonstrate that protection is not simply achieved through recognizing the existence of knowledge, but must also take into account the role of communities in determining its utilization. Although both instruments have specific scopes, their protection principles provide an argumentative basis for developing national mechanisms that are more responsive to community interests, including where traditional knowledge has not been administratively recorded.

The development of international protection was also marked by the adoption of *the WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge* on May 24, 2024, which stipulates the obligation to disclose the origin of genetic resources and related traditional knowledge sources in patent applications if the treaty's requirements are met after its entry into force. This instrument strengthens the defensive protection orientation through information transparency to reduce the risk of inappropriate patent grants, but does not directly establish a comprehensive protection system for all types of traditional knowledge. In the Indonesian context, Article 33 of Government Regulation No. 56 of 2022 stipulates requirements for the use of Intellectual Property Rights (KIK) contained in the information system, including respect for the community of origin, permission for certain knowledge, and the sharing of benefits from commercial use. However, the article does not explicitly regulate the mechanism for the use of unregistered KIK, resulting in a gap between the protection guarantees in Article 35 and the operational provisions for use in Article 33. This gap reinforces the relevance of the concept of *sui generis protection* as discussed by Christiano (2023), namely a special model that combines defensive protection through inventory with positive protection in the form of recognition of community interests, access regulations, and equitable benefit sharing.

Based on the overall legal construction, the status of traditional knowledge not yet recorded in the Indonesian KIK system can be affirmed as an object that still has a basis for legal protection, but the implementation of this protection requires proof and adequate operational mechanisms. Article 35 of Government Regulation Number 56 of 2022 provides certainty at the normative level that the lack of registration does not eliminate state protection, while Articles 3 and 5 emphasize the relationship between state responsibility and the interests of the Community of Origin. However, these regulations do not fully address how the origin of knowledge is proven, how the host community is determined when interrelated claims arise, and how the authority for approval and benefit sharing is exercised regarding unrecorded knowledge. Using Philipus M. Hadjon's (1987) theory of legal protection, resolving this issue requires preventive protection through identification, participatory verification, and access control, as well as repressive protection through objection mechanisms, mediation, and dispute resolution. Therefore, strengthening regulations needs to be directed at evidentiary mechanisms that recognize socio-historical relationships, involve host communities, and ensure fair and proportional control over utilization. Thus, the protection of unrecorded traditional knowledge does not stop at normative recognition, but can be realized through procedural certainty and substantive protection that respects the collective rights of the community.

Reconstruction of Legal Protection Mechanisms for Unrecorded Traditional Knowledge

Legal protection for unrecorded traditional knowledge requires regulatory reconstruction because there is still a gap between normative recognition and its implementation mechanisms. Constitutionally, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia provides the basis for recognition of indigenous legal communities and their traditional rights, while Article 28I paragraph (3) emphasizes respect for the cultural identity

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and rights of traditional communities (Republic of Indonesia, 1945). This recognition is strengthened through Article 35 of Government Regulation Number 56 of 2022 concerning Communal Intellectual Property (KIK), which guarantees protection for KIK that has not been or is not recorded (Government of the Republic of Indonesia, 2022).

However, these provisions do not specifically formulate procedures for identification, verification, and protection when traditional knowledge is not yet incorporated into the state administration system. From the perspective of Philipus M. Hadjon (1987), legal protection requires preventive and repressive instruments to prevent and address violations. In line with Satjipto Rahardjo's (2014) thinking, law cannot be understood simply as formal certainty; it must provide concrete protection for the interests of the community. Therefore, reconstruction is needed not to create new rights, but rather to clarify the mechanisms for implementing protection that have been normatively recognized.

The main reconstruction is directed at Article 35 of Government Regulation Number 56 of 2022 by developing provisions that were originally declarative into more operational regulations through the proposed seven paragraphs. The substance of this reconstruction includes the affirmation that protection does not depend on evidence of registration; determination of the characteristics of KIK through identification and examination; recognition of socio-historical evidence; involvement of the Community of Origin; and the authority of relevant agencies to carry out guarding, assistance, mediation, and advocacy in accordance with legal provisions (Government of the Republic of Indonesia, 2022). The proposed formulation in paragraph (2) emphasizes that protection for unregistered KIK can be implemented based on the results of identification and examination of the existence of KIK and its relationship with the Community of Origin, without requiring evidence of registration. Furthermore, paragraphs (3) to (6) are directed at accommodating oral traditions, customary practices, inheritance history, community participation, and protection of confidentiality, while paragraph (7) provides the basis for further technical regulations in accordance with applicable authorities. This reconstruction aligns with Darwance's (2026) view regarding the need to strengthen *sui generis protection of KIK* , but offers a more direct approach through improvements to existing regulations. Thus, Article 35 is proposed as a connecting norm between legal recognition and protective measures that can be implemented concretely without waiting for the enactment of specific legislation.

Further reconstruction is needed regarding Article 22 of Government Regulation Number 56 of 2022, which regulates the examination of completeness of documents and verification of KIK registration applications. This provision has provided an administrative verification mechanism, but has not explicitly outlined the standards for assessing non-administrative evidence that is an important characteristic of traditional knowledge (Government of the Republic of Indonesia, 2022). In fact, knowledge passed down through oral tradition, community testimony, and customary practices does not always have written documents that can meet the formal evidentiary approach. Therefore, this study proposes the addition of Article 22 paragraph (5) which authorizes relevant agencies to consider statements from the Community of Origin, oral tradition, customary practices, inheritance history, scientific research results, and other relevant information that can be accounted for.

Furthermore, the proposed paragraph (6) regulates the involvement of interested communities and competent parties if there are differences in information or claims regarding the origins of knowledge. This reconstruction is not intended to accept every claim without examination, but rather to expand the sources of evidence while maintaining the objectivity of verification. This view is in line with Rahardjo's (2014) thinking regarding the importance of laws that are responsive to the social realities of society. Thus, legal evidence not only prioritizes the completeness of documents, but also the strength of the historical and social relationship between traditional knowledge and the community that carries it so that legal certainty can be balanced with substantive justice.

The involvement of the Community of Origin is a fundamental aspect that needs to be strengthened in protection mechanisms because traditional knowledge is not always controlled through individual ownership relationships. Articles 3 and 5 of Government Regulation No. 56 of 2022 position the state as the rights holder over KIK within the regulatory and management framework, while the Community of Origin is the party that holds and/or holds moral rights and has an interest in its economic benefits (Government of the Republic of Indonesia, 2022). This relationship demonstrates that state authority should not ignore community participation in determining the origin, controlling access, and utilizing knowledge. (Hafshoh et al. (2021). Emphasizes the importance of *the Prior Informed Consent* (PIC) and *Access and Benefit Sharing* (ABS) principles to prevent unilateral use and ensure equitable benefit sharing. However, the implementation of these principles requires clarity regarding the authorized party representing the community, the form of consent, and the arrangement of benefits, especially when knowledge is owned or inherited by several communities. Therefore, the reconstruction of Article 35 and Article 22 must be implemented in an integrated manner so that community participation is not merely an administrative requirement,

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but becomes part of the decision-making process. This approach is also necessary to prevent exclusive recognition that is not supported by historical evidence and to avoid conflicting claims between communities.

The next aspect relates to the reconstruction of Article 31 of Government Regulation Number 56 of 2022 concerning the disclosure of KIK information. Article 31 paragraph (2) has provided an exception for the disclosure of sacred, confidential, and/or tightly held data based on the request of the applicant or the provisions of laws and regulations (Government of the Republic of Indonesia, 2022). However, this provision does not yet regulate in detail the process of determining the nature of confidentiality and community involvement when documentation is carried out at the initiative of the government. This issue is important because the inventory intended to protect traditional knowledge can actually increase the risk of misuse if limited information is disclosed to the public without control. *Documenting Traditional Knowledge: A Toolkit* emphasizes the importance of considering the objectives, risks, consent, and intellectual property implications in documenting traditional knowledge (WIPO, 2017). Based on this argument, this study proposes the addition of Article 31 paragraph (3) which regulates the determination of openness or restriction of access based on the character of the information, customary values, and social institutions of the Community of Origin. Furthermore, the proposed paragraph (4) emphasizes that the disclosure of sacred or confidential knowledge must take into account the consent of the authorized party representing the community in accordance with legal provisions. Thus, the reconstruction of Article 31 is aimed at ensuring that recording and documentation do not eliminate the community's authority to maintain the confidentiality of its traditional knowledge.

Reconstruction is also needed for Article 33 of Government Regulation Number 56 of 2022, which regulates the use of KIK in the Indonesian KIK information system. Article 33 paragraph (1) emphasizes the obligation to identify the Community of Origin, maintain the value, meaning, and identity of KIK, and pay attention to the values of the community that carries it. Furthermore, paragraphs (2) to (4) regulate licensing for certain knowledge and commercial use and agreed-upon benefit sharing (Government of the Republic of Indonesia, 2022). However, the formulation of Article 33 textually refers to KIK contained in the information system, while Article 35 expressly recognizes the protection of KIK that has not been or is not recorded. This difference in scope creates a need for harmonization so that the lack of registration is not interpreted as a reason to ignore the interests of the community in the use of traditional knowledge. Therefore, this study proposes the addition of Article 33 paragraph (6), which emphasizes that the provisions on respecting the Community of Origin, maintaining the value and identity of KIK, licensing, and benefit sharing also apply to KIK that has not been or is not recorded as long as it meets the provisions of laws and regulations. This reconstruction is in line with the concerns of Hafshoh et al. (2021) on the importance of consent and benefit sharing in the protection of traditional knowledge. Therefore, Articles 33 and 35 need to be harmonized so that legal recognition of unregistered KIK has clear consequences for the obligations of those who utilize it, without automatically creating exclusive economic rights over all traditional knowledge.

Strengthening these utilization mechanisms has gained relevance from developments in international law. Article 8, letter j, *of the Convention on Biological Diversity* emphasizes respect for indigenous and local knowledge related to biodiversity conservation, as well as the importance of informed consent, the involvement of knowledge holders, and equitable benefit sharing. The Convention was ratified by Indonesia through Law Number 5 of 1994 (Republic of Indonesia, 1994). Furthermore, Articles 7 and 12 *of the Nagoya Protocol* regulate informed consent, community involvement, and respect for customary law in access to traditional knowledge related to genetic resources.

The protocol was ratified through Law Number 11 of 2013 (Republic of Indonesia, 2013). Subsequent developments were marked by the adoption of *the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge* on May 24, 2024, which introduced mandatory disclosure of certain information in patent applications based on genetic resources or associated traditional knowledge (WIPO, 2024). While this instrument has a specific scope and its adoption status needs to be distinguished from its validity, this development demonstrates the importance of transparency regarding the origins and relationships between knowledge and its bearer communities. Therefore, the reconstruction of national laws needs to combine defensive protections to prevent claims and misuse with positive protections that regulate community participation, consent for use, and equitable benefit sharing.

Based on the overall analysis, this study formulates a reconstruction of the legal protection mechanism by strengthening four interrelated provisions: Article 35 as the basis for recognition and protection measures, Article 22 as an instrument for proof and verification, Article 31 as the basis for information control and confidentiality, and Article 33 as the regulation for utilization and benefit sharing (Government of the Republic of Indonesia, 2022). These four provisions need to be built as a unified normative framework so that recognition of unrecorded traditional

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knowledge can be translated into clear, participatory, and accountable procedures. From Hadjon's (1987) perspective, this integration is necessary to strengthen preventive and repressive protection, while Rahardjo's (2014) thinking emphasizes the importance of legal regulations capable of providing substantive benefits to the community. The normative novelty offered by this study lies in the integration of legal recognition, socio-historical proof, community involvement, information protection, and utilization regulations within a protection framework that does not rely entirely on administrative records. This reconstruction must still consider the principle of legality, the division of authority between institutions, and the need for further implementation regulations to avoid creating new uncertainties. Thus, the improvement of Government Regulation Number 56 of 2022 is an alternative legal reform to bridge the gap between normative protection and the needs of the community of holders while realizing a traditional knowledge protection system that is more legally certain, just, and responsive to the character of communal intellectual property.

CONCLUSION

Unrecorded traditional knowledge still enjoys legal protection under Article 35 of Government Regulation Number 56 of 2022 concerning Communal Intellectual Property. Legally, registration is not a prerequisite for protection, but rather an administrative instrument to strengthen inventory and verification. However, this normative recognition does not fully guarantee legal certainty because it is not accompanied by adequate operational mechanisms, particularly for proving origin, identifying the host community, and controlling utilization. This situation indicates a gap between legal recognition and effective protection, potentially neglecting substantive justice for host communities.

Therefore, a reconstruction of Article 35 is needed by strengthening Articles 22, 31, and 33 to establish a verification mechanism based on oral tradition and customary practices, community involvement, confidentiality protection, and equitable utilization regulations. This reconstruction emphasizes that legal protection must be based on the existence and historical relationship of knowledge to the community that holds it, not solely on administrative records. Thus, legal reform is directed at realizing preventive and repressive protection, legal certainty, and substantive justice in accordance with the communal character of traditional knowledge.

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