

## "Who Owns Tortor and Gordang Sambilan?": Between the Traces of History, Protection of Indonesian's Intangible Cultural Heritage and Concern for the State to Preserve

Taufik H. Simatupang<sup>1\*</sup>, Asmak ul Hosnah<sup>2</sup>, Agus Satory<sup>3</sup>, Eka Ardianto Iskandar<sup>4</sup>, Firdaus<sup>5</sup>, Okky Cahyo Nugroho<sup>6</sup>

<sup>1,5,6</sup> *Research Center for Law, Institute of Social Science and Humanities, National Research and Innovation Agency (BRIN), Jakarta, INDONESIA*

<sup>1,2,3,4</sup> *Faculty of Law, Pakuan University (UNPAK), Bogor, INDONESIA*

<sup>1</sup> *Faculty of Law, Ibn Khaldun University (UIKA), Bogor, INDONESIA*

\*Corresponding Author: [th\\_tupang@yahoo.co.id](mailto:th_tupang@yahoo.co.id)

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### ABSTRACT

Ownership of Intangible Cultural Heritage (ICH) is not merely a matter of registration leading to recognition. More than that, a culture must be based on its history honestly, including the history of Tortor and Gordang Sambilan. Using a legal history approach, this study found that Tortor and Gordang Sambilan, as cultural heritage of the Mandailing tribe in Indonesia, have existed since the 12th century, while some of the Mandailing tribe migrated to Malaysia in the 19th century. Changes over time have received criticism from the non-essentialist view that value identity tends to be fluid, consisting of elements that will adapt to circumstances. This is in line with Ibnu Khaldun's view, in hermeneutic discourse, that a tradition will die, dry up, and stagnate if it is not continuously revived through reinterpretation in line with social dynamics. Therefore, the Indonesian Government continues to strive for this art to gain global recognition.

**Keywords:** Communal IP, History, Intangible Cultural Heritage, Legal Protection, Ownership, Tortor and Gordang Sambilan

### INTRODUCTION

Tortor and Gordang Sambilan (names of dances and musical instruments) are dance and music arts that accompany traditional events or ceremonies for the Batak Angkola (one of the tribes in Indonesia), Mandailing ethnic group in the South Tapanuli, Kotanopan, North Sumatra area. Tortor and Gordang Sambilan, in addition to being a cultural custom, can also be seen and debated from the perspective of Intellectual Property Rights (IPR), especially Traditional Cultural Expressions (TCE) which questions its legal ownership. TCE itself is a form of expression of folk culture that is greatly influenced by local customs, such as forms of folklore in the realm of literature, music, and songs. The combination of literature, music, and art that gave birth to TCE is in the IPR regime as part of Communal IPR. The abuse of Intangible Cultural Heritage (ICH) as part of Indonesia's TCE by foreign parties that has occurred is the claim of Indonesian TCE by Malaysia, especially against the Pendet dance, Wayang, Reog, the Balinese Batu Perak motif which has been known as the crocodile skin motif and most recently the Tortor and Gordang Sambilan (Widyanti, 2020; Simatupang, 2022). This shows that Indonesia's TCE protection in copyright law has not yet been realized. Weak TCE protection in Indonesia is inversely proportional to the large

number of Indonesian TCE. The Ministry of Education and Culture has data showing that until 2020 there are 9,770 Indonesian ICH that have been recorded and 1,086 have been determined. ICH, which is manifested in a number of expressions, representations, practices, skills, knowledge, and various instruments, has been recognized as a form of communal intellectual property rights, and not individual, which is recognized in the UNESCO Convention in 2003. This also includes various objects, artifacts, and culture and customs of local community groups (Cullet, 2006). Every response from a community group to its environment will form history with all its records of events. Every record of the event in question becomes a cultural heritage that will develop and be inherited from generation to generation. The response in question also forms the identity of individuals as members of society to always maintain respect for cultural diversity and respect for their ancestors (Simatupang, 2022).

TCE is basically protected, managed, and developed by the state and Indigenous peoples from generation to generation who live in a certain area and have the same perspective on social values. ICH itself is part of TCE, which in the Intellectual Property Rights (IPR) regime is part of Communal Intellectual Property (Communal IP). In addition to intangible ICH, tangible or a combination of both are also known, especially in the fields of art and culture. This also includes expressions in the field of literature that have elements of traditional cultural heritage characteristics produced and developed from generation to generation by indigenous peoples (Putri & Putri, 2021). As a large country that has natural resources spread from Sabang to Merauke, Indonesia is also a country with diverse tribes, races, and cultures. This is as depicted in the lyrics of the Koes Plus band song entitled Nusantara V which was created in 1971 (Simatupang, 2022):

Ribuan pulau tergabung menjadi satu  
Thousands of islands united into one  
Sebagai ratna mutu manikam  
As a ratna mutu-manikam  
Nusantara, oh, Nusantara

Berlimpah-limpah kekayaan Nusantara  
Abundant wealth of Nusantara  
Tiada dua di mana jua  
No two anywhere  
Nusantara, oh, Nusantara

Siapa tak kenal Nusantara?  
Who doesn't know Nusantara?  
Siapa tak suka Nusantara?  
Who doesn't like Nusantara?  
Siapa tak sayang Nusantara?  
Who doesn't love Nusantara?  
Oh-oh-oh

Alamnya indah serta udara yang cerah  
The nature is beautiful and the air is bright  
Menjadi kebanggaan semua  
Becoming the pride of all  
Nusantara, oh, Nusantara

Aneka bunga terhampar sekitar kita  
Various flowers spread around us.  
Seakan ada di dalam surga  
As if in heaven  
Nusantara, oh, Nusantara

La-la-la-la-la-la-la-la-la  
La-la-la-la-la-la-la-la-la  
La-la-la-la-la-la-la-la-la

*Note:* This song does not have an English version. The English version here is freely translated by the author himself.

In this life, culture and humans have an inseparable bond throughout civilization (Mahdayeni & Roihan, 2019). The relationship between culture and humans has given birth to the diversity of races and ethnicities of a country, Indonesia is one of them. Indonesia not only has abundant natural resources but also a wealth of cultural and

ethnic diversity spread throughout the Indonesian archipelago (Simatupang, 2022). One of these cultural diversities is TCE. TCE as part of IPR is the potential of a country that must be protected, preserved, and developed (Roisah, 2014).

Article 39 of Law Number 28 of 2014 concerning Copyright explains that the state is the copyright holder of TCE which is obliged to carry out inventory and maintenance. Furthermore, in utilizing TCE, the state must always pay attention to the values of the local community (Atsar, 2017). The next development, through Law Number 5 of 2017 concerning the Advancement of Culture, which is expected to provide protection for Indonesian Communal IP, it turns out that there are still many violations committed by other countries against Indonesian culture, such as Malaysia's claim to Indonesia's TCE. Therefore, Indonesia needs to take more strategic policy steps to protect cultural heritage from claims by other countries, so that in the future Indonesian cultural heritage can contribute to increasing the country's foreign exchange and economic growth (Paramisuari, A.A.S., Purwani, Sagung, 2019). The failure of Communal IP protection in the copyright regime includes differences in perspectives on ownership rights (Tuarita, 2014), philosophically there is a sharp difference between IPR which is basically individualistic while Communal IP is collective and communal (Bustani, 2016). The characteristics of TCE have not been fully regulated in the Copyright Law, for example, TCE is not a work of creation that is limited by time, but is a creation that is not limited by time and is passed down from generation to generation. TCE is a work of creation whose creator is unknown because it is passed down from generation to generation and then eventually becomes a culture (Susanti et al, 2019). In the Draft Law on the Protection and Utilization of Intellectual Property of Traditional Knowledge and Traditional Cultural Expressions, the definition of EBT is a work of art including literary expressions produced, developed, and maintained by indigenous peoples, this definition does not yet include material related to ICH. Another view (Asri, 2018), also states that according to its principle, copyright requires certainty regarding the originality and identification of the author. This will certainly be problematic when faced with TCE which is generally oral tradition such as fairy tales, myths, legends, regional songs, and dances.

## LITERATURE REVIEW

### People, Culture and Heritage

"What" man is a guide that shows that man is a body or body, that is the principle of "why" as matter. While the "who" of humans will lead to the understanding that humans are souls, those are the principles of "who-ness" as spiritual. Humans as dual beings in the material and spiritual unity exist. Human paradox is also found in "what" and "who". Humans have uniqueness and pleasures, one of which is the existence of a paradoxical opposition in unity (Hadi, 2011). The word culture comes from Sanskrit, from the root word buddhi, the plural form is buddhayah which means budi, or reason, or budi or mind. After getting the prefix - and the suffix -an, it becomes culture which means the human mind (Santri Sahar 2015; Brian Burfitt 2014). Every nation has a culture with different patterns and forms, culture itself is a universal phenomenon (Maran, 2007). Every culture has a container and society that cannot be separated (Sahar, 2015).

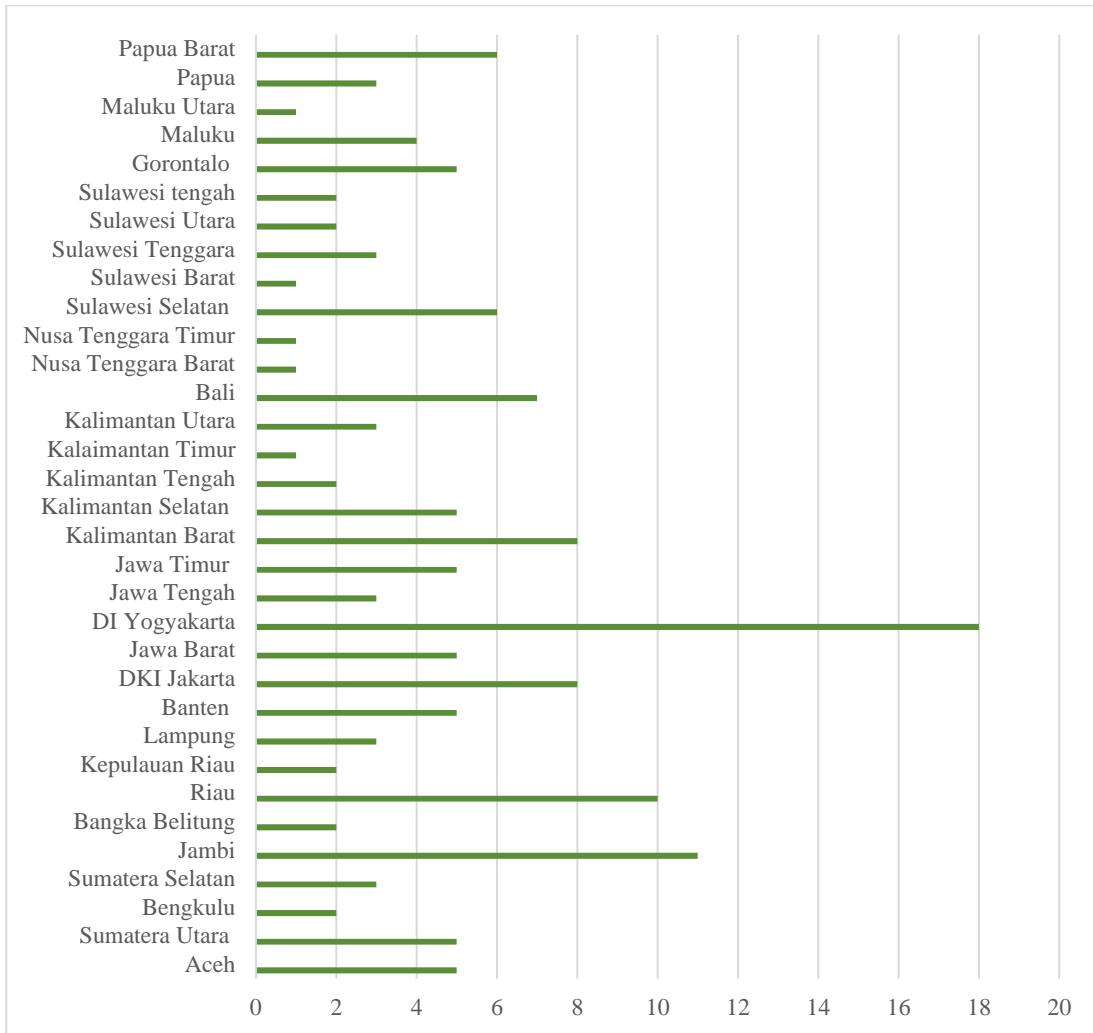
In general, there are 7 (seven) elements of culture, namely:

1. Language;
2. Knowledge systems;
3. Social organization;
4. Live equipment system and technology;
5. Live livelihood system
6. Religious system;
7. Art system (Wahyuni, 2013).

Culture has a relationship with anthropology, considering that both exist and have grown and developed since human civilization. To be sure, anthropology has no exclusive right to use this term. Artists such as dancers or painters etc. also use this term or are associated with this term, even the government has a department for this. This concept is indeed very often used by anthropologists and has spread to the wider community that anthropology works or researches what is often called culture (Siregar, 2002). Cultural anthropology deals with what is often called ethnology. Science that studies human behavior, both individuals and groups. The behavior here is not only activities that can be observed with the eyes, but also what is in their minds. In humans, this behavior depends on the learning process. What they do is the result of the learning process carried out by humans throughout their lives, whether they realize it or not (Siregar, 2002).

Indonesia is a country that has various dimensions or pluralities, both cultural, social, artistic, and thought plurals that form its identity. It is the identity in diversity that causes this great state to become a unitary state. The Unitary State of the Republic of Indonesia was pioneered by the nation's founders and has been able to survive until now (Hadi, 2011). This diversity has made Indonesia one of the countries that have bequeathed culture to

the world, both tangible and intangible. The determination of Indonesia's ICH can be seen in graph 1. The distribution of data in Graph 1 shows that of the 34 provinces in Indonesia, all have ICH. This means that overall Indonesia has an extraordinary wealth of culture. However, of the large number of ICH originating from Indonesia, it turns out that not many have been recorded by UNESCO. This shows that the efforts and sincerity of the Indonesian government in managing, maintaining, and developing ICH have not been carried out optimally.



**Graph 1.** Distribution of Indonesian Intangible Cultural Heritage Data  
*Source:* Directorate General of Culture, Ministry of Education and Culture in 2024

ICH is defined as the practices, representations, expressions, knowledge, skills, such as tools, objects, artifacts, and cultural spaces inherent in communities, groups, and in other cases individuals who are recognized as part of that culture. This definition adopts Article 2 Convention for the Safeguarding of the Intangible Cultural Heritage 2003 which mentions that "...intangible cultural heritage means the practices, representations, expressions, knowledge, skills-as well as instruments, objects, artefacts and cultural spaces associated therewith that communities, groups, and, in some cases, individuals, recognize as part of their cultural heritage." According to this convention, ICH is passed down from generation to generation and is constantly being re-created by communities and groups in response to their environment, their interaction with nature, and its history which automatically has an impact on the promotion of cultural diversity and human creativity. The intangible aspect (Sedyawati, 2003) is always attached to tangible cultural objects that can be touched, in the form of concrete objects that are man-made and made to meet certain needs.

**Looking at the History of the Batak Tribe**

Some argue that the term emerged after the arrival of a group of migrants to the Batak Land and some argue that the name Batak manifested itself after the existence of Siraja Batak. There are many opinions expressed about the emergence of the term Batak in the naming of this tribe. The term Batak is a word that comes from the word "Bataha" which is the name of a country in Burma which later changed to the word "Batak". In Malay literature,

the term Batak can also be interpreted as those who wander and are adventurous (Departemen Pendidikan Nasional, 2005). The spelling change is because in the old Batak writings there is no "k" while every "h" at the end of a word is pronounced as a "k", like Bataha becomes Batak (Ilyas & Kadir, 2021). The Batak tribe is very firm in holding on to customs and cultural traditions, tends to dislike foreigners because they are considered invaders and enemies. Before the colonial era, the Batak Land was known as the sovereign land of Toba, starting from the Sorimangaraja dynasty which was later inherited by Sisingamangaraja with the capital Bakkara (Van Hoeve, 1984). The Toba Batak tribe has a common ancestor, namely the Batak King who adheres to the *dalihan na tolu* (three-burner stove) culture (Dewan Bahasa dan Pustaka, 1998). The Batak lands around Lake Toba are located in the province of North Sumatra, formerly Morsa Island (Harahap, 1985), including Tapanuli and parts of East Sumatra (Siahaan, 1964). The term Tanah Batak was later changed to Tapanuli because the residents found an interesting recreational area, namely "Tapian Nauli" (beautiful beachfront) located in the city of Sibolga (Van Hoeve, 1984).

Anthropologically there are those who argue that the Batak people have existed since 800-1000 years ago, and there are even other opinions since 1500-2000 years ago. The Toba Batak people come from the mountains of Burma and Siam who arrived in the Batak Land more than 1000 BC. The arrival of immigrants took place in three stages. In the first stage, the immigrants landed on the islands of Nias, Mentawai and Siberut (A Place Located in North Sumatra, Indonesia). The second stage is through the Simpang River Estuary and the third stage is through the Sorkam River Estuary (A Smaller Place Located in North Sumatra, Indonesia) (Parlindungan, 1964). According to history, Siraja Batak and his entourage came to Sumatra through the Thai kingdom, continued to the Malay Peninsula, crossed the island of Sumatra and settled on the shores of Lake Toba. Another opinion says that their arrival from India to Barus wandered to Alas Gayo. Batak culture in 2000 BC to 1500 BC has been influenced by Hindu and Buddhist culture (Pedersen, 1975).

The Toba Batak tribe is rich in myths that have a lot to do with Debata (God), the gods about the creation of the earth, sky, humans, animals and plants. All the myths told by their ancestors from generation to generation through word of mouth. These myths are packaged in fairy tales (*turi-turian*) (Dhavamony, 1995). According to Batak mythology, the origin of the Batak tribe comes from Pusuk Buhit, the foot of a mountain located on the outskirts of Samosir Island. This island is in the middle of Lake Toba, now a tourist destination (Ilyas & Kadir, 2021). The Toba Batak tribe has a culture and philosophy of life that comes from the ancestors of Si Raja Batak, who lived in the village of Sianjur Mula-Mula around Lake Toba. This village community was the first to become a supporter of a culture called Batak culture (Siahaan, 1964). The culture and philosophy of life function as values that control the social system, as well as the Batak tribe (Ilyas & Kadir, 2021).

The Toba Batak tribe also has cultural values (Harahap, 1992), namely:

1. Hagabeon (many children and long life). In the Batak tribe, it means the hope of having good and long life children and grandchildren. With a long life, it is hoped that they will get good offspring too. For this tribe, children are a symbol of glory, especially boys as the successor of the clan.
2. Hamoraon (riches). Hamoraon has the meaning of honor which is intended as a balance between material and spiritual values.
3. Marsisarian (mutual respect). In the social system and values regulate the balance between human relations, considering that there are always differences in relationships in society. Marsisarian means to respect, appreciate and help each other.
4. Protection. The value of protection in the Batak tribe is unique. With this value they become accustomed to living independently and not easily asking for mercy from others. Because one of their customary principles is that everyone is a guardian and looks after each other. This principle derives from the element known as *dalihan na tolu*.
5. Uhum dan ugari (laws and cultural values). This value has the same meaning as the law. For the Batak people, the law or *uhum* is something absolute. The implementation of these values is shown through an attitude of justice. The value of justice itself is manifested from a commitment to do habits (*ugari*) and loyalty to promises.
6. Kinship. Kinship values are the most important cultural values in the Batak tribal community. This value upholds the traditional principles of *dalihan na tolu* (*hula-hula*, *dongan sabutuha* and *boru*) (wife's family, family of the same surname, woman's family). This can be seen from the good kinship between each other. Usually applies to wandering Batak tribes. Generally, they seek ties of kinship among their clans.

The Batak tribe has six sub groups, namely: Toba, Mandailing, Angkola, Simalungun, Pakpak, and Karo of which six inhabit the geographic area of North Sumatra, especially Tapanuli. Batak in cultural perception can be translated as a tribe that inhabits the geographical area of North Sumatra, especially the Tapanuli area. However, another opinion is of the view that what is said to be "Batak" or "Batak people" itself is not only limited to the geographical area but includes outside of that as long as they have a Batak lineage marked by the presence of "Marga", then it is still called "Batak" or "Batak people" (Siregar, 2015).

The existence of the Batak as a form of society with dynamic, strong, and self-confident characteristics makes it the Batak tribe not easy to experience major changes caused by the influence of external factors (Sibeth, 1991) reveals: "The Batak are very dynamic and self confidence people. Over the centuries they have able to guard their homeland against intrusion by foreigners, and it si only in the last 100 years that their way of life and culture has undergone a great change under the impact Christianity, Islam and colonialism". The religion which includes external influences cannot completely change Batak customs. Before the arrival of religion in Tapanuli, the Batak adhered to an animist belief called *si pele begu* (worshipping spirits).

### History of Tortor and Gordang Sambilan

"Gordang" itself means drum and the term "Gordang Sambilan" means 9 drums. The complete definition of Gordang Sambilan is a percussion instrument consisting of 9 drums, each of which has a name, namely: *jangat siangkaan* (large cowhide drum), *jangat silitonga* (medium cowhide drum), *jangat sianggian* (small cowhide drum), 2 *pangaloi/pangayak*, 2 *paniga*, *kudongkudong*, and *eneng-eneng/tepe-tepe* (there are differences in instrument names in each region in Mandailing). In addition to the linguistic understanding of Gordang Sambilan, it is a set of drums consisting of nine drums, according to (Hutajulu, R., & Harahap, 2004), Gordang Sambilan also has the meaning as a musical ensemble of a set of nine drums and their accompaniment instruments. Gordang player formations generally consist of 5; 1 person as the leader who plays rhythmic variations by beating the *jangat siangkaan*, *jangat silitonga*, and the *jangat sianggian*; 1 *pangaloi* drummer; 1 *paniaga* drummer; 1 *udong-kudong* drummer, and 1 *eneng-eneng* drummer. The formation of Gordang Sambilan is accompanied by 9 other traditional instruments, such as 2 *ogung* (*ogung boru-boru* and *ogung jantan*), 1 *doal*, 3 *salempong/mongmongan*, 1 *sarune/saleot*, and 2 *sasayak* strings. In its use at certain traditional events, the Gordang Sambilan performance is accompanied by a demonstration of greatness objects, such as: traditional flags, *odong* umbrellas, and *sijabut* spears. Gordang Sambilan is also an accompaniment to the *tor-tor* dance and the chanting of poems containing advice or telling a situation (*jeir*). The order of *gordang* is also a symbol of nine functionary figures of indigenous peoples, namely: 1. Gordang Sambilan which is the largest is a symbol for King Panusunan Bulung (King of the Angola People); the title for the best king who has built several villages, the king is chosen by community leaders; 2. One *gordang* is a symbol of *Datu* (Paranormal), which is an important helper of a king to communicate with the supernatural or ancestral spirits; 3. *Natoras* (Parent) who is the representative of the *Datu*; 4. King *Pamusuk* (King of the Angola People) is a traditional leader who heads a village; 5. One *gordang* for the Head of Ripe, namely the representative of King *Pamusuk*; 6. *Uluan* is a person who represents *Mora*, namely someone who comes from the wife's family; 7. *Talaga* is a person who represents the *anak boru*, namely a relative who takes a wife; 8. One *gordang* represents *Ulubalang*, the village security guard; 9. *Suruonkonon* is a servant of the king (Majid, 2013). Tortor and Gordang Sambilan as shown in Figure 1 and Figure 2.



**Figure 1.** Tortor  
Source: Kompasiana.com



**Figure 2.** Gordang Sambilan  
Source: info.madina.go.id

## MATERIALS AND METHODS

### Theoretical Framework

Legal observation of social reality is a general proposition. Legal validity is not determined by abstract norms that are born from the construction of human thought alone, but from facts that grow and develop in society.

Therefore, in order to understand law and its problems, various concepts, doctrines, and scientific methods other than law that intersect with society become an integral part (Hakim, 2016).

According to Judy Giles and Middleton, the essence of identity tends to be seen as something rigid and unchanging, and timeless. The collective identity of a nation will not change even though it consists of various individuals with different experiences. The non-essentialist view criticizes the essentialist view by asking "is it possible to speak of a fixed 'true' identity over time and in all places" (Judy Giles & Tim Middleton, 1999).

This critique opposes the existence of the most original identity, the most correct, among others, which does not allow identity changes, because according to the non-essentialist view, identity tends to be fluid, consisting of elements that adapt to the surrounding conditions and are not rigid which avoid change, no matter how small the change (Kathryn Woodward, 1997).

### **Data Collection Technique**

This research is a normative legal research that uses secondary data. Secondary data used based on its legally binding power consists of: primary legal materials, secondary legal materials, and tertiary legal materials, both in the form of online literature and laws and regulations that are relevant to the research problem, especially Law Number 28 of 2014 concerning Copyright. Data were collected through literature study/library study. The study was conducted by utilizing internet media from various sources, especially international and national websites. The data used in this study is data within the last 10 years, from 2013 to 2023 obtained from international institutions <https://www.unesco.org/id>, especially to see the development of the registration of the ICH of Indonesia. Furthermore, this research also uses data from the Directorate General of the Indonesian Ministry of Law and Human Rights, with the official institutional link <https://www.dgip.go.id/artikel/list-artikel?kategori=ki-komunal> to see a comparison of the recapitulation of communal intellectual property with those <https://kebudayaan.kemdikbud.go.id/> who specifically also collect ICH data.

### **Data Analysis Method**

The data obtained will be analyzed qualitatively through the hermeneutic approach in Ibnu Khaldun's thinking which is also an analytical tool in this study. This tradition was pioneered by Ibnu Khaldun, which was later developed by later generations, including Arkaun and Nasr Hamid Abu Zaid (Hidayat, 1996). In hermeneutic discourse, a tradition will die, dry up and stagnate if it is not revived continuously through reinterpretation in line with social dynamics. As a sociologist who is also an observer of history, Ibnu Khaldun recommends understanding history, as the substance and condition of the historical actors. Hermeneutics consists of three main elements, namely: author, text and reader. All three have their world, so a dynamic, dialogical and open relationship must be established. There is an interrelated interaction between the three. On the one hand, a reader when dealing with a text, the results he gets depend on his courage to recognize the meaning and content of the text. Meanwhile, on the other hand, readers are required to know more about the author's personality so that they can capture the aspirations that exist in the author's conscience as a whole (Kasdi, 2014).

Whereas in Ibnu Khaldun's philosophy of history, this structure consists of: historical actors, historical substances and historical readers. A history reader must master the rules of historical narration, the characteristics of historical actors, the existing character, the problems of the division of the people and so on (Al-Maghriby, 1983). This is so that the history that is read can be understood in its entirety and avoid breaking the chain of generations. The three must be interrelated and it is impossible to leave one of them.

## **RESULTS**

### **Who Owns Tortor and Gordang Sambilan**

Malaysia's claim to Tortor and Gordang Sambilan does not need to be reacted reactively because the two allied countries must have similarities and cultural similarities. One example is the ownership rights to Pantun according to UNESCO's assessment to be the joint property of the two countries, Indonesia-Malaysia. Historically, Tortor and Gordang Sambilan are performing arts that were born and rooted in every event in the South Tapanuli area of North Sumatra. However, it cannot be denied that there are so many Mandailing people who have migrated and settled for decades in Malaysia, even "coloring" the basic culture consisting of ethnic Malays, Indians, and ethnic Chinese there. The question then is what steps have been taken by the Indonesian government and the obstacles faced in preserving the performing arts of Tortor and Gordang Sambilan in order to gain international recognition as a world ICH.

Historically, Tortor and Gordang Sambilan cannot be separated from the existence of the Mandailing community in Malaysia. Those who miss their hometown, continue to preserve the art and culture of Tortor and Gordang Sambilan. The emergence of the Mandailing community in Malaysia occurred during the Dutch

intervention in the Mandailing lands and caused mass migration of the Mandailing people to the western peninsula of Malaysia. Around 1820, Padri entered Mandailing. This event sparked the massive migration of the Mandailing people to Malaysia in the 19th century, headed by the Mandailing Kings, followed by the clans. This also signifies the emergence of the concept of the Mandailing nomads or what is currently better known as the diaspora. The Mandailing community, especially those overseas, are ordered to always maintain their customs, never give up and not sell their identity. In its definition, diaspora refers to a nation or population who is forced or compelled to leave their homeland for another country or region. In the sociology dictionary, the concept of diaspora is known, which means spread. The concept of diaspora according to Paul Gilroy is "a relational network, characteristically produced by forced dispersal and reluctant scattering" (Kathryn Woodward, 1997).

Diaspora is a network of interconnections produced by population dispersal that occurs against their will and is not patterned. The causes can vary, such as pressure, ranging from war, ethnic cleansing, and slavery (Kathryn Woodward, 1997). The past and history do form a cultural identity, but identity formation continues for the future and does not stop at the things that compose it in the past. In the view of Judy Giles and Tim Middleton, defining an essential view of identity tends to view identity as something rigid and unchanging, and timeless. In other words, there is a collective identity that belongs to a nation, and this identity will not change even though the nation consists of various individuals with different experiences. On the other hand, the non-essentialist view criticizes the essentialist view by questioning "whether it is possible to speak of a 'true' identity that is fixed for all time and in all places" (Judy Giles & Tim Middleton, 1999). This critique opposes the existence of the truest identity, the truest of all, and the unchanging of one's identity. According to the non-essentialist view, a person's identity tends to be fluid, consisting of elements that will adapt to the surrounding cultural circumstances and not on rigid characteristics that avoid the slightest change (Woodward, 1997).

Ibnu Khaldun once said that history is "Ibrar", which means a useful example or moral lesson. Terminologically, "Ibrar" means through, beyond, crossing, or violating the border. Sufi groups use the word as a tool for the development of their inner world, to describe the spiritual function of all further mystical expressions (Sujati, 2018). The historical position in Ibnu Khaldun's theory is seen from two sides in the historical building, namely the outside and the inside. On the outside, history is nothing more than a record of the cycles of past periods and powers, but when viewed more deeply, history is a critical reasoning and careful effort to seek the truth. History is an intelligent explanation of the causes and origins of all things. It is an in-depth knowledge of how and why an event occurred (Hasbullah, M., Supriyadi, 2012). Ibnu Khaldun's view implicitly does not question the most original identity in a historical perspective as in essential theory, or historical identity is actually fluid as criticism of non-essential theories. More than that, history is actually an intelligent explanation of the causes of everything that can happen. Likewise, Malaysia's claim to Tortor and Gordang Sambilan is actually the result of the historical cause of the migration of the Mandailing people to Malaysia and forming a community as well as an identity with all its cultures.

In the context of preserving and protecting ICH in the current era of globalization, it is no longer important to record which country actually owns Tortor and Gordang Sambilan, Indonesia or Malaysia, because the true owners of a cultural heritage are the actors and practitioners who carry it out on a daily basis. At present it is much more important for the state to take a more serious role in providing assistance in order to create protection, preservation and development of ICH, especially for the Indonesian government.

Referring to the historical dimension of how massive the migration of the Mandailing tribe to Malaysia occurred hundreds of years ago, the question of who actually owns Tortor and Gordang Sambilan is no longer interesting to discuss. In the future, UNESCO's recognition of Tortor and Gordang Sambilan as world cultural heritage originating from two countries, namely Indonesia and Malaysia, is not impossible. This is the same as how UNESCO recognizes and records pantun as a world cultural heritage originating from Indonesia and Malaysia.

## DISCUSSION

### The State's Concern for the Protection of Intangible Cultural Heritage

The Indonesian Constitution has stipulated that the state has an important and strategic role in advancing national culture. This is because Indonesia has a very diverse ethnic group. This diversity has given birth to ICH which is another word for TCE in the IPR regime (Simatupang, 2022). The recording and determination of ICH as part of Indonesia's TCE, from 2009 to 2017 has recorded as many as 7,241 cultural works, and has determined 77 cultural works in 2013; 96 cultural works in 2014; 121 cultural works in 2015; 150 cultural works in 2016; and in 2017 has designated 150 cultural works as ICH Indonesia. It is hoped that Indonesian ICH will not only end with international registration, registration, and recognition but legal protection is needed to prevent commercial exploitation of foreign countries.

The ICH which has been managed by the Directorate General of Culture and the Directorate of Cultural Heritage and Diplomacy of the Ministry of Education and Culture, 12 of which have been designated as world heritage by UNESCO, namely (Widyanti, 2020):

1. The Wayang Puppet Theatre;
2. The Indonesian Kris;
3. Indonesian Batik;
4. Education and training in Indonesian Batik intangible cultural heritage for elementary, junior, senior, vocational school and polytechnic students, in collaboration with the batik museum Pekalongan;
5. Indonesian angklung;
6. Saman Dance;
7. Noken Multifunctional Knotted or Woven Bag, Handcraft of the people of Papua;
8. Three Genrees of Traditional Dance in Bali;
9. Pinisi, seni pembuatan kapal di Sulawesi Selatan (Pinisi, art of boatbuilding in South Sulawesi);
10. Malay Oral Tradition;
11. Traditions of Pencak Silat;
12. Indonesian Gamelan.

The state's obligation to care and pay attention to the cultural heritage of its people, as mandated in the constitution, must of course be carried out more concretely. TCE as part of ICH must clarify which agencies actually have the right and authority to manage, foster, and develop it. Currently, there are at least 2 agencies (Ministry of Law and Ministry of Culture) that are directly involved in this ICH, but the limits of authority of the two agencies in practice are not very clear, which ultimately has an impact on less than optimal management.

### **The Steps that must be Taken by the Indonesian Government**

After Indonesia ratified the 2003 Convention for the Safeguarding of Intangible Cultural Heritage, which was ratified through Presidential Regulation No. 78 of 2007 concerning Ratification of the Convention for the Safeguarding of Intangible Cultural Heritage, Indonesia is obliged to record cultural works and all of Indonesia. In addition, as an even stronger protection effort, the Directorate of Cultural Heritage and Diplomacy has determined the ICH of Indonesia. Determination of Indonesian ICH is the granting of Intangible Cultural status to Indonesian Intangible Cultural Heritage by the Minister based on the recommendation of the Indonesian ICH Expert Team (Kementerian Pendidikan dan Kebudayaan, 2017).

The Directorate of Cultural Heritage and Diplomacy, the Directorate General of Culture under the Ministry of Education and Culture which has the main task and function of carrying out the Recording and Determination of Indonesian ICH, from 2009 to 2017 has recorded 7,241 cultural works and has determined 77 cultural works in 2017. 2013; 96 cultural works in 2014; 121 cultural works in 2015; 150 cultural works in 2016; and in 2017 it has designated 150 cultural works as Indonesian ICH (Direktorat Warisan dan Diplomasi Budaya Direktorat Jenderal Kebudayaan Kementerian Pendidikan dan Kebudayaan, 2017).

This determination activity is carried out as an effort to protect and preserve the Intangible Culture in the territory of the Unitary State of the Republic of Indonesia. This determination activity must involve all parties such as the Central Government, Regional Government, everyone, and customary law communities. Thus, it is hoped that public awareness of the importance of preserving Indonesia's ICH will increase. Intangible Cultural Works that will be determined is Intangible Cultural Works that exist in the territory of Indonesia in accordance with the UNESCO Convention of 2003, namely:

1. Oral traditions and expressions, including language as a vehicle for intangible cultural heritage;
2. Performing arts;
3. Community customs and celebrations;
4. Knowledge and behavioral habits regarding nature and the universe;
5. Proficiency in traditional crafts (Kementerian Pendidikan dan Kebudayaan, 2017).

This activity to determine the Indonesian ICH aims to:

1. Guarantee and protect the ICH of Indonesia which belongs to the various communities, groups, and individuals concerned;
2. Improving the dignity of the nation and strengthening the character, identity, and personality of the nation;
3. Increasing the appreciation and pride of the Indonesian people towards the uniqueness and richness of Indonesian cultural diversity;
4. Increase awareness and active role of the community and policymakers on the importance of ICH;
5. Respect for the nation's cultural heritage;
6. Promote the nation's ICH of Humanity to the wider community; and
7. Improving people's welfare (Direktorat Warisan dan Diplomasi Budaya Direktorat Jenderal Kebudayaan Kementerian Pendidikan dan Kebudayaan, 2017).

The steps that have been taken by the Indonesian government are good steps by making the registration and determination of the Indonesian Cultural Heritage. However, international registration and registration should not be forgotten. Intangible Cultural Heritage from Indonesia must of course get world recognition, so that it is not claimed by other countries. Cultural claims by Malaysia have received tremendous attention from the public. Self-esteem as a nation is part of the national interest as regulated in the 1945 Constitution. Article 27 paragraph 3 of the 1945 Constitution states that every citizen has the right and is obliged to participate in the defense of the state. Maintaining Indonesian arts and culture is one of the efforts to defend the country. Malaysia's repeated claims have caused Indonesians to protest. The Indonesian government seeks to resolve cultural disputes through peaceful means. However, the action of cultural claims continues (Rozi, 2016).

Finally, Malaysia claims Tortor and Gordang Sambilan ethnic Mandailing, which is a native art from North Sumatra, as the cultural heritage of the neighboring country. This claim of Indonesian culture by Malaysia has become a big issue that involves the attention of the majority of the Indonesian people. This cultural claim has also become a pro and contra in the eyes of the North Sumatran public. When the issue of Malaysia registering Tortor and Gordang Sambilan as cultural heritage in the 2005 National Heritage Deed, surfaced in the mass media, the controversy increased. It was marked by a large demonstration in front of the Malaysian Consulate General's office in Medan City. Community groups in North Sumatra also asked the North Sumatra Provincial Government to submit a note of protest to Malaysia over the Tortor and Gordang Sambilan claims. Tortor and Gordang Sambilan are cultural arts from Mandailing, one of the major ethnic groups in North Sumatra. Tortor, according to the original, is not a dance, but a complement to Gordang based on the traditional philosophy itself. Tortor which is done with certain movements has certain characteristics, meanings, characteristics, and goals. In accordance with their position, Tortors can be distinguished according to the group that is the supervisor (Pandapotan Nasution, 2005). Tortor and Gordang Sambilan as cultural expressions and entities of a nation are actually intellectual property rights that must be fought for their ownership. Tortor and Gordang Sambilan are part of the protection of Copyright which is protected under Law Number 28 of 2014 concerning Copyright, as referred to in Article 40 paragraph (1) of the Copyright Law.

The steps for international registration and registration are appropriate and civilized steps as a nation. The position of the state is important to realize these results, as mandated in Article 38 paragraph (2) of Law Number 28 of 2014 concerning Copyright that the State is obliged to take inventory, maintain, and maintain traditional cultural expressions. WIPO advises developing countries to protect traditional knowledge *sui generis* and Indonesia needs to take similar steps (Kasih, D.P.D., Dharmawan, N.K.S., Putra, I.B.W., Sudiawan, K.A., Rakhima, 2021), including Tor-tor and Gordang Sambilan, to drafting such a *sui generis* law, Indonesian parliamentarians can follow the guidelines provided by WIPO. To draft a national legal protection law for Tortor and Gordang Sambilan as part of the protection of TCE, the concept of *sui generis* must of course pay attention to the legal ideals of the Indonesian nation based on the values of Pancasila.

## CONCLUSION

From the analysis of the research results, it can be concluded that the ICH ownership rights can be proven in the historical dimension by stating which country is the real owner. However, the essential view, which says that historical-cultural identity tends to be rigid and does not change with time, has received criticism from non-essential views which view identity as more fluid and adaptable to the circumstances around it. In line with the non-essential view, Ibnu Khaldun assesses, in the hermeneutic discourse, tradition will die if it is not revived continuously through reinterpretation that is in line with social dynamics. Likewise with Tortor and Gordang Sambilan, referring to the historical dimension, in the future it is not impossible that UNESCO will recognize these cultural heritages as originating from two countries, namely Indonesia and Malaysia.

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## Glossary

Batak Angkola boru dalihan na tolu Datu Debata dongan sabutuha hagabeon hamoraon hula-hula jangat siangkaan jangat silitonga jangat sianggian pangaloi/pangayak, kudongkudong, and tepe King Panusunan Bulung King Pamusuk marsisarian Mentawai and Siberut Natoras Nias, Mentawai and Siberut Sorkam River Estuary Tapian Nauli Tortor and Gordang Sambilan uhum dan ugari	The Tribes in Indonesia woman's family three-burner stove Paranormal God family of the same surname riches mutual respect wife's family jangat siangkaan jangat silitonga jangat sianggian another name for a musical instrument that is the same as a jangat King of the Angola People King of the Angola People mutual respect A Place Located in North Sumatra, Indonesia Parent A Place Located in North Sumatra, Indonesia A Smaller Place Located in North Sumatra, Indonesia Beautiful Beachfront Names of Dances and Musical Instruments laws and cultural values
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