

TOWARDS CRIMINAL LAW REFORM PROTECTING COMMUNAL RIGHTS OF ASMAT CARVINGS IN INDONESIA

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ABSTRACT

This study examines the reform of criminal law protection of Asmat carvings as a form of traditional cultural expression and communal rights of the Asmat indigenous people in South Papua. The main problem lies in the ineffectiveness of the modern Intellectual Property Rights system based on individual ownership in protecting communal cultural heritage such as Asmat carvings that have spiritual, social, historical, and symbolic value. Various violations still occur, such as imitation of carving motifs, mass reproduction, commercial exploitation without permission, and registration of copyrights or industrial designs by outsiders without fair sharing of benefits for indigenous peoples. This study aims to analyze the legal protection of the Asmat carvings and formulate a criminal law reform model that is more responsive to the communal rights of indigenous peoples. The method used is normative legal research with a legislative approach, a conceptual approach, and a case approach supported by literature studies. The results of the study show that although the constitution, the Copyright Law, and the Law on the Advancement of Culture have provided normative recognition of communal rights, criminal law has not expressly accommodated communal ownership as an object of legal protection. The absence of special criminal offenses, difficulties in the evidentiary mechanism, weak institutional capacity, and lack of optimal integration between customary law and criminal law are the main obstacles, criminal law reform is needed through the recognition of indigenous peoples as legal subjects, the formulation of special criminal acts against the exploitation of traditional culture, the application of the principle of Free Prior Informed Consent (FPIC), and the integration of customary law in national law enforcement.

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INTRODUCTION

Indonesia as a country rich in cultural diversity has a great responsibility in maintaining, protecting, and preserving the cultural heritage inherited by indigenous peoples from generation to generation¹. One form of cultural wealth is the traditional carving art of the Asmat people in South Papua which not only has high aesthetic value, but also contains spiritual, philosophical, social, and collective meanings of the indigenous people². Asmat carvings are not just works of art in the commercial sense, but representations of life, respect for ancestors, symbols of human relations with nature, and an integral part of the value system of the Asmat indigenous people³. In this context, Asmat carvings are traditional cultural expressions that are born communally and inherited from generation to generation, so they cannot be understood only through an individualistic approach as the construction of modern intellectual property law⁴.

Problems arise when the development of the creative economy, the globalization of trade, and the advancement of information technology cause Asmat's carvings to be more easily reproduced, traded, modified, and even claimed by other parties without the consent of the indigenous people of the owners⁵. Many Asmat motifs, symbols, and carvings are used for commercial purposes by outsiders without a fair benefit-sharing mechanism or recognition of the communal rights of the indigenous Asmat people. This phenomenon shows that there is an inequality between the cultural values that live in society and the national legal system that is not fully able to provide effective protection for the communal right to traditional cultural

¹ Saharuddin Sahar et al., "Transfer of Land Rights in the Tayade System," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 1 (2025): 196, <https://doi.org/10.22373/petita.v10i1.412>.

² Astrid de Hontheim, "Imagination behind Shape: The Invisible Content of Asmat Artefacts," *A Journal of Social Anthropology and Comparative Sociology* 20, no. 3 (2010), <https://doi.org/https://doi.org/10.1080/00664677.2010.515292>.

³ Haidy Geismar, Ton Otto, and Cameron David Warner, *Exploring Continuous Change across Cultures*, 2022, https://www.researchgate.net/profile/Jaap-Timmer/publication/358924389_We_are_not_an_emblem'_Impermanence_and_materiality_in_Asmat_lifeworlds/links/621e0ca2579f1c041723b1e1/We-are-not-an-emblem-Impermanence-and-materiality-in-Asmat-lifeworlds.pdf#page=125.

⁴ Wina Sulisty, Nur Anggraheni, and Tjahjono Prasodjo, "Evolusi Budaya Artefaktual Suku Asmat Dalam Pendekatan Ekoteologi," *Janibura History and Culture Journal* 5, no. 1 (2023): 73-98, <https://doi.org/10.37905/jhcj.v5i1.26520>.

⁵ "Nick Stanley, The Making of Asmat Art: Indigenous Art in a World Perspective.," *Bijdragen Tot de Taal, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 169, no. 4 (n.d.), <https://doi.org/https://doi.org/10.1163/22134379-12340061>.

expression. In many cases, Indonesia's positive law is still more oriented towards the protection of individual rights, while the collective rights of indigenous peoples have not gained a strong position in the national legal protection system.

Law Number 28 of 2014 concerning Copyright has indeed provided recognition for traditional cultural expressions through the provision that the state holds the copyright to traditional cultural⁶ expressions. However, these norms still raise various juridical and practical problems. The placement of the state as a rights holder raises questions about the position of indigenous peoples as original creators as well as owners of these cultural values. On the other hand, the arrangements regarding protection mechanisms, law enforcement, economic benefit sharing, and criminal sanctions for violations of communal rights have not yet been formulated in a firm and operational⁷ manner. As a result, the protection of Asmat carvings is more declarative than implementive. This condition shows that criminal law reform in the field of intellectual property rights protection is an urgent need so that the law is not only a formal instrument, but is truly able to guarantee substantive justice for indigenous peoples.

The urgency of criminal law reform is even more relevant when the practice of traditional cultural exploitation continues without an adequate deterrent effect⁸. Criminal provisions in the copyright regime have been more directed at conventional copyright infringements of an individual nature, such as piracy of books, music, movies, or software⁹. Meanwhile, violations of traditional cultural expressions such as Asmat carvings have not received proportionate attention¹⁰. In the absence of a specific criminal formulation, it is difficult to effectively prosecute acts of abuse, cultural plagiarism, unauthorized commercialization, and the loss of indigenous peoples' cultural identity¹¹. From the perspective of restorative justice and

⁶ D Jana, "Investigating the Surface Layer of Micro-Features Machined by Spark Assisted Investigating the Surface Layer of Micro-Features Machined by Spark Assisted Investigating the Surface Layer of Micro-Features Chemical Engraving Machined by Spark Assisted Inves," *IFAC-PapersOnLine* 52, no. 10 (2019): 315-18, <https://doi.org/10.1016/j.ifacol.2019.10.049>.

⁷ Ahmed Ragib Chowdhury, "Computer Law & Security Review : The International Journal of Technology Law and Practice Techno-Authoritarianism & Copyright Issues of User-Generated Content on Social- Media," *Computer Law & Security Review* 55, no. November (2024): 106068, <https://doi.org/10.1016/j.clsr.2024.106068>.

⁸ Desak Putu et al., "The Exploitation of Indigenous Communities by Commercial Actors : Traditional Knowledge and Traditional Cultural Expression," *Journal of Ethnic and Cultural Studies* 8, no. 4 (2021): 91, <http://dx.doi.org/10.29333/ejecs/89>.

⁹ Mariam Aroian, "Traditional Cultural Expressions and Copyright Law : Denoting the Long - Lasting Confusion," *The Journal of World Intellectual Property WILEY* 28, no. February 2 (2025): 568, <https://doi.org/10.1111/jwip.12345>.

¹⁰ Yosman Leonard Silubun et al., "The Implications of Protecting Geographic Indications of the Cultural Rights of the Asmat Indigenous People," *Proceedings of the International Joined Conference on Social Science (ICSS 2021)* 603, no. 15 (2021): 453, <https://doi.org/10.2991/assehr.k.211130.082>.

¹¹ Putu Aras Samsithawrati et al., "Traditional Knowledge and Traditional Cultural Expressions as Communal Intellectual Property : Are They Protected Under the WIPO Treaty on Intellectual Property , Genetic

protection of indigenous peoples, violations of communal rights not only cause economic harm, but also moral, social, and spiritual losses that have a long-term impact on the sustainability of a community's cultural identity¹².

Philosophically, the protection of the communal rights of the Asmat carving is in line with the mandate of the constitution as stated in Article 18B paragraph (2) of the Constitution of the Republic of Indonesia of 1945 which recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia¹³. In addition, Article 28I paragraph (3) of the 1945 Constitution emphasizes that cultural identity and traditional community rights are respected in line with the development of the times and civilization¹⁴. Thus, legal protection of Asmat carvings is not only a copyright issue, but also part of the fulfillment of the constitutional rights of indigenous peoples. Criminal law reform must be directed to bridge these constitutional values into more concrete, effective, and equitable legal norms.

Although various studies have discussed the protection of traditional cultural expressions, particularly related to the relationship between intellectual property rights and the rights of indigenous peoples, there is still a gap in the study of the criminal law aspect as an instrument of protection. Most previous research has focused on the weaknesses of the modern copyright system based on individual ownership, limited protection periods, and economic orientations that are not in harmony with the communal character of traditional culture, including in the context of the carving of Asmat as the cultural heritage of the indigenous Papuan people which has very strong philosophical, spiritual, social, and symbolic value.¹⁵

Various studies have discussed the protection of traditional cultural expressions and communal intellectual property rights, there are still gaps in the study of the criminal law aspect

Resources , and Associated Traditional Knowledge 2024 ?," *Jurnal Pembangunan Hukum Indonesia*, 7, no. 1 (2025): 1.

¹² Sandra H Sulzer, "Restorative Justice for International Traditional Cultural Expression Ownership Disputes," *Michigan Journal International of Law* 45, no. 2 (2024): 275, <https://doi.org/10.36642/mjil.45.2.restorative>.

¹³ G. C Bramantyo, R. Y., & Setiono, "Implementasi Undang-Undang Dasar 1945 Pasal 18b Ayat 2 Tentang Pengakuan Negara Terhadap Norma Adat Dalam Perspektif Religius Dan Ritualis Masyarakat Dusun Temboro Kecamatan Wates Kabupaten Kediri," *Transparansi Hukum* 5, no. 2 (2022): 3, <https://doi.org/10.30737/transparansi.v0i0.3688>.

¹⁴ M. K. K. Malanye, M. D., Puluulawa, F., Junus, N., & Kadir, "PEMBERLAKUAN NILAI-NILAI KEARIFAN LOKAL ADAT ISTIADAT OYA DI KECAMATAN LOLAK DITINJAU DARI PASAL 18B AYAT 2 UUD 1945," *Jurnal Risalah Kenotariatan* 4, no. 2 (2023), <https://doi.org/https://doi.org/10.29303/risalahkenotariatan.v4i2.183>.

¹⁵ Muhammad Fadil et al., "Rok Rumbai Representasi Budaya Dan Kearifan Lokal Dalam Pakaian Adat Suku Asmat," *Jurnal Pendidikan Tambusai* 8, no. 3 (2024): 49229.

as an instrument of protection for Asmat carvings. Eddy Pelupessy's research entitled "Legal Protection of Intellectual Property Rights in the Perspective of Papuan Traditional Culture" emphasizes that traditional Papuan culture, including Asmat carvings, has a communal character and is not fully appropriate if protected through a modern copyright system that is individual, economical, and time-limited¹⁶. Meanwhile, Gilang's research, titled "Beyond TRIPS: Reconstructing Communal Intellectual Property Law in Indonesia through Human Rights and Criminal Enforcement" has begun to link communal intellectual property protection with human rights and criminal enforcement approaches, but it is still general and has not specifically addressed the carving of Asmat as a cultural object of indigenous Papuan¹⁷ peoples. Different from the two studies, this study specifically places the Asmat carving as the main object of study and focuses on the direction of criminal law reform as a preventive and repressive instrument against commercial exploitation by outsiders without permission, without recognition of origin, and without fair distribution of benefits to indigenous peoples. Thus, the novelty of this research lies in the effort to formulate a synchronization between the modern intellectual property rights system that tends to be individualistic and customary law based on collective ownership, so that the protection of communal rights to Asmat carvings can be realized in a fair, effective, and sustainable manner.

The state of the art of this research lies in the focus of the study on the direction of criminal law reform in protecting the communal rights of Asmat carvings as a traditional cultural expression. In contrast to previous research that focused more on normative protection within the framework of copyright law or an anthropological approach to Asmat culture, this study specifically places criminal law as a strategic instrument in realizing effective protection. The scientific novelty of this article lies in the analysis of the need to reformulate criminal provisions in the intellectual property rights regime in order to be able to accommodate the communal rights of indigenous peoples, including the recognition of the subject of collective law, the formulation of special penalties for the exploitation of traditional cultures, as well as sanctions models that are not only repressive but also restorative and distributive. This approach is important because effective legal protection is not enough only through normative recognition, but must be accompanied by law enforcement instruments that are able to provide certainty,

¹⁶ Eddy Pelupessy, "Perlindungan Hukum Hak Kekayaan Intelektual Dalam Perspektif Budaya Tradisional Papua," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. November (2023): 172, <https://doi.org/10.5281/zenodo.10519484>.

¹⁷ Washif Izzuddin Gilang Kresnanda Annas, Aji Baskoro, Doli Witro, "Beyond TRIPS: Reconstructing Communal Intellectual Property Law in Indonesia through Human Rights and Criminal Enforcement," *Jambe Law Journal* 9, no. 1 (2026): 273, <https://doi.org/10.22437/jlj.9.1.273-308>.

justice, and benefits.¹⁸

This research departs from the incompatibility between the national criminal law system and the characteristics of communal rights carved by Asmat as a traditional cultural expression. First, the criminal law in the copyright regime has not provided a specific formulation of the violation of the communal rights of indigenous peoples. Second, the state's position as the copyright holder of traditional cultural expressions has not fully reflected justice for indigenous peoples as owners of cultural values. Third, there is no criminal law enforcement mechanism that is able to guarantee substantive protection of Asmat carvings from the practice of exploitation and commercialization without permission. This condition raises fundamental questions about the ideal direction of criminal law reform to protect the communal rights of Asmat carvings in Indonesia.

Based on these problems, this research departs from the reform of criminal law must change the paradigm of intellectual property rights protection from an individual orientation to recognition of the collective rights of indigenous peoples. Criminal law should not only be understood as a tool of punishment, but also as an instrument of cultural protection, social justice, and recognition of indigenous peoples' identities. Therefore, it is necessary to formulate criminal law policies that integrate customary law values, human rights principles, constitutional protection of indigenous peoples, and a restorative justice approach in the national intellectual property rights protection system.

The aim is to analyze the direction of criminal law reform in protecting the communal rights of Asmat carvings in Indonesia, identify weaknesses in the current legal arrangements, and formulate a concept of legal protection that is more effective and equitable in the perspective of intellectual property rights. Through this study, it is hoped that a new construction of thinking will be born that can be an academic contribution to the development of criminal law and intellectual property law, as well as a practical recommendation for policymakers in drafting regulations that are more responsive to the protection of the cultural heritage of indigenous peoples in Indonesia.

METHODS

This research is normative legal research that aims to examine the legal norms, principles, and concepts related to the protection of communal intellectual property rights over

¹⁸ Rosman, Edi, Elfiani Elfiani, Hidayatul Azizah, and Ferdi Yufriadi. "Tulou As A Customary Criminal Sanction in Mentawai: Convergensi of Customary and Islamic Law for Social Reconciliation." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 3 (2025): 1518-1546.

Asmat carvings¹⁹. Normative legal research focuses on law as written in legislation, legal doctrines, principles, and relevant legal documents²⁰. This approach is used to analyze the adequacy of existing legal provisions, identify normative gaps, and formulate the direction of criminal law reform in protecting the communal rights of indigenous peoples²¹. This study applies a statutory approach, a conceptual approach, and a case approach. In addition, this research integrates a cultural-legal perspective as a methodological novelty to understand the philosophical, spiritual, social, and symbolic values of Asmat carvings as communal cultural expressions of the Asmat indigenous people. Through this approach, the study seeks to formulate a legal protection model that synchronizes modern intellectual property law with customary law based on collective ownership²².

This research focuses on the legal protection of Asmat carvings as communal intellectual property rights of the Asmat indigenous people in South Papua Province. Asmat carving is positioned as a traditional cultural expression that has philosophical, spiritual, social, and symbolic values, and therefore requires legal protection that is not limited to the modern intellectual property rights system. The legal materials used in this research consist of primary legal materials, including laws and regulations related to criminal law, intellectual property rights, traditional cultural expressions, indigenous peoples, and cultural heritage; secondary legal materials, including books, journal articles, legal doctrines, and previous research; and tertiary legal materials, including legal dictionaries, encyclopedias, and other supporting references. The data collection technique was carried out through library research by examining legislation, legal documents, academic literature, and relevant court decisions. The collected legal materials were analyzed qualitatively using statutory, conceptual, and case approaches to identify normative gaps and formulate the direction of criminal law reform in protecting the communal rights of Asmat carvings in Indonesia.

¹⁹ Saharuddin et al., "Tayade System Land Rights: The Concept of Unification of Customary Law and Indonesian Positive Law," *IOP Conference Series: Earth and Environmental Science* 1430, no. 1 (December 1, 2024): 012005, <https://doi.org/10.1088/1755-1315/1430/1/012005>.

²⁰ Shri Hardjuno Wiwoho and Muhammad Nabil, "LEGAL CERTAINTY AS THE CORE PRINCIPLE TOWARD NON- CONVICTION BASED ASSET FORFEITURE REFORM IN INDONESIA," *PETITA Jurnal Kajian Ilmu Hukum Dan Syariah* 11, no. 1 (2025): 598, <https://doi.org/https://doi.org/10.22373/petita.v11i1.999>.

²¹ Agus Sekarmadji, "Rechtsverwerking In Indonesia: How Land Ownership Can Be Lost Under Customary Law," *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 2 (2025): 930, <https://doi.org/DOI:https://doi.org/10.22373/petita.v10i2.836>.

²² Firman Muntaqo, Febrian, and Alip Dian Pratama, "Adat Law as a Foundation for Advancing Indonesian Agrarian Law to Maximise Societal Welfare," *Sriwijaya Law Review* 8, no. 2 (2024): 379, <https://doi.org/10.28946/slrev.Vol8.Iss2.3710.pp376-392>.

RESULTS AND DISCUSSION

Communal Rights in Criminal Law in Indonesia

Communal rights in Indonesia are a form of social and cultural wealth that has a very important position in the lives of indigenous peoples²³. Communal rights are not only understood as common rights to land, territory, or natural resources, but also include the right to traditional cultural expressions born from the values, ideas, thoughts, customs, and collective identity of an ethnic group²⁴. In this context, communal rights are a symbol of the civilization of a society that is inherited from generation to generation as an inseparable part of their cultural and social existence²⁵. These expressions can be manifested in various forms, such as carvings, dances, traditional music, fabric motifs, traditional symbols, traditional architecture, to the control of customary territories that have spiritual and historical value²⁶. One of the communal rights that is very well known in Indonesia is the Asmat carving which comes from the Asmat tribe community in Papua.

Asmat carvings are one of the traditional cultural heritages that have very high artistic, spiritual, and philosophical value. For the Asmat people, carvings are not just ordinary works of art, but representations of the relationship between humans, ancestors, nature, and the indigenous beliefs that live in their social structures. Each carving has a deep symbolic meaning, reflecting family identity, respect for the spirits of ancestors, and belief systems that are passed down from generation to generation²⁷. The carvings are made collectively based on the customary values that live in the community, so that the ownership cannot be attached to one specific individual, but becomes a common right of the Asmat indigenous people as a customary law community. Therefore, the Asmat carving is a tangible form of communal rights that must be legally protected.

²³ Sanaz Memari et al., "Communal Spaces in Multi-Unit Housing Renovation : A Systematic Literature Review," *Frontiers of Architectural Research*, no. 20 (2026), <https://doi.org/10.1016/j.foar.2025.10.014>.

²⁴ Takashi Kurosaki, Saumik Paul, and Firman Witoelar, "Journal of Economic Behavior and Organization In Pursuit of Power : Land Tenancy Contracts and Local Political Business Cycles in Indonesia," *Journal of Economic Behavior and Organization* 227, no. May 2023 (2024): 106764, <https://doi.org/10.1016/j.jebo.2024.106764>.

²⁵ Isabella Jeniva and Maidiantius Tanyid, "Social Sciences & Humanities Open The Framework of Religious Moderation : A Socio-Theological Study on the Role of Religion and Culture from Indonesia ' s Perspective," *Social Sciences & Humanities Open* 11, no. September 2024 (2025): 101271, <https://doi.org/10.1016/j.ssaho.2024.101271>.

²⁶ Suprapti Suprapti et al., "Case Studies in Chemical and Environmental Engineering Communal-Based Domestic Rainwater Harvesting System : A Novel Approach to Alternative Solutions for Increasing Water Supply and Recharging Groundwater in Jagakarsa Urban Area , South Jakarta," *Case Studies in Chemical and Environmental Engineering* 11, no. January (2025): 101126, <https://doi.org/10.1016/j.cscee.2025.101126>.

²⁷ Deborah Manzi and Francesco Calderoni, "A Simulation Approach to Assess Law Enforcement Intervention Impact : How the Efficiency / Security Trade-off Affects Drug Trafficking Networks ' Resilience to Arrests," *Journal of Criminal Justice* 104, no. February (2026): 102622, <https://doi.org/10.1016/j.jcrimjus.2026.102622>.

The legal basis for the protection of communal rights in Indonesia can be found in various laws and regulations. Constitutionally, the recognition of customary law communities is contained in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This provision is the main basis that communal rights, including traditional cultural expressions, have constitutional legitimacy that must be protected by the state²⁸.

In addition, Article 28I paragraph (3) of the 1945 Constitution also emphasizes that cultural identity and the rights of traditional communities are respected in line with the development of the times and civilization. This provision shows that cultural protection is not only a social issue, but also part of the protection of human rights. The state has an obligation to ensure that indigenous peoples do not lose their rights to their cultural heritage due to the pressures of globalization, commercialization, or the weakness of the national legal system.

In the context of sectoral law, the protection of communal rights can also be found in Law Number 5 of 2017 concerning the Promotion of Culture. This law places the object of cultural advancement as an important part of national identity that must be protected, developed, utilized, and fostered in a sustainable manner. Traditional cultural expressions such as Asmat carvings are included in the objects of cultural advancement that must be maintained. The state through the central and regional governments has the responsibility to carry out inventory, security, maintenance, rescue, and publication of traditional culture so that it is not lost or claimed by other parties.

The protection of traditional cultural expressions is also related to Law Number 28 of 2014 concerning Copyright. Article 38 states that copyright on traditional cultural expressions is held by the state. The state is obliged to inventory, preserve, and maintain these traditional cultural expressions. However, this arrangement is still debatable because the state is placed as the holder of rights, while indigenous peoples as collective creators do not gain a strong enough position as the main legal subject. This has led to criticism that the approach is still centralistic and does not fully reflect the principles of justice for indigenous peoples.

Positive criminal law in Indonesia does not specifically regulate the criminal act of exploitation of traditional culture as a crime against the communal rights of indigenous peoples.

²⁸ Erlan Wijatmoko, Armaidly Armawi, and Teuku Faisal Fathani, "Legal Effectiveness in Promoting Development Policies: A Case Study of North Aceh Indonesia," *Social Sciences & Humanities Open* 13, no. January (2026): 102466, <https://doi.org/10.1016/j.ssaho.2026.102466>.

In fact, the practice of reproduction without permission, the falsification of cultural origins, and the taking of economic advantage without the consent of indigenous peoples can qualify as a form of serious violation that harms the collective interest. Criminal law reform is needed so that the protection of communal rights is not only declarative, but has real law enforcement power.

Theoretically, the protection of communal rights can be analyzed through the Theory of Justice put forward by John Rawls. According to Rawls, justice must be realized through a fair distribution of rights and obligations in society²⁹. In the context of communal rights, indigenous peoples have the right to equal protection of the cultural products they have inherited from generation to generation. When outsiders gain economic benefits from Asmat carvings without providing benefits to indigenous peoples, there has been distributive injustice.³⁰ The state must be present to correct these inequality through legal policies that favor the protection of indigenous peoples.

Furthermore, the Legal Protection Theory put forward by Satjipto Rahardjo emphasizes that the law must provide protection to the weak in order to create social balance³¹. Indigenous peoples are often in a vulnerable position in the face of global market forces and individualistic modern legal systems. Therefore, the law must not only be a tool of administrative formality, but must be a means of substantive protection of communal rights. Legal protection of Asmat carvings must be understood as an effort to maintain the cultural dignity and sustainability of indigenous peoples' identities.³²

The theory of Communal Property Rights is also relevant in explaining the position of Asmat's carving as a collective right³³. In contrast to the concept of individual property rights in the Western legal system, communal property places ownership as common property that is inseparable from its community³⁴. This right has not only economic value, but also spiritual,

²⁹ Pan Mohamad Faiz, "Teori Keadilan John Rawls (John Rawls' Theory of Justice)," *SSRN Electronic Journal*, no. October (2017): 135, <https://doi.org/10.2139/ssrn.2847573>.

³⁰ Yacob, F., S. R. Kamsani, A. Sinring, M. Fitri, and N. Nuraida. "Multicultural Counseling To Restore Social Harmony In A Multiethnic Acehese Community." *Jurnal Ilmiah Peuradeum* 13, no. 3 (2025): 2019-2042.

³¹ Budi Raharjo, Rengga Kusuma Putra, and Methodius Kossay, "Legal Issues in the Supervision and Enforcement of Professional Ethics for Advocates in Indonesia," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 3, no. 1 (2025): 900-917, <https://doi.org/10.51903/hakim.v3i1.2287>.

³² Arifin, Muhammad Yarif, S. Salle, Muhammad Rinaldy Bima, M. Azham Ilham, and Ar Rayhan Wiqra Ramadhan. "THE ROLE OF THE MINANGKABAU TRADITIONAL COMMUNITY'S CULTURE OF CONSENSUS BUILDING AS A PILLAR OF DEMOCRACY IN SUPPORTING THE SUSTAINABLE DEVELOPMENT GOALS (SDGs)." *Jurnal Al-Dustur* 9, no. 1 (2026): 35-50.

³³ Shivakumar Channappal Maheshappa, "From Commons to Contention : A Review of the Evolution of Forest Property Rights in India," *Social Sciences & Humanities Open* 13, no. May (2026): 102829, <https://doi.org/10.1016/j.ssaho.2026.102829>.

³⁴ Cyrille Vallet, "Extractivism , Ecocentrism and Democracy . Imaginaries around Rights of ^ Ne River River and Legal Personhood of the Rh O," *Political Geography* 128, no. February (2026): 103563, <https://doi.org/10.1016/j.polgeo.2026.103563>.

social, and historical value³⁵. Therefore, its protection approach cannot be confused with ordinary copyright protection. States need to develop sui generis protection systems specifically designed to protect traditional cultural expressions and the rights of indigenous peoples.

The sui generis approach is very important because it provides a more flexible legal space and in accordance with the character of traditional culture³⁶. This system allows for the recognition of communal ownership, indefinite protection, and a fair benefit-sharing mechanism. In the context of Asmat carvings, this approach can be a solution to ensure that indigenous peoples remain the primary owners of their cultural heritage and derive economic benefits from the use of that culture by others.

Thus, communal rights in Indonesia are an important part of the nation's identity that must be seriously protected. The carving of Asmat as a form of traditional cultural expression shows that communal rights are not just a cultural symbol, but also concern the economic rights, moral rights, and sustainability rights of indigenous peoples. The existing legal basis has provided normative recognition, but its implementation still requires strengthening, especially in the aspects of criminal law and recognition of the communal ownership of indigenous peoples. The theory of justice, the theory of legal protection, and the theory of communal property rights provide an academic basis that the protection of communal rights is not only a legal necessity, but also a moral obligation of the state in preserving the heritage of the Indonesian civilization. Criminal law reform that protects the communal rights of Asmat carvings is an important step to realize cultural justice, customary sovereignty, and sustainable protection of Indonesia's communal intellectual property.

Table 1. Legal Framework for the Protection of Communal Rights over Asmat Carving as Traditional Cultural Expression

No.	Legal Basis	Article/Provision	Regulatory Substance	Relevance to the Communal Rights of Asmat Carving
1	The 1945 Constitution of the Republic of Indonesia	Article 18B paragraph (2)	The State recognizes and respects customary law community units along with their traditional rights, as	Serves as the constitutional basis for recognizing the communal rights of the Asmat indigenous

³⁵ Jingxi Liu, Xiaojun Luo, and Guan H Tang, "Bridging Fairness in Machine Learning : A Legal Critique of Technical Strategies," *Computer Law & Security Review: The International Journal of Technology Law and Practice* 61, no. May (2026): 67-69.

³⁶ Emre Kazim et al., "On the Sui Generis Value Capture of New Digital Technologies : The Case of AI," *Patterns* 3, no. 7 (2022): 100526, <https://doi.org/10.1016/j.patter.2022.100526>.

				long as they are still alive and in accordance with the development of society	community over traditional carvings as a collective cultural heritage
2	The 1945 Constitution of the Republic of Indonesia	Article paragraph (3)	28I	Cultural identity and the rights of traditional communities are respected in harmony with the development of time and civilization	Provides human rights protection for traditional culture and the identity of the Asmat indigenous community
3	Law Number 5 of 2017 concerning Cultural Advancement	Article 5		Objects of Cultural Advancement include oral traditions, manuscripts, customs, rituals, traditional knowledge, traditional technology, arts, language, folk games, and traditional sports	Asmat carving is included in the category of art and traditional cultural expression that must be protected by the State
4	Law Number 5 of 2017 concerning Cultural Advancement	Articles 16–22		The Government is obliged to conduct inventory, safeguarding, maintenance, preservation, and publication of objects of cultural advancement	Imposes state responsibility in preserving the sustainability of Asmat carving so that it is not claimed or exploited by other parties
5	Law Number 28 of 2014 concerning Copyright	Article paragraph (1)	38	Copyright over traditional cultural expressions is held by the State	Affirms legal protection for Asmat carving as a traditional cultural expression
6	Law Number 28 of 2014 concerning Copyright	Article paragraph (2)	38	The State is obliged to inventory, protect, and preserve traditional cultural expressions	Provides legitimacy for administrative and legal protection of the communal cultural rights of the Asmat people
7	Law Number 39 of 1999 concerning Human Rights	Article paragraph (1)	6	In the context of human rights enforcement, the differences and needs of customary law communities must be considered and protected by law,	Ensures respect for the rights of the Asmat indigenous community as part of human rights protection

			society, and the government	
8	Minister of Education and Culture Regulation concerning Intangible Cultural Heritage	Provisions on the registration of traditional culture	Regulates the inventory and designation of national intangible cultural heritage	Strengthens official recognition of Asmat carving as a national cultural heritage
9	Sui Generis Principle in the Protection of Traditional Cultural Expressions	Special protection concept	A special protection system for traditional culture based on communal rights, unlimited duration, and indigenous community-based protection	Becomes an ideal solution for the legal protection of Asmat carving, which cannot be fully covered by the ordinary intellectual property rights system

Copyright Protection of Asmat Carvings in South Papua Province

Copyright protection of Asmat carvings in South Papua Province, especially in Kampung Per, Yepem, Uwus, and Yufri-Yaun, has become a very important issue as tourist visits through cruise ships increase regularly. The presence of tourists encourages the economic activities of indigenous peoples through cooperation between tour guides and villagers in organizing traditional art performances and selling Asmat carvings. This condition has a positive economic impact because it strengthens the culture-based tourism sector and improves the welfare of local communities. However, behind these benefits there is a great risk in the form of excessive commercialization of culture if it is not accompanied by clear regulations and adequate legal protections. Asmat carvings are not just ordinary works of art, but traditional cultural expressions that contain sacred, spiritual, historical, and collective values of the Asmat indigenous people. When such carvings are produced, exhibited, or traded without regard for customary norms and indigenous peoples' consent, it can obscure the meaning of indigenous culture and cause violations of the communal rights of local communities. Art performances in public spaces can indeed be a means of cultural education for tourists, but if they are presented in a wrong, exaggerated way, or only oriented towards economic gain, they can form a public perception that deviates from the true traditional values. Therefore, strict regulations are needed from the Asmat Regency Regional Government to provide legal protection for the copyrights and communal wealth of indigenous peoples, including regulations on cultural performance permits,

commercial use of Asmat carvings, fair economic benefit sharing mechanisms, and strengthening the role of customary institutions in supervision.

The main obstacle faced by local governments in implementing legal protection for Asmat carvings from a criminal law perspective lies in the lack of certainty of a legal framework that expressly accommodates the communal rights of indigenous peoples as objects of criminal protection. The prevailing criminal law system is still dominated by an individual ownership approach, so traditional cultural expressions such as collective Asmat carvings are often difficult to place as clear subjects of legal protection. In addition, the evidentiary process in criminal cases is also a serious obstacle because communal rights do not always have formal written evidence like modern intellectual property rights, but are more based on customary recognition, oral traditions, and social legitimacy in indigenous communities. This condition poses difficulties for law enforcement officials in determining the elements of ownership, loss, and parties who have the right to represent indigenous communities in legal proceedings. On the other hand, the limited capacity of law enforcement officials, both the police, prosecutor's office, and local governments, is also an inhibiting factor due to the lack of understanding of communal rights, traditional cultural values, and mechanisms for the protection of indigenous peoples. Many officials still see this issue as a purely cultural issue, not as a legal issue that requires criminal enforcement.

Asmat's carvings have very distinctive characteristics that reinforce the urgency of implementing the communal rights approach in its legal protection system. Anthropologically, Asmat carvings cannot be understood solely as ordinary works of art, but as an integral part of the belief system, social structure, and collective identity of the Asmat indigenous people. Each motif, shape, and symbol depicted in the carvings has a spiritual meaning related to respect for ancestors, human relationships with nature, and traditional values that are inherited from generation to generation. Therefore, the use of Asmat carvings outside the customary context without the consent of the community not only causes economic losses, but can also be considered a moral and spiritual violation because it touches on the sacred aspects that live in indigenous peoples. From an intellectual property law perspective, the issues that arise include misappropriation or unauthorized taking of traditional cultural expressions, unlicensed commercial exploitation, and mass reproduction that removes the original symbolic meaning of the carving. Many outsiders use Asmat carvings as objects of art trade, tourist souvenirs, and export commodities without involving indigenous peoples as legitimate communal owners. This kind of practice shows the weakness of modern IPR systems that are more oriented towards individual ownership and have not been fully able to accommodate the collective character of

traditional cultural heritage. Studies have also shown that in the absence of legal protection mechanisms that are sensitive to indigenous values, traditional cultural works such as Asmat carvings are highly vulnerable to cultural appropriation by outsiders, including the tourism industry and the global art market that tend to place culture only as an economic commodity.

Further recognition is contained in Law Number 28 of 2014 concerning Copyright, especially Article 38 which states that copyright on traditional cultural expressions is held by the state, and the state is obliged to inventory, maintain, and maintain these cultural expressions. However, there are still practical problems because indigenous peoples as communal owners have not fully acquired a strong position as the main legal subject in such protection. In addition, Law Number 5 of 2017 concerning the Advancement of Culture also provides a basis for protection of cultural advancement objects, including traditional arts such as Asmat carving, through efforts to secure, maintain, save, and develop culture. Thus, normatively the communal rights of the Asmat people have a fairly strong legal legitimacy, but the biggest challenge lies in the implementation of protection that is still not optimal, especially in the face of commercial exploitation, unilateral claims, and weak law enforcement against the violation of these communal rights.

In practice, as described by Anthonius M. Ayorbaba, various forms of violations of the communal rights of the Asmat people to traditional carving works of art still occur frequently and show the weak legal protection that exists. These violations include imitating Asmat motifs and carving styles through mass production carried out outside Papua without the consent of indigenous peoples as owners of indigenous culture. In addition, Asmat's distinctive motifs are also widely used in various commercial products such as furniture, fashion accessories, decorative crafts, and tourism souvenirs that are widely marketed without any recognition of cultural origins or fair distribution of economic benefits to the Asmat people. This practice shows a cultural exploitation that is not only economically detrimental, but also removes the symbolic value and spiritual meaning inherent in the carving. In some cases, Asmat carvings are even traded at high value in national and international art markets, while the indigenous people of Asmat are only placed as early suppliers of cultural materials or are not even involved in the economic chain at all. This creates a huge inequality between the cultural values produced and the benefits received by the indigenous communities of the owners. Furthermore, it was also found that there were efforts to register copyrights or industrial designs by certain parties on motifs or forms of carving that are actually the collective cultural heritage of the Asmat people, accompanied by product labeling as if they were new individual creations. This kind of action is

a serious form of misappropriation because it takes communal rights and turns them into private property which is contrary to the principles of cultural justice³⁷.

The Concept of Legal Protection Reform Carving Asmat Criminal Law Perspective

The concept of legal protection reform in Asmat's carving in the perspective of criminal law departs from the urgent need to place traditional cultural expressions as objects of legal protection on par with other forms of intellectual property, while still respecting the communal character inherent in them³⁸. Asmat carvings are not just works of art with economic value, but representations of cultural identity, belief systems, spiritual values, and historical relationships of the Asmat indigenous people with their ancestors and the surrounding nature. Therefore, any form of exploitation, imitation, unauthorized reproduction, or commercialization that does not provide fair benefits to indigenous peoples must be seen as a serious violation of communal rights that requires a stronger criminal law response³⁹. This reform is important because the existing legal system, especially in the Intellectual Property Rights (IPR) regime, is still dominated by the paradigm of individual ownership that is less able to reach the protection of collective cultural heritage such as Asmat carvings.

The Concept of Legal Protection Reform Carving Asmat Criminal Law Perspective

1. Position of Communal Rights

Conceptually, criminal law protection reform must begin with the firm recognition that the indigenous people of Asmat are legal subjects who have communal rights to their traditional carvings. This recognition is important so that indigenous peoples are not only positioned as objects of state protection, but also as legitimate owners who have economic rights, moral rights, and supervisory rights over the use of their culture. So far, Article 38 of Law Number 28 of 2014 concerning Copyright does state that the right to traditional cultural expression is held by the state, but the position of indigenous peoples as original owners has not received a strong space in the practice of legal protection. Criminal law reform must be able to clarify the position of indigenous communities as parties who have the right to sue, give consent, and receive economic benefits from the use of Asmat carvings.

³⁷ Regional Office of the Ministry of Law and Human Rights of Papua. 2026. Interview on the Legal Protection of Traditional Cultural Intellectual Property of Indigenous Peoples in Papua. Papua: Regional Office of the Ministry of Law and Human Rights of Papua, January 12, 2026.

³⁸ Muna B Alharthi, Abdulhadi A Althiabi, and Mona F Sulaimani, "The Relationship between Bullying and Depression among Students with Mild Intellectual Disabilities in Inclusive Primary Schools," *Acta Psychologica* 264, no. September 2025 (2026): 106513, <https://doi.org/10.1016/j.actpsy.2026.106513>.

³⁹ Purabi Bose et al., "Women's Rights to Land and Communal Forest Tenure: A Way Forward for Research and Policy Agenda in Latin America," *Women's Studies International Forum* 65, no. November (2017): 53–59, <https://doi.org/10.1016/j.wsif.2017.10.005>.

2. Establishment of New Regulations Related to Special Delicacies

Furthermore, reforms should be directed at the establishment of special criminal offenses that explicitly regulate violations of communal rights to traditional cultural expression. Currently, there is no specific criminal action formulation regarding the illegal exploitation of traditional culture such as Asmat carvings. In fact, various forms of infringement such as imitation of motifs, mass production without permission, the use of customary symbols for commercial purposes, unilateral copyright registration by external parties, and trade in cultural works without profit sharing are real forms of communal rights deprivation. Therefore, criminal law must formulate specific criminal acts that include unauthorized taking, illegal reproduction, falsification of cultural origins, commercialization without the consent of indigenous peoples, and unilateral recognition of communal works as individual creations.

3. Clarity of Sanctions

In the context of sanctions, criminal law reform must provide a real deterrent effect through proportionate and fair punishment. Sanctions are not only in the form of imprisonment and fines, but must also include deprivation of economic benefits from violations, restitution to indigenous peoples, revocation of business licenses, prohibition of certain commercial activities, and obligations to restore the cultural reputation that has been harmed. Restitution is important because the violation of the Asmat carvings not only causes material losses, but also moral and spiritual losses that affect the dignity of indigenous peoples. Thus, criminal law is not only repressive, but also serves as an instrument for the restoration of cultural justice. Reform must also strengthen the evidentiary mechanism in criminal cases related to communal rights. One of the main obstacles in law enforcement is the difficulty of proving communal ownership because traditional cultures generally do not have formal documents like modern intellectual property rights. Ownership is based more on oral traditions, customary recognition, social history, and community legitimacy. Therefore, criminal law reform must recognize customary-based evidence, such as the testimony of indigenous figures, local cultural archives, anthropological records, and the recognition of indigenous peoples as valid evidence in the judicial process. This approach will provide a space for justice that is more in line with the traditional cultural character and prevent the dominance of formal evidentiary standards that often harm indigenous peoples.

4. Integration Between Customary Law and National Criminal Law

The integration between customary law and national criminal law is also an important element in the reform of the protection of the law of Asmat carvings. The customary norms that live in the Asmat community have enormous social power in regulating the use of culture and resolving internal disputes. However, in the practice of the formal justice system, customary law often does not receive adequate recognition. Criminal law reform must build synchronization between the two through the recognition of customary institutions as partners in supervision, early settlement of disputes, and the granting of legitimacy to the use of traditional culture. Thus, criminal law does not exist as an instrument that erases customs, but as a reinforcement of the protection of customary values themselves.

In addition, the reform must place the principle of Free Prior Informed Consent (FPIC) as the main requirement in any commercial use of Asmat carvings. This means that any party who wants to use, reproduce, or trade Asmat carvings must first obtain free consent, preceded by and clearly informed to the indigenous peoples of the owners. This principle is important to ensure that indigenous peoples retain control over their cultural heritage and are not victims of unilateral exploitation. Without such consent, any form of cultural exploitation must be able to qualify as a violation of the law that can be criminally prosecuted.

The *sui generis* approach is also an important part of this concept of reform. The current legal protection system is still too dependent on the individualistic conventional IPR regime, so it is not fully able to protect traditional cultural expressions. *Sui generis* protection provides room for the recognition of communal ownership, indefinite protection, and a more equitable benefit-sharing mechanism. In the context of criminal law, this approach allows for the birth of specific regulations that specifically regulate the protection of traditional culture without having to be forced into the usual copyright legal framework.

From the perspective of legal theory, this reform is in line with John Rawls's Theory of Justice which emphasizes the equitable distribution of rights and benefits in society. When outsiders gain great benefits from the Asmat carvings without providing equal benefits to indigenous peoples, there is a distributive injustice that must be corrected by the state through criminal law instruments. In addition, Legal Protection Theory Satjipto Rahardjo also emphasized that the law must be present to protect vulnerable groups, including indigenous peoples who are often in a weak position in the face of global market forces and the modern legal system.

Thus, the concept of legal protection reform carved by Asmat from the perspective of criminal law must be built on five main principles, namely recognition, protection,

empowerment, justice, and sustainability. Recognition means placing indigenous peoples as rightful owners of communal rights, protection means presenting effective criminal law instruments, empowerment means involving indigenous peoples in the entire legal process, justice means ensuring a balanced sharing of economic benefits and moral protection; and sustainability means preserving cultural heritage for future generations. This reform is not only a legal issue, but also part of efforts to maintain the nation's cultural sovereignty, strengthen national identity, and ensure that Indonesia's legal development runs in harmony with the values of social justice and respect for indigenous peoples.

CONCLUSION

The conclusion of this study shows that legal protection of Asmat carvings as a traditional cultural expression has not been fully effective because the Indonesian intellectual property legal system is still oriented towards individual rights, while Asmat carvings have the character of communal rights of indigenous peoples. The study found that there is no adequate legal mechanism to regulate collective ownership, use, and protection of traditional cultural exploitation, including the absence of specific criminal arrangements that expressly provide protection against violations of communal rights. The limitation of this study lies in the use of normative legal methods that focus on the study of norms, principles, legal concepts, and laws and regulations (*law in books*), so that it has not directly examined the application of legal protection through field research.

Further research is suggested to use an empirical or socio-legal approach to test the effectiveness of legal protection, the consent mechanism of indigenous peoples through the principle of *Free, Prior and Informed Consent* (FPIC), and the role of customary institutions in the management of communal rights. In terms of policy, the government needs to establish special regulations regarding the protection of traditional cultural expressions that regulate the status of indigenous peoples as holders of communal rights, the mechanism for permits for the use of culture, the recording of communal rights, and the sharing of benefits for commercial use, so that the protection of Asmat carvings can provide legal certainty and maintain the sustainability of indigenous peoples' cultural identities.

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